

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 objectives¹. 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 Act².

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 advertising³.
- 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

¹ The relevant legislation is set out in detail in Annex 1 of the Code.

² The relevant legislation can be found at Part 4A of the Act.

³ 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

Britain's Got More Talent

ITV2, 13 April 2013, 20:35, 14 April 2013, 17:30 and 17 April 2013, 06:30 and 13:25

Introduction

Britain's Got More Talent is the companion show to the ITV talent series *Britain's Got Talent*, which aims to find an 'unknown star' from the general public to perform at the annual Royal Variety Performance.

A complainant alerted Ofcom to scenes of nudity in the episode broadcast on 13 April 2013 at 20:30.

Ofcom viewed a recording and noted a performance by Scarlet around 20:55, which included the following:

- Presenter Stephen Mulhern interviewed Scarlet backstage before the performance, during which Scarlet appeared wearing a full length sequined dress and necklace, and a black dressing gown over that costume. Scarlet communicated using a pen and paper, explaining she was resting her voice due to pneumonia, and wrote "*It's a secret*" in response to a question about what song she was going to sing;
- Scarlet was introduced to the judges, wearing the full length sequined dress, necklace, and gloves;
- Scarlet appeared on stage singing "The Bare Necessities". After singing a chorus and verse, she removed her gloves and asked the audience and judges, "*Am I giving you a clue ladies and gentlemen? David [referring to the judge David Walliams], do you need a clue about what's about to happen?*";
- Stephen Mulhern was shown backstage, holding to camera a card with the words, "*Get em off!*";
- Scarlet unzipped, dropped and stepped out of her dress entirely, leaving her wearing only a necklace and with a feather boa to cover her body (which she picked up from a chair at this point). She turned to the audience to reveal her naked bottom, which she wiggled. This sequence consisted of: a two second close-up of Scarlet unzipping the back of her dress; a two second mid shot of her wriggling her bottom out of the dress; a one second close up of her bottom; a two second long to mid zoom showing Scarlet in wide shot with her naked bottom to the audience; a two second mid shot of Scarlet shaking her naked bottom to the audience; and a later one second shot of Scarlet shaking her naked bottom to the audience. The images were pixellated and intercut with shots of the audience and the judges' reactions; and
- At the end of the routine, Scarlet turned back to the audience, her feather boa covering her front, and presenter Declan Donnelly came on stage and handed her a dressing gown.

We noted that this episode, featuring exactly the same sequence described above, was repeated on three occasions on ITV2, on 14 April 2013 at 17:30, and on 17 April 2013 at 06:30 and 13:25.

Ofcom considered the broadcast raised issues warranting investigation under Rule 1.3 of the Code, which states:

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

Ofcom issued detailed guidance about observing the watershed in September 2011¹. This states that: “It is important to note that in pre-watershed content, Ofcom would not expect to see singers and dancers wearing clothing that does not adequately cover their bodies (in particular their breasts, genital area and buttocks)”.

We therefore asked ITV2 Limited (“ITV” or “the Licensee”), how this content had complied with Rule 1.3.

Response

ITV said that “the programme celebrates variety entertainment and British talent, and therefore showcases a wide range of different types of act, not all of which will always be to everyone’s taste”. The Licensee said that “both ITV commissioners and the producers consider very carefully the suitability of all performances for the family audience that the programme attracts, and the expectations of viewers, in particular those of parents, and the fact that these programmes will be repeated at varying times in the schedule before the watershed”.

ITV said it also took into account recent Ofcom guidance on pre-watershed material, and decisions in this area of entertainment programming (for example *The X Factor Final* in issue 180 of Ofcom’s Broadcast Bulletin²) and specifically decisions on previous episodes of *Britain’s Got Talent* and *Britain’s Got More Talent* (for example issue 210 of Ofcom’s Broadcast Bulletin³).

ITV considered that, while some viewers may find any burlesque performance unsuitable for children simply by virtue of the “sexualised” nature of burlesque itself, *Britain’s Got Talent* has featured a number of similar acts over the years, for example Fabia Cerra in 2009 and Beatrix Von Bourbon in 2012. It therefore did not consider that this performance would have exceeded the likely expectations of the vast majority of the audience, either when originally broadcast or when repeated. ITV said that in each case “any nudity or partial nudity was carefully covered visually in post-production”.

ITV said that Scarlet’s act consisted of singing and striptease, and the performance was carefully edited, with much of the performance being shown in long shot once the striptease element began. It was also clearly signposted during the performance

¹ Published 30 September 2011:

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

² Issue 180 of Ofcom’s Broadcast Bulletin, available to view at:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb180/obb180.pdf>

³ Issue 210 of Ofcom’s Broadcast Bulletin, available to view at:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb210/obb210.pdf>

by the choice of song, and, for example, by the teasing removal of her gloves, that a striptease element would be involved. ITV said that once Scarlet did remove her dress, her naked bottom was always covered in all shots by pixellation. It considered this nudity was always sufficiently covered in every shot, and the performance as a whole was therefore suitably inexplicit. ITV did not dispute that Scarlet was “briefly nude during the performance”, but said that viewers never “saw her entirely nude”, and disagreed with Ofcom that the pixellation was insufficient and of limited effectiveness.

ITV said that this partial nudity must also be considered in the context of the obvious humour of the performance and the song choice, which drew upon a wider tradition of “saucy” humour, rather than being overtly erotic. At the conclusion of the performance, when she received the judges' comments, Scarlet was modestly covered first by her feather boa and then by a dressing gown.

ITV acknowledged that not all parents will consider acts of this nature to be appropriate for entertainment programming scheduled before the watershed, and regretted any offence caused to the complainant to Ofcom in this instance. Nevertheless, it did not believe that the inclusion of this performance exceeded the expectations of the family audience, or that it was unsuitable for children.

Decision

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

Rule 1.3 requires that children must be protected by appropriate scheduling from material that is unsuitable for them. This rule is not prescriptive and it does not stipulate material or themes that require appropriate scheduling to protect children. Instead it requires that appropriate scheduling is judged by a 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 applying the requirement to protect persons under the age of eighteen, Ofcom must take into account the broadcaster's and audience's right to freedom of expression. This is set out in Article 10 of the European Convention on Human Rights. Article 10 provides for the right of freedom of expression, which encompasses the right to hold opinions and to receive and impart information and ideas without unnecessary interference by public authority. However, the broadcaster's right to freedom of expression is not absolute. In carrying out its duties, Ofcom must balance the right to freedom of expression on one hand, with the requirement in the Code to protect under-eighteens.

As Ofcom noted in its 2011 guidance on observing the watershed on television⁴, family viewing programmes raised particular concerns amongst the parents and carers surveyed in Ofcom's 2011 research. The guidance states that “[w]hile Ofcom acknowledges these programmes are not made for children, they nevertheless tend to attract a significant child audience and therefore broadcasters should ensure that the content is suitable for family viewing *throughout the duration* of the programme... In the entertainment and talent genres, particular areas of concern include the sexualised clothing and dance routines of performers and/or guest artistes...”.

⁴ See footnote 1.

Broadcasters are also required to take particular care if repeats of the content are scheduled during the daytime when it is likely children will be watching, some potentially unaccompanied by a parent or other adult.

We considered first whether the material broadcast was unsuitable for children.

The performance in question was a burlesque act, which is a variety genre characterised by flirtatious comedy, mime, dancing and striptease. We noted that this performance as a whole lasted approximately 90 seconds and contained shots of Scarlet removing her dress and shaking her naked bottom at the audience (as set out in the Introduction). We noted that from the point when Scarlet removed her dress, there were five individual shots totalling around 10 seconds giving particular focus to her naked and pixellated buttocks.

As already pointed out Ofcom guidance states that: "It is important to note that in pre-watershed content, Ofcom would not expect to see singers and dancers wearing clothing that does not adequately cover their bodies (in particular their breasts, genital area and buttocks)". In issue 210 of Ofcom's Broadcast Bulletin⁵ Ofcom considered images of a burlesque act on *Britain's Got Talent*, Beatrix Von Bourbon, adopting mildly provocative positions, with partial and obscured nudity. In that case Ofcom did not find the material in breach of the Code, but did note in particular a sequence in which Beatrix Von Bourbon looked over her shoulder as she slowly unzipped the back of her skirt to very briefly reveal a partial view of her buttocks, and that "this image was on the margins of acceptability and remind[ed] the broadcaster to take particular note of Ofcom's guidance⁶...in future".

Ofcom considered in this latest broadcast that the nudity was more evident than the previous case due to the frequency and close-up nature of some of the images of the performer's naked buttocks. While we noted the nudity was pixellated, Ofcom disagreed with ITV and considered it was of limited effectiveness and did not sufficiently obscure the performer's naked buttocks.

Taking into account the level of detail in this sequence, Ofcom did not consider that the Licensee had taken adequate steps to limit the images of nudity. The frequency and detail of these images in context of a striptease in a burlesque act meant that on balance they were not suitable for children.

Ofcom then assessed whether the images of Scarlet's nudity were appropriately scheduled. In terms of scheduling, Ofcom noted that when this programme was originally broadcast on ITV2 on 13 April 2013 it began at 20:35 (the performance in question occurred at 20:55) and was repeated at various times (all prior to the 21:00 watershed) on three different dates during the following week. Ofcom obtained audience viewing figures for all the broadcasts and noted that:

- on ITV2 on Saturday 13 April 2013 at 20:35 *Britain's Got More Talent* attracted 206,000 child viewers (aged between 4 and 15 years), which represented 18.4% of total viewers for the programme;
- on ITV2 Sunday 14 April 2013 at 17:30, *Britain's Got More Talent* attracted 116,000 child viewers, which represented 17% of total viewers;

⁵ See footnote 3.

⁶ See footnote 1.

- on ITV2 on Wednesday 17 April 2013 at 06:30 *Britain's Got More Talent* attracted 25,000 child viewers, which represented 38.2% of total viewers; and
- on ITV2 on Wednesday 17 April 2013 at 13:30 *Britain's Got More Talent* attracted 1,000 child viewers, which represented 0.2% of total viewers.

Given the above Ofcom considered there was a significant child audience for all these programmes, except the broadcast on 17 April 2013 at 13:30.

In Ofcom's view, the pixellation of Scarlet's naked buttocks had some impact but its effectiveness was limited. Although the images were obscured to some extent, the pixilation was insufficient to obscure Scarlet's naked buttocks, which were sometimes shown in relative close up.

Ofcom noted that no information was given to viewers before any of the showings of the programme began to warn them (parents in particular) that some material might be unsuitable for children.

Overall, contrary to ITV's submissions, Ofcom decided that this content would have exceeded the likely expectations of the audience (and especially parents) for this programme. This was particularly the case when this material was shown at times when a significant child audience could be expected (see audience figures above).

Ofcom concluded that this material was not appropriately scheduled and breached Rule 1.3.

Breaches of Rule 1.3

In Breach

Various political items

Channel Nine UK, February to March 2013, various dates and times

Introduction

Channel Nine UK is a news and general entertainment channel broadcast in Bengali and serving a Bangladeshi audience. The licence for Channel Nine UK is held by Runners TV Limited (“Runners TV” or “the Licensee”).

A complainant drew Ofcom’s attention to what appeared to be advertisements placed on Channel Nine UK by various organisations in breach of the ban on political advertising contained within the Communications Act 2003 (“the Act”).

Ofcom examined 10 items, each of which was broadcast in Bengali. The items were short self-contained messages apparently produced by the person or group whose message the item conveyed. The organisations, including regional branches, that featured in the 10 items were:

- Awami League¹;
- UK Jubo League²;
- Bangladesh Nationalist Party³;
- The 18 Party Coalition⁴;
- The Shahbag Movement⁵; and
- Gono Jagoron Mancho⁶.

Ofcom commissioned independent translations of the items, each of which was between 10 and 40 seconds long. All of the items appeared with other items bookended by slates which stated “*Community Roundup*” (in English).

¹ The Awami League is the main party in the coalition governing Bangladesh.

² The Jubo League is the youth wing of the Awami League.

³ The Bangladesh Nationalist Party is the main opposition party in Bangladesh.

⁴ The 18 Party Coalition is a coalition of opposition parties headed by the Bangladesh Nationalist Party and the Jamaat Party (also known as Jamaat-e-Islami), the main Islamist party in Bangladesh.

⁵ The Shahbag Movement was so-called because it was associated with protests in the Shahbag district of Bangladesh’s capital, Dhaka. These protests started on 5 February 2013 when Kader Molla, the leader of the Jamaat Party, was sentenced to life imprisonment by the International Crimes Tribunal (“ICT”) set up by the current Bangladeshi Government to investigate allegations of war crimes during the 1971 war in which Bangladesh obtained its independence from Pakistan. To date, the ICT has indicted 11 politicians of war crimes: nine members of the Jamaat Party and two members of the Bangladesh Nationalist Party.

⁶ Gono Jagoron Mancho is a movement aligned with the Shahbag Movement.

2 February 2013 – 00:38

Two items were shown featuring the Midlands Awami League and the Coventry Awami League respectively. The translations of these items obtained by Ofcom stated:

- Item 1: *“Third-yearly conference of United Kingdom Awami League, Midland Branch, 2013
Venue: The Victoria palace, Lewisham Road, Smatehwick, B66
Date: 10 February, Sunday. Time: 12 pm
Chief guest: Sultan Mahmud Shareef – President, United Kingdom Awami League.
The presence of all expatriate brothers and sisters in favour of independence is highly expected.
Invited by, on behalf of the conference preparation committee of Midland branch United Kingdom Awami League, A. K. M. Asaduzzaman, Convener Hifzur Rahman Khan, Member Secretary.”*
- Item 2: *Third-yearly conference of United Kingdom Awami League, Coventry Branch, 2013
Venue: Coventry Muslim Resource Centre, Red Lane, Coventry, CV6 5EE
Date: 03 February, Sunday. Time: 12 pm
Chief guest: Sultan Mahmud Shareef. Special guests: Al-Hajj Shams Uddin Khan and Al-Hajj Jalal Uddin. Keynote speaker: Syed Sajdur Rahman Faruque.
Also will be present in the conference: Maruf Ahmed Chowdhury, Abdul Ahad Chowdhury, Mohammad Sharob Ali and Mohammad Tariq Ahmed All believing in the ideology of Bangabandhu⁷ are invited to this conference.”*

28 February 2013 – 12:28

Two items were shown featuring the Southampton Awami League and the German Awami League respectively. The translations of these items obtained by Ofcom stated:

- Item 3: *“Joy Bangla Joy Bangabandhu
Awami League Southampton Branch
Greetings and respect to all martyrs of the Language Day. At the same time, we, on behalf of Southampton Awami League, convey our full support to Shahbag Projonmo Chatter movement and the demand for the war criminals to be tried and executed (hanged).
Publicised by Southampton Awami League.”*
- Item 4: *“Allah (God) is the greatest
Joy Bangla Joy Bangabandhu
Great 21st (February)
‘You have shed your blood for our mother tongue, Bangla. We remember your sacrifice with respect from a far away land’
Discussion meeting and cultural programme. Organised by German Awami League*

⁷ “Bangabandhu” – meaning ‘Friend of Bangal’ – is the honorific title given to Sheikh Mujibur Rahman, who was the first President of Bangladesh and led the Awami League.

Chief guest: Pijush Banddopadhyay. Venue: Salbau Sonhope, Frankfurt vest. Date: 2 March 2013, Saturday, 5pm.

German Awami League

Best wishes from Younus Khan Acting president, German Awami League

Organised by: Zillur Rahman, Vice President, German Awami League;

Nur a Hasnat Shipon, Vice President, German Awami League; Atiqur

Rahman Sabuj, Vice President, German Awami League; Mahfuz Faruk,

Joint Secretary, German Awami League; M A Khaleque, Cultural

Secretary, German Awami League; Haqem Titu, Publicity Secretary,

German Awami League.”

10 March 2013 – 17:25

Two items were shown featuring the Belgium Bangladesh Nationalist Party and 18 Party Coalition. The translations of these items obtained by Ofcom stated:

Item 5: *“Conference and demonstration against nationwide genocide. Press Conference: Time: 4 pm, Date: 10th of March (Sunday). Demonstration: Time: 1 pm, Date: 11th of March (Monday). Place: in front of European Commission, Brussels, Belgium. Meeting at 3pm. Anybody who holds the spirit of nationalism is invited. Invited by: Sanwar Ali, Secretary, Belgium BNP.”*

Item 6: *“A huge demonstration has been arranged to protest the attack and torture of Law-enforcement team against the opposition party in Bangladesh. Date: 11th of March, 2013, Monday. Time: 2pm Place: Altab Ali Park London To save our country and democracy, join this demonstration if you believe in nationalism. Organised by: 18 party coalition, UK.”*

24 March 2013 – 20:54

Four items were shown featuring the UK Jubo League, 18 Party Coalition, Shahbag Movement and Bangladesh Nationalist Party, Berlin. The translations of these items obtained by Ofcom stated:

Item 7: *“On Independence day, UK Jubo League has organised a meeting and a cultural programme. Date and time: 26th of March, 5 pm. Place: Bluemoon Media centre. 82-88 Mile End Road. London E1 4UN. The programme will be presided by Fakrul Islam Madhu, Secretary Jubo League, UK. Contact for more details: Selim Ahmed khan, General Secretary, Jubo League, UK.”*

Item 8: *“In the memory of our Independence day, 18 Party Coalition has arranged a meeting and demonstration. Date: 26th of March, Tuesday. Time: 5:30 pm. Place: Water Lily Banquet hall, Mile End. Everybody is invited who has the spirit of nationalism. Join us to save our country and countrymen. Vow to save our Independence. Arranged by: 18 Party Coalition. UK.”*

- Item 9: *“To show solidarity with the Shahbag Movement, demonstration will take place demanding a quick trial of war-criminals. Whoever has the spirit of Independence is invited to join. Organised by Gono Jagoron Mancho, Milan, Lombardia, Italy.”*
- Item 10: *“Bangladesh National Party, Berlin is celebrating 42 years of Independence of Bangladesh on 26th of March by organising a seminar. Chief guest: Mr. Akul Miah. Special guest: Maulana Jalal Uddin. Mr. Fazal Khan, Mr. Kazi Suruj. Many renowned political critics will attend the seminar. Time: 26th of March, 2013, Tuesday 4 pm. All of you are invited to the seminar.”*

We sought the Licensee’s comments on the terms under which all of these items had been included in its schedule. Runners TV told us that all of the items, which were intended to “provide information to the community”, were transmitted without payment for broadcast.

Given the Licensee’s assertions that no money was accepted for the broadcast of any of the items set out above and that it did not consider any of them to be advertisements, Ofcom concluded that the items must be regarded as programme material and therefore subject to the Code. Because each of the items appeared to consist of self-contained messages from political organisations, we considered they raised issues warranting investigation under the following rules of the Code:

- Rule 5.5: “Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved on the part of any person providing a service (listed above). This may be achieved within a programme or over a series of programmes taken as a whole.”
- Rule 9.1: “Broadcasters must maintain independent editorial control over programming.”
- Rule 9.2: “Broadcasters must ensure that editorial content is distinct from advertising.”

We therefore sought Runners TV’s views on how the items complied with the rules set out above.

Response

The Licensee told us that none of the items were advertisements. Runners TV stated that no money or other consideration had been sought or offered in return for their broadcast. It stated that all of the items had been broadcast as ‘community announcements’ and had appeared within slates saying so.

Rule 5.5 (due impartiality in matters of political or industrial controversy and matters relating to current public policy)

The Licensee told us that it accepted that all of the items did appear to be politically biased. The Licensee said that the political content of the items should not have appeared and stressed that it had not been Runners TV’s intention to allow politically partial material to have been included in its service. The Licensee explained that these inclusions came about through having “been overlooked by the editorial team”.

Rule 9.1 (editorial independence must be maintained)

The Licensee repeated that the inclusion of the political statements and other content in the items was unintentional and an error. Runners TV maintained, however, that the community slots were open to all and that no bias operated as to access: a range of views were included over time.

Further, the Licensee told us that it believed that it should have included "...a pre-announcement in place mentioning this was only a platform for announcements for local organisations and not advertising or expression of the views of Channel Nine UK."

Rule 9.2 (editorial content must be distinct from advertising)

On the question of distinction between advertising and editorial matter the Licensee said:

"...since these announcements appeared as 30 or 40 second clips it may have been interpreted as advertising. ...[T]his was not...intentional [but resulted from] a lack of understanding on the [part of the] editorial team. As...management we have taken necessary steps to retrain all the editorial and programming related staff in order for us to ensure a situation like this does not arise in the future."

In conclusion the Licensee emphasised a number of points, including that; it was never the Licensee's intention to breach the Code; the objective of the material was only to serve as community announcements; the editorial team was new and inexperienced; and, that steps were being taken to avoid any repeat of the problems.

Runners TV added that the Community Roundup feature was being dropped. The Licensee said it had read, understood and taken on board all of the points which had been raised with it. Runners TV said it "...will look into setting up Ofcom training events for each and every member of the organisation."

Decision

Under the Act, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that the special impartiality requirements set out in section 320 of the Act are complied with. This standard is contained in Section Five of the Code. Broadcasters are required to ensure that the impartiality requirements of the Act are complied with, including that due impartiality is preserved on matters of political or industrial controversy and matters relating to current public policy (see above for the specific provisions).

Ofcom also has a statutory duty under the Act to ensure that "the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with". Articles 20 and 23 of the Audiovisual Media Services ("AVMS") Directive set out strict limits on the amount and scheduling of television advertising. The AVMS Directive also requires that advertising is distinguishable from other parts of the programme service: "Television advertising ... shall be readily recognisable and distinguishable from editorial content ... and ... shall be kept quite distinct from other parts of the programme by optical and/or acoustic and/or spatial means." The purpose of this distinction is to prevent viewers being confused or misled about the status and purpose of the material they are watching and to protect viewers from surreptitious advertising. It also prevents

editorial content from being used to circumvent the restrictions on advertising minutage.

The requirements of the AVMS Directive are reflected in, among other Code rules, Rule 9.2, which requires that editorial content is kept distinct from advertising.

The Act also requires Ofcom to have regard to the “desirability of maintaining the independence of editorial control over programme content”. This is reflected in Rule 9.1 of the Code.

Ofcom therefore considered the items’ compliance with Rules 5.5, 9.1 and 9.2 of the Code.

Rule 5.5

This rule states:

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

It is not part of Ofcom’s remit to question or investigate the validity of the political views expressed in a case like the current one, but to require the broadcaster to comply with the relevant standards in the Code. The Code does not prohibit broadcasters from discussing any controversial subject or including any particular point of view in a programme. To do so would be an unacceptable restriction on a broadcaster’s freedom of expression.

However, the broadcaster’s right to freedom of expression is not absolute. In carrying out its duties, Ofcom must balance the right to freedom of expression on one hand, with the requirement in the Code to preserve “due impartiality” on matters relating to political or industrial controversy or matters relating to current public policy. Ofcom recognises that Section Five of the Code, which sets out how due impartiality must be preserved, acts to limit, to some extent, freedom of expression. This is because its application necessarily requires broadcasters to ensure that neither side of a debate relating to matters of political or industrial controversy and matters relating to current public policy is unduly favoured. Therefore, while any Ofcom licensee should have the freedom to discuss any controversial subject or include particular points of view in its programming, in doing so broadcasters must always comply with the Code.

In this case, Ofcom firstly had to ascertain whether the requirements of Section Five of the Code should be applied: that is whether the content in this case was dealing with matters of political or industrial controversy and/or matters relating to current public policy. We noted that the items were brief statements that, for instance, alerted viewers of Channel Nine to the existence of forthcoming meetings or demonstrations. Just because editorial content refers to political parties or politicians does not necessarily mean that the rules in Section Five are applicable. Furthermore, in judging the applicability of Section Five in any case, Ofcom will take into account the manner in which political issues are dealt with, and how they are presented within programming.

In this case, we considered that the items, although brief, clearly touched on matters of political controversy and public policy in Bangladesh: in all cases by virtue of publicising political parties and groups, in all but one item by promoting meetings or

protests, and in four items by reference to particular political issues. These issues were the ongoing political debate concerning the existence of and actions of the ICT in relation to the investigations of war crimes alleged to have taken place in Bangladesh during the 1971 war in which Bangladesh obtained independence from Pakistan (items 3 and 9), and allegations of political killing and torture (items 5 and 6). We considered that all of these items dealt with matters of political controversy and matters relating to public policy. Rule 5.5 was therefore applicable.

In assessing whether due impartiality has been preserved, the term “due” is important. Under the Code, it means adequate or appropriate to the subject and nature of the programme. Therefore, “due impartiality” does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented. Due impartiality may be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures due impartiality is maintained.

In this case, Ofcom considered that all of the items could be characterised either as self-contained expressions of specific viewpoints on particular matters of political controversy or as promotion of particular political interests, including meetings and protests. None of the items contained any alternative views.

Although we noted that the Licensee stated that it had carried items from opposing political interests, it was our view that such items taken together could not fulfil Rule 5.5’s requirement of due impartiality, for two reasons.

Firstly, the items were material apparently assembled and supplied by each interest and as such were not capable of providing the necessary balance and coverage over time expected by Rule 5.5. As independent and uncoordinated statements that were placed in the schedule without having been commissioned by the Licensee, these items collectively could not be taken – unlike conventional, scheduled programming – to be a body of programming planned over time by the Licensee.

Secondly, we noted that all but one of the items contained calls to actions to meetings, protests or demonstrations. Consequently, it was our view that each item could only be viewed as a self-standing piece intended to promote a particular political interest. By their very nature, therefore, such items presented no opportunity for duly impartial consideration of a matter of political controversy.

In reaching our decision, we took account of the Licensee’s explanation that the items were ‘community announcements’. Ofcom recognises that broadcasters serving particular communities will want to provide content that presents issues of topical interest to their target audience. In Ofcom’s view, however, this cannot justify the inclusion of inherently partial items concerning matters of political controversy or matters relating to public policy.

We also noted Runners TV’s submission that the political content of the items should not have been transmitted and that this had been an error by its staff.

Given the above, Ofcom therefore concluded that all of the items breached Rule 5.5.

Rule 9.1

This rule states:

“Broadcasters must maintain independent editorial control over programming.”

Ofcom was concerned that, in the absence of any editorial treatment, programme time had effectively been donated to third parties' interests. Where a political message is included in programming (generally in news or current affairs programming) it will usually be clearly contextualised – for example, to illustrate the stance of a political party or pressure group – labelled, and included only as far as editorial justification allows. This last consideration will generally mean both that the item (advertisement, campaign video, etc) will not be shown in full, and that the programme will offer a clear explanation for the reason for its inclusion.

In Ofcom's view, by broadcasting an item that apparently reflected one political group's interests – whether by promoting itself, one of its events or by setting out its general aims or position on a particular issue – without any editorial context or analysis, Runners TV had failed to maintain independent editorial control. Ofcom therefore concluded that Rule 9.1 had been breached by the inclusion of the item.

Rule 9.2

This rule states:

Rule 9.2: "Broadcasters must ensure that editorial content is distinct from advertising."

All of the announcements were standalone messages, of short duration, which appeared to be broadcast separately from, and between, other programme material. As such, they resembled advertisements very strongly. In fact, in Ofcom's view, they were very much more likely to be understood by viewers as advertisements than as programme items. In reaching this conclusion, Ofcom gave full consideration to the "Community Roundup" slates, but considered these wholly insufficient to distinguish the items from advertising.

Generally, if a Licensee wishes to run programming whose purpose is to let communities know of events of interest, it should take care to ensure that the programming is not, and gives rise to no suggestion of being, a collection of advertisements. In this respect, it is Ofcom's view that such programming is very much more likely to fall foul of Rule 9.2 where no conventional programme elements are present: a presenter, studio, programme titles and graphics and so on. Where, as in this case, the items appeared to be made by the organisations themselves and scheduled as discrete items in a break, the prospect of inadequate distinction was very strong indeed.

In view of the items' presentation within the Licensee's schedule, Ofcom concluded that they were not distinct as programme material and that Rule 9.2 had been breached by all of the items.

This case is of considerable concern to Ofcom. Under section 321 of the Act, political bodies are banned from advertising altogether on Ofcom licensed services (both TV and radio). This ban applies to political bodies from anywhere in the world. In the course of Ofcom's investigation Runners TV accepted the political nature of the organisations mentioned in all of the items. Further, Ofcom has reported previously on breaches of the prohibition on political advertising that concerned Bangladeshi political bodies⁸ and which the Licensee ought to have been aware of.

⁸ In issue 197 of Ofcom's Broadcast Bulletin, published on 12 January 2012, and issue 202 of Ofcom's Broadcast Bulletin, published on 19 March 2012, and available at, respectively:

Ofcom noted the Licensee's statements that it had stopped broadcasting material under the "Community Roundup" heading.

However, Ofcom is putting Runners TV on notice that it will treat any similar future breaches as extremely serious, and that any future such breaches may be considered for the imposition of statutory sanctions.

Breaches of Rules 5.5, 9.1 and Rule 9.2

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb197/obb197.pdf>
and
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb202/obb202.pdf>

In Breach

Item for Bangladesh Nationalist Youth Organisation

ATN Bangla UK, 14 February 2013, 18:25

Introduction

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

A complainant alerted Ofcom to an item shown during an advertising break on 14 February 2013 which appeared to show political messages placed by or on behalf of the Bangladesh Nationalist Party¹ in breach of the ban on political advertising contained within the Communications Act 2003 (“the Act”).

Ofcom examined the material, which was broadcast in Bengali. The translation of the text and audio of the item is as follows:

Bangladesh Nationalist Youth Organisation, Tower Hamlets Branch

A huge youth gathering and cultural function will be held protesting the continuous conspiracy against BNP (Bangladesh Nationalist Party) chairperson Begum Khaleda Zia and the country's hero Tareq Rahman² by being jealous of their popularity, protesting the countrywide oppression and tyranny on BNP and its associate organization, to know the whereabouts of leader of the people against autocracy, Ilyas Ali³ and demanding the election under non-partisan, neutral government.

Organised by Bangladesh Nationalist Youth Organisation, Tower Hamlets Branch.

Date: 20 February 2013, Wednesday; Time 6:30pm

Requesting you to join, Saifuddin, Mohamamd Khijir and Mostafizur Rahman Minar.

We noted that the item was broadcast between advertisements in what appeared to be a commercial break. We sought the Licensee's comments on the terms under which this item had been included in its schedule. The Licensee said no payment had been made for item to be broadcast, and that it did not consider it to be advertising. Because no payment or other valuable consideration had been received by the broadcaster in return for the item's broadcast, Ofcom concluded that it must be regarded as programme material.

¹ The Bangladesh Nationalist Party is the largest opposition party in Bangladesh.

² Tareq Rahman is the senior Vice-Chairperson of the Bangladesh Nationalist Party.

³ Ilyas Ali is a Bangladesh Nationalist Party politician who has been missing since April 2012. It has been alleged that he was abducted by opponents of the Bangladesh Nationalist Party.

The item contained an apparently unmediated message from or on behalf of a political organisation. Therefore we considered the item raised issues warranting investigation under the following rules of the Code:

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

Rule 9.1: “Broadcasters must maintain independent editorial control over programming.”

Rule 9.2: “Broadcasters must ensure that editorial content is distinct from advertising.”

We asked the Licensee for its comments on how the item complied with the above rules.

Response

ATN Bangla stated that the item was a “community announcement” which had been provided to the station by “cultural activists” from within the Bangladeshi community.

In relation to Rule 5.5, the Licensee argued that it had a regular political show that ensures that due impartiality is achieved across the station.

The Licensee claimed also that it had maintained independent editorial control over programming because the focus of the item had been on the cultural aspect of the event rather than the political content.

Decision

Under the Act, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that the special impartiality requirements set out in section 320 of the Act are complied with. This standard is contained in Section Five of the Code. Broadcasters are required to ensure that the impartiality requirements of the Act are complied with, including that due impartiality is preserved on matters of political or industrial controversy and matters relating to current public policy (see above for the specific provisions).

Ofcom also has a statutory duty under the Act to ensure that “the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”. Articles 20 and 23 of the Audiovisual Media Services (“AVMS”) Directive set out strict limits on the amount and scheduling of television advertising. The AVMS Directive also requires that advertising is distinguishable from other parts of the programme service: “Television advertising... shall be readily recognisable and distinguishable from editorial content... and... shall be kept quite distinct from other parts of the programme by optical and/or acoustic and/or spatial means” The purpose of this distinction is to prevent viewers being confused or misled about the status and purpose of the material they are watching and to protect viewers from surreptitious advertising. It also prevents editorial content from being used to circumvent the restrictions on advertising minutage. The requirements of the AVMS Directive are reflected in, among other Code rules, Rule 9.2 which requires that editorial content is kept distinct from advertising.

The Act also requires Ofcom to have regard to the “desirability of maintaining the independence of editorial control over programme content”. This is reflected in Rule 9.1 of the Code.

Ofcom therefore considered the item’s compliance with Rules 5.5, 9.1 and 9.2 of the Code.

Rule 5.5

It is not part of Ofcom’s remit to question or investigate the validity of the political views expressed in a case like the current one, but to require the broadcaster to comply with the relevant standards in the Code. The Code does not prohibit broadcasters from discussing any controversial subject or including any particular point of view in a programme. To do so would be an unacceptable restriction on a broadcaster’s freedom of expression.

However, the broadcaster’s right to freedom of expression is not absolute. In carrying out its duties, Ofcom must balance the right to freedom of expression on one hand, with the requirement in the Code to preserve “due impartiality” on matters relating to political or industrial controversy or matters relating to current public policy. Ofcom recognises that Section Five of the Code, which sets out how due impartiality must be preserved, acts to limit, to some extent, freedom of expression. This is because its application necessarily requires broadcasters to ensure that neither side of a debate relating to matters of political or industrial controversy and matters relating to current public policy is unduly favoured. Therefore, while any Ofcom licensee should have the freedom to discuss any controversial subject or include particular points of view in its programming, in doing so broadcasters must always comply with the Code.

In this case, Ofcom first had to ascertain whether the requirements of Section Five of the Code should be applied: that is whether the content in this case was dealing with matters of political or industrial controversy and matters relating to current public policy. We noted that the item was a brief statement that alerted viewers of ATN Bangla to the existence of a forthcoming discussion and protest meeting. Just because editorial content refers to political organisations or figures does not necessarily mean that the rules in Section Five are applicable. Furthermore, in judging the applicability of Section Five in any case, Ofcom will take into account the manner in which political issues are dealt with, and how they are presented within programming.

In this case, we considered that the item, although brief, clearly touched on matters of political controversy and public policy in Bangladesh; namely, statements supportive of the largest opposition party in Bangladesh, the Bangladesh Nationalist Party, including a reference to the disappearance of a leading member of that party and a demand for new elections. As such we considered that these statements implicitly criticised policies of the current Government of Bangladesh.

Given the above, Ofcom therefore considered that the item dealt with matters of political controversy and matters relating to current public policy. Rule 5.5 was therefore applicable.

In assessing whether due impartiality has been preserved in this case, the term “due” is important. Under the Code, it means adequate or appropriate to the subject and nature of the programme. Therefore, “due impartiality” does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented. Due impartiality may be preserved in a

number of ways and it is an editorial decision for the broadcaster as to how it ensures due impartiality is maintained.

In this case, Ofcom considered that the item in question could be characterised as a self-contained expression of a specific viewpoint on matters of political controversy and matters relating to public policy. The item did not contain any alternative views, which could be reasonably and adequately classed as critical or counter to those expressed.

As such we considered that the item, when examined alone, gave a one-sided view on such matters and did not contain any alternative viewpoints. Although we noted that the Licensee stated that it had broadcast a range of programmes on related issues, it was our view that the item could only be viewed as a self-standing piece intended to promote a particular political interest. By its very nature, therefore, it presented no opportunity for duly impartial consideration of a matter of political controversy.

In reaching our decision, we took account of the Licensee's explanation that the item had appeared as a 'community announcement'. Ofcom recognises that broadcasters serving particular communities will want to provide content that presents issues of topical interest to their target audience. In our view, however, this cannot justify the inclusion of inherently partial items.

Given the above, Ofcom therefore concluded that the item breached Rule 5.5.

Rule 9.1

Ofcom was concerned that, in the absence of any editorial treatment, programme time had effectively been donated to a third party's interests. Where a political message is included in programming (generally in news or current affairs programming) it will usually be clearly contextualised – for example, to illustrate a political party's or pressure group's stance – labelled and included only as far as editorial justification allows. This last consideration will generally mean both that the item (advertisement, campaign video, etc.) will not be shown in full, and that the programme will offer a clear explanation for the reason for its inclusion.

In Ofcom's view, by broadcasting an item that apparently reflected one political group's interests – whether by setting out its general aims or promoting one of its events – without any editorial context or analysis, ATN Bangla had failed to maintain independent editorial control. Ofcom therefore concluded that Rule 9.1 had been breached by the inclusion of the item.

Rule 9.2

The item was a self-standing message, of short duration, which was broadcast between advertisements during a commercial break. As such, this item strongly resembled an advertisement. In Ofcom's view this item was much more likely to be understood by a viewer as an advertisement than any form of programming.

In view of the item's presentation within the Licensee's schedule Ofcom concluded that it was not distinct as programme material and that Rule 9.2 had been breached. This case is of considerable concern to Ofcom. Under section 321 of the Act, political bodies are banned from advertising altogether on Ofcom licensed services (both TV and radio). This ban applies to political bodies from anywhere in the world. In the course of Ofcom's investigation ATN Bangla did not seek to argue that it was

unaware of the political nature of the organisation mentioned in the item. Further, Ofcom noted that earlier this year it recorded a breach⁴ of the BCAP Code for ATN Bangla's broadcast of an advertisement placed by an organisation called the UK Jubo League which Ofcom judged to be political advertisement. We have also reported previously on breaches of the prohibition on political advertising and breaches of Section Five that concerned Bangladeshi political bodies and of which the Licensee ought to have been aware⁵.

Ofcom is putting ATN Bangla on notice that it will treat any similar future breaches by the Licensee as extremely serious, and that any future such breaches may be considered for the imposition of statutory sanctions.

Breaches of Rules 5.5, 9.1 and 9.2

⁴ Advertisement by UK Jubo League:
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb221/obb221.pdf>,

⁵ Advertisement for the Bangladesh Nationalist Party:
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb202/obb202.pdf>;

Advertisement for the Jatiya Party:
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb197/obb197.pdf>;

I Focus:
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb224/obb224.pdf>.

In Breach

Finspreads sponsorship of The Financial Report, Sky News

Sky News, various dates and times

Introduction

Sky News is a 24 hour rolling news channel operated by British Sky Broadcasting Ltd (“Sky” or “the Licensee”). *The Financial Report* is a short update on major currencies and markets sponsored by Finspreads, an online financial spread betting firm, which allows customers access to various instruments on the financial market through online and mobile trading.

Ofcom received a complaint that sponsorship credits for Finspreads were shown before *The Financial Report*, breaching the restriction on the advertising of spread betting companies outside of specialist financial channels or programming.

The opening credit showed a graphic of the Finspreads logo accompanied by a voiceover stating “*Finspreads sponsor The Financial Report on Sky News*”. The closing credit again showed the logo and repeated the statement from the opening credit in the voiceover.

Ofcom considered that the credits raised issues warranting investigation under Rule 9.17 of the Code which states:

“Sponsorship must comply with both the content and scheduling rules that apply to television advertising.”.

Section 14 of the UK Code of Broadcast Advertising (“the BCAP Code”) sets out the rules governing the advertising of financial products, services and instruments. Rule 14.5.2 of the BCAP Code states that:

“These categories of advertisement may be broadcast on specialised financial channels, stations, or programming only:

[...]

14.5.2: advertisements for spread betting, as an investment only. Spread betting advertisements may be advertised on interactive or additional TV services (including text services). They must comply with the gambling rules. The advertised products or services should be available only to clients who have demonstrated through a pre-vetting procedure compliant with the FSA’s appropriateness test that they have relevant financial trading experience¹.”

We therefore requested comments from the Licensee on how the sponsorship credit complied with the relevant rules.

¹ Section 17 of the BCAP Code (“Gambling”) states that a “spread bet” is “a contract for differences that is a gaming contract, as defined in the glossary to the FSA Handbook”.

Response

The Licensee stated *The Financial Report* was a short programme detailing factual information about market prices. Sky noted that the Broadcasting Code did not require an item to be a certain length to be considered as a programme. Consequently, it considered *The Financial Report*, although under a minute long, was a programme which was properly separated from news programming and therefore capable of being sponsored.

The Licensee argued that there had never been any question that *The Financial Report* was not specialist financial programming, because it considered that the markets and currency reports were “clearly identifiable as a financial programme”.

Although the Licensee considered that the slot was properly separated from other types of news content, in order to further clarify the distinction between financial and news content it would re-schedule *The Financial Report* to follow directly the financial news and reports on the channel.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to ensure standards objectives, one of which is to ensure “that unsuitable sponsorship... is prevented”.

Under Rule 9.17 of the Code broadcasters must ensure that sponsorship complies with both the content and scheduling rules that apply to television advertising. Section 14 of the BCAP Code outlines the obligations which apply to the advertisement of financial services, including statutory ones.

The Financial Services and Markets Act 2000 set rules on the advertising of financial services with which advertisements must comply. As stated in the BCAP Code, the selection of financial products or services requires customers to consider many factors, and short-form television and radio advertisements are not suitable formats for promotion of such services. This is particularly true for high-risk or specialist investments. As a result, Rule 14.5.2 of the BCAP Code states that advertisements for spread betting may be broadcast on specialised financial channels, stations or programming only. Although there is no definition of “specialist financial programming” in the BCAP Code, a “specialist financial channel or station” is defined as a channel or station whose programmes are likely to be of particular interest only to business people or finance professionals.

Although we noted the Licensee’s view that *The Financial Report* was “specialist financial programming”, we considered that the programme contained the type of broad financial information that most audiences would expect from a mainstream news outlet catering for a general audience. The episode of *The Financial Report* broadcast on the morning of 12 June, for example, consisted of two graphics illustrating the status of world markets and currencies for that day.

With reference to the BCAP Code definition, we did not consider a short financial update shown either integrated with or alongside general news content on a channel appealing primarily to a general news audience, was likely to be of particular interest only to business people or finance professionals. Ofcom noted such updates are frequently included in or alongside news programming and would also appear alongside regular news content in a daily newspaper.

We considered that the share price and other financial information included in *The Financial Report* was likely to appeal to a broad audience interest. We considered this differed from specialist financial programming that was likely to be more detailed or technical, with appeal only to a more informed and self-selecting audience.

We did not consider that the Licensee's suggestion to reschedule *The Financial Report* as a separate item following the news to be sufficient to resolve this matter, as the content of the report would still appeal to a broad audience interest.

In conclusion, we did not accept the Licensee's argument that *The Financial Report* constituted specialist financial programming.

We therefore considered that the sponsorship credits were in breach of Rule 9.17 of the Broadcasting Code with reference to Rule 14.5.2 of the BCAP Code.

Breach of Rule 9.17 of the Broadcasting Code with reference to Rule 14.5.2 of the BCAP Code

In Breach

Commercial reference to Pakistan International Airways

Asian Sound Radio, 12 April 2013, 17:05

Introduction

Asian Sound Radio is a local commercial radio station which broadcasts to the Greater Manchester region. The licence for the service is held by Asian Sound Radio Limited (“Asian Sound” or “the Licensee”).

A complainant alerted Ofcom to a commercial reference for Pakistan International Airways (“PIA”) read out by a presenter on Asian Sound which stated that:

“PIA are offering tickets from the UK to Pakistan for only £420.”

However, upon calling PIA to purchase tickets shortly after the broadcast, the complainant was advised by PIA that there were none available at this price.

Ofcom considered the material raised issues warranting investigation under Rule 10.7 of the Code, which states:

Rule 10.7: “Commercial references in programming must comply with the advertising content and scheduling rules that apply to radio broadcasting.”

The advertising content and scheduling rules that apply to radio broadcasting are set out in the UK Code of Broadcast Advertising (“the BCAP Code”)¹. Rules 3.1 and 3.28 of the BCAP Code state:

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

BCAP Code Rule 3.28: “Broadcasters must be satisfied that advertisers have made a reasonable estimate of demand.”

Ofcom therefore requested comments from the Licensee and PIA about how the programme material complied with each of these rules.

Response

The Licensee said it recognised that the way the commercial reference was written could lead a person to believe that all flights would have been priced at £420 regardless and that a further line was necessary to ensure the listener was aware that prices may fluctuate according to demand.

¹ The Advertising Standards Authority (“ASA”) and Broadcast Committee of Advertising Practice (“BCAP”) regulate the content of broadcast advertising, under a Memorandum of Understanding with Ofcom. Specifically, BCAP supervises and reviews the codes that govern the regulation of broadcast advertising. The regulation of commercial references on radio, including sponsorship credits, remains with Ofcom, as such references form part of radio broadcasters’ editorial content (i.e. they are not spot advertisements).

Asian Sound also said that there was a process failure within its sales department and as such, information regarding pricing and availability was not confirmed before going to air.

Asian Sound apologised for this error and said that since being alerted to the incident, it has implemented several measures to avoid a recurrence including staff training, extra checks for compliance and the appointment of a compliance officer with programming and sales expertise.

PIA confirmed that fares of £420 had been available but that this had been on a “first come first served basis” which had not been made clear in the script.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including “that generally accepted standards are applied to the contents of...radio services so as to provide adequate protection for members of the public from the inclusion in such services of...harmful material” and “that the inclusion of advertising which may be misleading, harmful or offensive in...radio services is prevented”. These objectives are reflected in the BCAP Code rules in relation to advertising, and in Section Ten of the Ofcom Broadcasting Code in relation to commercial references in radio programming.

Ofcom noted that, in this case, the complainant had contacted PIA having heard a commercial reference in which the presenter stated that flight tickets were on offer at £420, but that no tickets had been available at this price. We considered therefore that the broadcast had both materially misled the complainant and was likely to mislead other listeners. The material was therefore in breach of Rule 3.1 of the BCAP Code.

Ofcom also noted that the Licensee had not confirmed the availability of the flight tickets before the commercial reference was read out on air, when in fact none had been available. Accordingly, Ofcom concluded that the Licensee had not satisfied itself that the advertiser had made a reasonable estimate of demand.

As Ofcom concluded that the material did not comply with the relevant advertising rules, the broadcast breached Rule 10.7 of the Broadcasting Code with reference to Rules 3.1 and 3.28 of the BCAP Code.

Breach of Rule 10.7 of the Code with reference to Rules 3.1 and 3.28 of the BCAP Code

In Breach

Accountancy with Mahbub Murshed

NTV, 29 April 2013, 15:30

Introduction

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

Accountancy with Mahbub Murshed was a consumer advice show during which a panel provided advice on accountancy matters to a live studio audience. We received a complaint from a member of the public stating that the programme appeared to be sponsored by an accountancy firm owned by Mahbub Murshed, and that Mr Murshed was using the programme to promote his own company.

On reviewing the material we noted that the programme is hosted by Mr Murshed, and sponsored by his accountancy firm, Mahbub and Co Accountants.

As noted in Section Nine of the Code, any reference to a sponsor that appears in a sponsored programme (with the exception of the sponsorship credits themselves) as a result of a commercial arrangement with the broadcaster, the programme maker or a connected person will be treated as product placement¹.

Ofcom therefore considered that the programme raised issues warranting investigation under Rule 9.12(b) of the Code:

Rule 9.12: “Product placement is not permitted in the following:...

b) Consumer advice programmes...”

We asked the Licensee for its comments as to how, given that the programme was sponsored by his accountancy firm, Mr Murshed’s appearance in the programme complied with Rule 9.12(b) of the Code.

Response

The Licensee stated that the show was intended to educate viewers on financial matters. It said that Mr Murshed was selected to present the show as he is knowledgeable on a range of accounting matters and has been working with the Bangladeshi community for many years. The Licensee said it took the decision to include Mr Murshed’s name in the title of the programme as it felt it would attract more viewers given Mr Murshed’s popularity among the Bengali business community.

Although the Licensee acknowledged a relationship between Mr Murshed and the sponsor, Mahbub and Co Accountants, it argued that the programme did not feature any references to the sponsor, or make reference to the relationship between Mr

¹ 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.

Murshed, who was always introduced as the “host” of the programme, and Mahbub and Co Accountants.

The Licensee stated that it would be happy to make necessary changes to ensure the programme complied with the Code.

Finally, the Licensee said it would include a product placement logo for this programme in future.

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. These include 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 consumer affairs programmes.

This is reflected in Rule 9.12(b) of the Code which prohibits product placement in consumer advice programmes made under UK jurisdiction².

First, Ofcom considered whether the appearance of Mr Murshed in *Accountancy with Mahbub Murshed* amounted to product placement. Mr Murshed is a director of the company which bears his name i.e. Mahbub and Co Accountants and which sponsored the programme. We considered that his inclusion throughout the programme as the presenter was a reference to the sponsor. Because this was a result of the sponsorship arrangement, it therefore amounted to product placement.

Second, we considered whether *Accountancy with Mahbub Murshed* was a consumer affairs programme.³ Because the format of the show consisted of a panel including Mr Murshed providing advice on accountancy matters, we concluded that *Accountancy with Mahbub Murshed* was a consumer advice programme. This was therefore in breach of the Code.

Ofcom was concerned that the Licensee’s proposal to include a product placement logo in future editions of the programme suggests a significant misunderstanding of the product placement rules, including the specific prohibition on product placement in consumer advice programmes plainly stated in the Code. We remind the Licensee of the importance of maintaining sufficient knowledge of the Code to ensure that its programming complies with the rules.

In light of our concerns, Ofcom is requesting that the broadcaster attend a meeting to discuss its compliance processes and procedures.

Breach of Rule 9.12(b)

² Details of what constitutes a programme made under UK jurisdiction can be found in Section Nine of the Code at <http://stakeholders.ofcom.org.uk>.

³ Our Guidance to Section Nine of the Code states that consumer advice programmes are shows “offering advice, or including reviews, on products or services”. See paragraph 1.109 of our Guidance at <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>.

Resolved

Trailer for Blood+

Animax, 6 June 2013, 14:00

Introduction

Animax is an entertainment channel dedicated to Japanese animation. The channel is licensed by Ofcom for transmission in Europe. The licence is held by AXN Northern Europe Limited (“AXN” or “the Licensee”).

A complainant alerted Ofcom to scenes of violence in a trailer for the animation series *Blood+* broadcast around 14:00 on 6 June 2013, between episodes of *Sailor Moon* and *Jeanne, die Kamikaze-Diebin*, which they suggested have a high appeal to children.

Ofcom assessed the material, which ran for just under 60 seconds and advertised that *Blood+* would be broadcast on Animax on Mondays to Fridays at 20:15. The trailer showed a fast-paced montage of clips from the series, including images of characters: with a blood stained face; drawing and wielding swords with blood running down/spraying off the blades; pointing and firing guns; confronting bat-like monsters; and, holding a gun to another character’s head.

Ofcom considered that the material warranted investigation under Rule 1.3 of the Code, which states:

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

Ofcom therefore requested comments from the Licensee on how the programme material complied with this rule.

Response

AXN said that Animax is a “youth targeted” channel and whilst not aimed at children, the channel operates in accordance with the Code rules and guidance on appropriate scheduling and children.

It said that producers are directed to create trailers suitable for daytime broadcast, but will flag any trailers with a harder tone to the scheduling team for special attention. All completed trailers are viewed by schedulers trained in compliance and given suitable classifications which are then entered into the scheduling system and act as a guide to the correct placement of trailers.

The Licensee said that this particular trailer should have been flagged and given a ‘schedule with care’ classification indicating that it was not suitable for transmission in daytime or around programmes that could attract children. Unfortunately, due to human error the classification was omitted.

AXN said it had now reviewed and cleared all promotions as appropriate for their scheduled times, and updated its procedures so that any trailer without a rating must be viewed before being scheduled. In addition, staff are attending a compulsory

course to be reminded of the importance of procedures related to Code compliance and interpretation.

Taking into account the information the Licensee had already provided, Ofcom did not consider it necessary to seek further representations before reaching a Preliminary View in this case.

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 1.3 requires 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 likely number and age range of the audience; the start and finish time of the programme; and likely audience expectations.

Ofcom guidance on the watershed on television includes advice concerning Rule 1.3 and the scheduling of trailers¹. In this guidance we emphasise the importance of ensuring that “trailers for post-watershed content scheduled pre-watershed include only content that is appropriate for a pre-watershed audience”. This is particularly important because viewers come across trailers unawares and broadcasters are unable to provide any context or warning to viewers in advance about the material they are about to see.

Ofcom first assessed whether this trailer contained material unsuitable for children. We considered that the images in the trailer (as set out in the Introduction), when assessed individually, were not necessarily unsuitable. In Ofcom’s view, however, the cumulative effect of the brief scenes in this particular trailer was a level of violence unsuitable for child viewers. This meant that the trailer required careful scheduling to comply with the Code.

Ofcom then went on to consider whether this material was appropriately scheduled.

This content was broadcast during the daytime in an advertising break between cartoons of potential appeal to younger viewers. While the adjacent cartoons *Sailor Moon* and *Jeanne, die Kamikaze-Diebin* are in the same overall genre as *Blood+*, Ofcom considered that the tone of *Blood+* is considerably darker. This trailer for *Blood+* containing material from this series scheduled for broadcast at 20:15 in Ofcom’s view exceeded the likely expectations of the audience for the output of Animax broadcast in the early afternoon.

However, Ofcom took into account that: ANX had intended to classify this trailer for internal purposes so that it would not be broadcast in daytime or around programmes that could attract children; the trailer was broadcast due to human error; and, AXN has reviewed its procedures to ensure a similar error does not happen again.

¹ See: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/watershed-on-tv.pdf>

In light of these factors, Ofcom considers the matter resolved.

Resolved

Broadcast Licence Condition Cases

Community radio licensees

Late and non-payment of licence fees

Ofcom is partly funded by the licence fees it charges television and radio licensees. Ofcom is under a statutory obligation to ensure that the aggregate amount of fees that are required to be paid by licensees is sufficient to meet the cost of Ofcom's functions relating to the regulation of broadcasting. The principles which Ofcom applies when determining what fees should be paid by licensees are set out in the Statement of Charging Principles¹. The detailed fees and charges which are payable by broadcasting licenses are set out in Ofcom's Tariff Tables². The payment of a fee is a licence requirement³. Failure by a licensee to pay its licence fee when required represents a serious and fundamental breach of a broadcast licence.

In Breach

The following licensees have failed to pay their annual licence fee in full, in accordance with the original deadline, despite repeated requests to do so. The licensees have therefore been found in breach of their licence. As a consequence of this serious and continuing licence breach, Ofcom is putting the licensees on notice that the contravention is being considered for the imposition of a statutory sanction, which could include licence revocation.

Licensee	Licence Number	Service Name
Leith Community Media Works	CR000080	Castle FM
Awaaz Radio Limited	CR000208	Awaaz Radio

Resolved

The following licensee failed to pay its annual licence fee in full, in accordance with the original deadline, but has subsequently paid. We therefore consider the matter **resolved**.

Licensee	Licence Number	Service Name
Radio Elwy Point FM Ltd	CR000157	Point FM

1

http://stakeholders.ofcom.org.uk/binaries/consultations/socp/statement/charging_principles.pdf

2 <http://www.ofcom.org.uk/files/2013/03/tariff-tables-2013-14.pdf>

3 For example, Broadcasting Act licence Schedule Part 2, Condition 3

Fairness and Privacy cases

Not Upheld

Complaint by Mrs Shirley Robey

Inside Out (London and South East), BBC1, 10 December 2012

Summary

Ofcom has not upheld Mrs Shirley Robey's complaint of unwarranted infringement of privacy in the programme as broadcast.

The programme complained of was an edition of the BBC1 London and South East regional current affairs programme *Inside Out*. This edition reported on new evidence in the case of Lord Lucan, who disappeared following the murder of his children's nanny in 1974. The programme included footage of an interview from a previously broadcast programme in which the identity of the woman being interviewed was disguised. The programme reporter then named the disguised woman as Mrs Shirley Robey, saying that following the BBC's interview with her, Mrs Robey had told the same story to 'The Daily Telegraph' newspaper. An unobscured photograph of Mrs Robey, taken from the newspaper article, was then included in the programme.

Mrs Robey complained to Ofcom that her privacy was unwarrantably infringed in the programme as broadcast in that her full name, as well as a photograph of her, was included in the programme unnecessarily, despite the fact that the BBC had assured her that her anonymity would be maintained in the programme. Ms Robey said that the BBC had sought her permission to re-use the interview footage in which she was disguised, and asked her to participate openly in the upcoming programme, but she had refused, because the broadcasts of the earlier disguised footage had resulted in negative consequences for her and her family.

Following the publication of the interview with Mrs Robey, accompanied by her full name and photograph, in 'The Daily Telegraph' and a number of other newspapers, Mrs Robey's identity was already in the public domain by the date on which the programme complained of was broadcast by the BBC. As a result, Ofcom's decision is that Mrs Robey did not have a legitimate expectation of privacy in either the unobscured photograph of her or her full name as broadcast in the programme. Therefore, Mrs Robey's privacy was not unwarrantably infringed in the programme as broadcast.

Introduction

On 10 December 2012, BBC1 broadcast an edition of its regional current affairs programme *Inside Out* (London and South East). This edition reported on new evidence in the case of Lord Lucan, who disappeared following the murder of his children's nanny in 1974. In 1975 Lord Lucan was convicted in his absence of the murder of the nanny, Mrs Sandra Rivett. The reporter explained that various theories had been put forward by a number of people regarding what had happened to Lord Lucan since then, one theory being that he had committed suicide on the day after Mrs Rivett's death, and another being that he had escaped abroad with the help of influential friends and was living abroad under an assumed identity. The reporter said that important new evidence had come to light recently. This was in the form of boxes of material relating to the case, found in the loft of the daughter of Detective Chief

Inspector David Gerring, who had been in charge of the day-to-day running of Scotland Yard's search for Lord Lucan at the time of his disappearance.

The programme included footage of a woman who explained that she had been asked in the 1980s to arrange for two of Lord Lucan's children to travel from England to Africa in order that Lord Lucan could see, from a distance, how they were growing up. The reporter said that the woman worked for a friend of Lord Lucan, Mr John Aspinall, and that he had instructed her to book flights for the children to Africa. The woman was disguised in the interview, but the reporter then named her as Mrs Shirley Robey, saying that since originally being interviewed, she had told the same story to 'The Daily Telegraph' newspaper. An unobscured photograph of Mrs Robey, apparently taken from the newspaper article, was shown in the programme.

Following the broadcast of the programme, Mrs Robey complained to Ofcom that her privacy was unwarrantably infringed in the programme as broadcast.

By way of background, Mrs Robey said that she had previously contributed to two BBC programmes broadcast in February 2012 about Lord Lucan, namely *Inside Out* and *South East Today*. In both programmes Mrs Robey had been filmed in such a way that her identity was protected. Mrs Robey said the programme makers complained of (the edition of *Inside Out* broadcast on 10 December 2012) contacted her to ask if the previously filmed interview footage of her could be re-used in the new programme but she had refused her consent. She had made it clear that she did not want to participate further, because she considered she had been misrepresented in the previous programmes, and that the programme makers had acted dishonestly in their dealings with her.

Mrs Robey said that she was told by the programme makers that, in spite of her objections, the original recordings from February 2012 might still be used by the BBC in the programme complained of, in the same form as the previous broadcasts, i.e. with her anonymity maintained. Mrs Robey said that in view of this she had asked for an assurance that only the material included in the February 2012 programmes would be included in the December 2012 programme, but was never given a conclusive reply. Mrs Robey said that one of her main concerns, which she had communicated to the programme makers, was that the BBC had recorded additional material of her, made when she was under the impression that the camera had stopped filming. Mrs Robey said that in response the BBC had reassured her that, apart from the material broadcast in February 2012, it only possessed what it described as "set up shots" of her but that it could not tell her what was in those shots. Mrs Robey said she believed that the journalist had misled her when recording the original material first shown in February 2012 and may have acted dishonestly by recording their conversation when she was under the impression they were speaking off camera. Mrs Robey said that in a telephone conversation before the broadcast of the programme complained of, the reporter had said he would be using the footage from February 2012 and disagreed that they had originally talked off camera, adding that Mrs Robey was mistaken about when she had, and had not, agreed to be filmed.

Summary of the complaint and the broadcaster's response

Mrs Robey complained that her privacy was unwarrantably infringed in the programme as broadcast because her full name and a photograph of her were included in the programme unnecessarily and without her knowledge or permission, despite the fact that the BBC had assured her that her anonymity would be maintained in the programme.

Mrs Robey said that the BBC's Head of Regional and Local Programmes had emailed her on 21 November 2012 in the weeks preceding the broadcast of the programme to assure her that nothing would be shown of her other than a short clip from the 'disguised' interview that had been broadcast in February 2012:

"As I have said to you previously, it is not our intention in the upcoming programme to show anything other than a clip that we broadcast previously, and I repeat my assurance that I will let you know if that changes".

Mrs Robey said that the BBC's Head of Regional and Local Programmes had repeated this assurance to her in an email of 7 December 2012, just days before the programme went to air.

These emails, Mrs Robey said, had led her to believe that her anonymity would be maintained. Mrs Robey said that the disclosure of her identity in the programme was unnecessary and did not add anything to the programme.

In response to the complaint, the BBC said that Mrs Robey had no legitimate expectation of privacy following her decision to tell her story to 'The Daily Telegraph' in May 2012, some seven months before the programme complained of was broadcast. Mrs Robey was named in 'The Daily Telegraph' story and a photograph of her was published alongside the story. Mrs Robey was also named in a number of related articles in the 'The Daily Mirror', 'The Express', 'The Daily Mail', 'The Kent News' and 'The Daily Record' in Scotland. The BBC said that there was therefore no requirement for the edition of *Inside Out* complained of to protect her identity, regardless of any agreement that had been reached in relation to her contributions to the two previous programmes. The BBC provided links to various articles about Lord Lucan containing references to Mrs Robey and her involvement in the Lord Lucan case, which it said demonstrated the fact that both her name and photograph were in the public domain.

The BBC also highlighted an email exchange between the programme reporter and Mrs Robey prior to the broadcast of the programme in which it said that Mrs Robey acknowledged that she had given up her right to privacy regarding this matter and had appeared to have accepted that she had no legitimate expectation of privacy in her name and photograph.

In a transcript of the email exchange of 29 August 2012, provided to Ofcom by the BBC, Mrs Robey is recorded as writing to the programme reporter:

"I would prefer you didn't use me in the programme if I'm honest. I hate the idea of my photo being splashed around anymore. But I suspect I have got involved too far for that privilege".

The programme reporter replied:

"You are correct, as soon as you took the decision to 'go public' with your identity and name in the Telegraph, any agreement we had on protecting your identity went flying out the window. You know that, and so do I, hence why I'd prefer to do a well shot, considered follow up interview than have to cobble together what I have. Sorry to sound a bit harsh, but I've always tried to be absolutely honest with you from the start, making sure you fully understood the consequences of what you were entering into".

Mrs Robey concluded:

“That’s ok. Fair comment. Just pick a nice photo will you”.

Citing this email exchange, the BBC stated that not only was Mrs Robey aware that the BBC intended to identify her in the programme, but that she had accepted that the programme makers were within their rights to do so. This was because Mrs Robey had waived any legitimate expectation of privacy she might have had in her name and photograph, when her story was published and her identity was revealed in the national press in May 2012.

Therefore the BBC rejected Mrs Robey’s claim that by naming her in the programme it had unwarrantably infringed her privacy.

The BBC rejected Mrs Robey’s assertion that she had been assured by the BBC’s Head of Regional programmes, only three days before the programme was broadcast, that her anonymity would be maintained, saying that this “is a misrepresentation of the facts”. The BBC said that any assurances given to Mrs Robey about what would, or would not, be included in the programme related only to the previously broadcast interview material, and that the BBC had not offered “any assurance that it would not name her or use material which was in the public domain, such as photographs of her”.

In support of this the BBC cited the exchange of emails during November and December 2012, between the *BBC’s Head of Regional and Local Programmes* and Mrs Robey which Mrs Robey had referenced in her complaint. In this exchange Mrs Robey had sought assurance that only footage used in the original programmes would be used by the BBC in future programmes.

In an email dated 21 November 2012, the *BBC’s Head of Regional and Local Programmes* wrote to Mrs Robey:

“We will not use anything you said in the set-up shots unless it is of the most innocuous nature. However we reserve the right to use either of the interviews under the same conditions (of anonymity) that you agreed to then. As I have said to you previously, it is not our intention in the upcoming programme to show anything *other* [emphasis added by Ofcom] than a clip that we broadcast previously, and I repeat my assurance that I will let you know if that changes”.

In an email dated 7 December 2012, the *BBC’s Head of Regional and Local Programmes* informed Mrs Robey:

“The programme will broadcast on Monday night, 10th December, at 7.30 on BBC1 in the South East and London. It will contain two short clips of you from the programme that was broadcast in February. There is no additional material from the interview we did with you being shown”.

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 its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast, a transcript of the programme as broadcast, both parties' written submissions, and transcripts of email exchanges between various BBC employees and Mrs Robey during the period November 2011 to December 2012.

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 Ofcom's Broadcasting Code ("the Code") which states that any infringement of privacy in programmes, or in connection with the obtaining of material included in them, must be warranted.

Ofcom considered Mrs Robey's complaint that her privacy was unwarrantably infringed in the programme as broadcast in that her full name and a photograph of her were included in the programme without her permission, and in direct contradiction of an assurance she claimed she had been given by the BBC that her anonymity would be preserved.

In doing so, Ofcom had regard to Practice 8.6 of the Code which requires broadcasters to obtain consent from a person if the broadcast of material in a programme would infringe that person's privacy, unless the infringement was warranted. Ofcom also had regard to Practice 8.10 which requires a broadcaster to ensure that the re-use of material in a later or different programme does not create an unwarranted infringement of privacy.

In order to establish whether or not Mrs Robey's privacy was unwarrantably infringed by the inclusion of her name and a photograph of her in the programme, Ofcom first assessed the extent to which Mrs Robey had a legitimate expectation of privacy in her name and photograph.

The broadcast material in question consisted of two interview clips from a previously broadcast programme in which Mrs Robey's identity was disguised, and a still photograph of Mrs Robey in which she was clearly identifiable. Mrs Robey was identified by her full name in the programme when the programme reporter stated in commentary:

"She'd asked us not to identify her, but the following month she told the same story to the Daily Telegraph. Her real name is Shirley Robey".

With regard to the two interview clips in which Mrs Robey was disguised, Ofcom noted that in the transcripts provided by the BBC of email exchanges between Mrs Robey and the various members of staff at the BBC between November 2011 and December 2012, Mrs Robey had stated on a number of occasions that she did not want the "disguised" interview footage to be re-used. She also said she did not want to participate openly in the BBC's planned (December 2012) programme.

For example, in the email of 29 August 2012 to the programme's reporter cited above and quoted by the BBC, Mrs Robey said that she would prefer that the BBC did not "use" her in the programme (though she appeared to accept that her request might not be acceded to by the BBC). Also in an email to the programme's reporter dated 3 October 2012 she said:

"I was very concerned when you told me that you intend to use film of me, made back in February of this year for *Inside Out*, in the documentary about Lord Lucan that the BBC are planning to show later this year".

In response the BBC asserted that it considered itself to be within its rights to re-broadcast clips from the previously broadcast interview with Mrs Robey (with or without Mrs Robey's agreement) in the forthcoming programme (although the BBC reassured Mrs Robey that in any re-used clips she would remain "anonymous").

For example, in his email of 21 November 2012 to Mrs Robey, the BBC's Head of Regional and Local Programmes stated:

"...we reserve the right to use either of the interviews under the same conditions (of anonymity) that you agreed to then".

With regard to the broadcast of Mrs Robey's full name and photograph in the December 2012 programme, Ofcom assessed the extent to which Mrs Robey's identity, and involvement in the Lord Lucan case, was already a matter of public knowledge. Ofcom noted that it was accepted by both parties that in May 2012 (following the broadcast of the disguised interviews in February 2012 but before the broadcast of the edition of *Inside Out* in December 2012 currently being investigated) Mrs Robey had told her story to the 'The Daily Telegraph' and been identified by her full name and by a photograph. 'The Daily Telegraph' story was then subsequently picked up and published in 'The Mirror', 'The Express', 'The Daily Mail', 'The Kent News' and 'The Daily Record' in Scotland.

Ofcom recognises that there are circumstances in which a person may have a legitimate expectation of privacy in their name and photograph, such that they may not be included in a programme without their prior consent.

However, Ofcom did not consider that Mrs Robey could reasonably expect her identity to remain private in the programme complained of. This is because she had voluntarily identified herself in the national press only months before the programme was broadcast. It was Ofcom's view that, by telling the story about her role in the Lord Lucan 'affair' to 'The Daily Telegraph' and allowing it to name her and include a photograph of her, Mrs Robey had voluntarily placed her identity in the public domain. Following its appearance in 'The Daily Telegraph' on 20 May 2012, the story had been picked up and published in a number of other national and regional newspapers and, at the time of this investigation, it was still readily accessible on the internet.

Given Ofcom's conclusion that Mrs Robey had no expectation of privacy in relation to either the photograph or her full name as broadcast in the programme, Ofcom did not consider it necessary to consider whether any infringement of Mrs Robey's privacy had been warranted.

In addition to complaining that her name and a photograph of her had been included in the programme without her consent, Mrs Robey stated that she had been

specifically assured by the BBC that her anonymity would be preserved in the programme.

Ofcom considered transcripts of email exchanges between Mrs Robey and various BBC staff members in the months leading up to the broadcast of the programme, and noted that the BBC's approach to the question of whether or not it intended to identify Mrs Robey was inconsistent to some extent.

For example, the programme's reporter clearly stated in an email to Mrs Robey of 29 August 2012 that:

"...as soon as you took the decision to 'go public' with your identity and name in the Telegraph, any agreement we had on protecting your identity went flying out of the window".

The Series Editor of *Inside Out*, in an email to Mrs Robey on 24 October 2012, wrote:

"Subsequent to our broadcast [in February 2012], you identified yourself to the Daily Telegraph and hence your name and image has appeared in a number of outlets – that is, it's in the public domain. If it were relevant to our next film, we would be entitled to use a recognisable image in the factual telling of the story, but we would not use footage from our original programme in any way differently from what has been previously agreed. At this stage though, we don't actually know what the final film will be like".

By November and December 2012, however, in the weeks and days immediately preceding the broadcast of the programme, emails from the BBC's Head of Regional and Local Programmes were drafted in a much more accommodating manner.

For example, in an email of 21 November 2012 the BBC's Head of Regional and Local Programmes stated that it was not the BBC's intention to "show anything other than a clip that we broadcast previously" and that he would let her know if "that changes." In Ofcom's view, this had the potential to lead Mrs Robey to conclude that she would not be identified in the programme, because only the interview footage, in which Mrs Robey was not identifiable, from the previously broadcast programme would be included. The same email also stated that the interview clips would be used "under the same conditions (anonymity)".

However, given Ofcom's conclusion that, following Mrs Robey's appearance in the UK national press in May 2012, she no longer had a legitimate expectation of privacy in her name and photograph, it was not necessary for Ofcom to consider whether or not any potential ambiguity on the part of the BBC as to its intention to identify Mrs Robey in programme contributed to any unwarrantable infringement of her privacy.

Consequently, in view of the factors detailed above, in particular Ofcom's finding that Mrs Robey did not have a legitimate expectation of privacy in her name and photograph as broadcast in the programme, Ofcom concluded that Mrs Robey's privacy had not been unwarrantably infringed.

Accordingly, Ofcom has not upheld Mrs Robey's complaint of unwarranted infringement of privacy in the programme as broadcast.

Other Programmes Not in Breach

Up to 26 August 2013

Programme	Broadcaster	Transmission Date	Categories
Advertisements	Movies 24	27/05/2013	Advertising minutage
Doctors	BBC 1	13/05/2013	Scheduling

Complaints Assessed, not Investigated

Between 13 and 26 August 2013

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
"More Music Variety" slogan	Heart FM	n/a	Materially misleading	1
8 Out of 10 Cats Uncut	4Music	07/08/2013	Scheduling	1
A&E	DMAX+1	13/08/2013	Fairness & Privacy	1
Advertisements	ITV	31/07/2013	Advertising minutage	1
Apna Bazar	DM Digital	04/08/2013	Materially misleading	1
BBC Asian Network	BBC Asian Network	15/08/2013	Outside of remit / other	1
BBC News	BBC 1	03/08/2013	Outside of remit / other	1
BBC News	BBC News Channel	12/08/2013	Outside of remit / other	1
BBC News	BBC News Channel	12/08/2013	Outside of remit / other	1
BBC News	BBC News Channel	15/08/2013	Outside of remit / other	1
BBC News at Six	BBC 1	31/07/2013	Scheduling	1
BBC News at Six	BBC 1	16/08/2013	Outside of remit / other	13
BBC News at Six	BBC 1	21/08/2013	Scheduling	1
BBC News at Ten	BBC 1	16/08/2013	Generally accepted standards	1
BBC News at Ten	BBC 1	16/08/2013	Outside of remit / other	1
BBC News at Ten	BBC 1	21/08/2013	Generally accepted standards	5
BBC News at Ten	BBC 1	22/08/2013	Generally accepted standards	1
BBC Proms	BBC 4	15/08/2013	Outside of remit / other	1
BBC Radio 1's Stories: Tempted by Teacher	BBC Radio 1	12/08/2013	Generally accepted standards	1
Beyond Belief: Buddhism and Violence	BBC Radio 4	19/08/2013	Religious/Beliefs discrimination/offence	1
Big School	BBC 1	16/08/2013	Generally accepted standards	2
Boom Town	BBC 3	22/08/2013	Outside of remit / other	1
Breakfast	BBC 1	04/08/2013	Outside of remit / other	1
Bremner's One Question Quiz	BBC Radio 4	16/08/2013	Outside of remit / other	1
Britain's Got More Talent	ITV2	21/04/2013	Violence and dangerous behaviour	1
Britain's Got More Talent	ITV2	27/05/2013	Offensive language	1
Britain's Got More Talent	ITV2	30/05/2013	Generally accepted standards	4
Britain's Got More Talent	ITV2	31/05/2013	Generally accepted standards	1

Britain's Got Talent	ITV	13/04/2013	Scheduling	60
Britain's Got Talent	ITV	13/04/2013	Scheduling	1
Britain's Got Talent	ITV	13/04/2013	Under 18s in programmes	5
Britain's Got Talent	ITV	20/04/2013	Offensive language	1
Britain's Got Talent	ITV	27/04/2013	Harm	1
Britain's Got Talent	ITV	27/04/2013	Violence and dangerous behaviour	14
Britain's Got Talent	ITV	04/05/2013	Due impartiality/bias	1
Britain's Got Talent	ITV	11/05/2013	Offensive language	1
Britain's Got Talent	ITV	11/05/2013	Outside of remit / other	1
Britain's Got Talent	ITV	11/05/2013	Scheduling	85
Britain's Got Talent	ITV	11/05/2013	Under 18s in programmes	1
Britain's Got Talent	ITV	26/05/2013	Violence and dangerous behaviour	1
Britain's Got Talent	ITV	27/05/2013	Generally accepted standards	2
Britain's Got Talent	ITV	27/05/2013	Outside of remit / other	3
Britain's Got Talent	ITV	27/05/2013	Religious/Beliefs discrimination/offence	1
Britain's Got Talent	ITV	27/05/2013	Sexual material	1
Britain's Got Talent	ITV	27/05/2013	Transgender discrimination/offence	1
Britain's Got Talent	ITV	27/05/2013	Violence and dangerous behaviour	1
Britain's Got Talent	ITV	28/05/2013	Outside of remit / other	1
Britain's Got Talent	ITV	30/05/2013	Disability discrimination/offence	11
Britain's Got Talent	ITV	30/05/2013	Generally accepted standards	1
Britain's Got Talent	ITV	30/05/2013	Offensive language	15
Britain's Got Talent	ITV	30/05/2013	Scheduling	1
Britain's Got Talent	ITV	30/05/2013	Under 18s in programmes	3
Britain's Got Talent	ITV	31/05/2013	Promotion of products/services	1
Britain's Got Talent	ITV	31/05/2013	Sexual material	1
Britain's Got Talent	ITV	31/05/2013	Under 18s in programmes	2
Britain's Got Talent	ITV	01/06/2013	Generally accepted standards	1
Britain's Got Talent	ITV	01/06/2013	Offensive language	7
Britain's Got Talent	ITV	01/06/2013	Outside of remit / other	2
Britain's Got Talent	ITV	08/06/2013	Offensive language	4
Britain's Got Talent	ITV	08/06/2013	Outside of remit / other	10
Britain's Got Talent	ITV	08/06/2013	Scheduling	2
Britain's Got Talent	ITV	08/06/2013	Under 18s in programmes	2
Britain's Got Talent	ITV	08/06/2013	Voting	1
Britain's Got Talent	ITV	n/a	Generally accepted standards	1

Britain's Got Talent	ITV	n/a	Offensive language	1
Britain's Got Talent	STV	27/05/2013	Advertising minutage	1
Britain's Got Talent Results	ITV	28/05/2013	Generally accepted standards	162
Britain's Got Talent Results	ITV	30/05/2013	Generally accepted standards	4
Britain's Got Talent Results	ITV	30/05/2013	Under 18s in programmes	1
Cash Money	Nollywood TV	07/08/2013	Offensive language	1
Celebrity Big Brother	Channel 5	22/08/2013	Generally accepted standards	1
Celebrity Big Brother	Channel 5	22/08/2013	Outside of remit / other	1
Celebrity MasterChef	BBC 1	07/08/2013	Outside of remit / other	1
Channel 4 News	Channel 4	09/08/2013	Due impartiality/bias	1
Channel 4 News	Channel 4	09/08/2013	Outside of remit / other	1
Channel 4 Weather	Channel 4	n/a	Generally accepted standards	1
Channel Ident	ITV2	09/08/2013	Violence and dangerous behaviour	1
Channel Ident	ITV2	22/08/2013	Violence and dangerous behaviour	1
Charity appeal	Samaa	20/07/2013	Charity appeals	1
Chickens (trailer)	Sky Sports News	20/08/2013	Scheduling	1
Chickens (trailer)	Sky Sports News	21/08/2013	Scheduling	1
Christo	LBC 97.3FM	10/08/2013	Due impartiality/bias	1
Coronation Street	ITV	12/07/2013	Race discrimination/offence	1
Coronation Street	ITV	15/07/2013	Generally accepted standards	1
Coronation Street	ITV	09/08/2013	Drugs, smoking, solvents or alcohol	1
Coronation Street	ITV	12/08/2013	Promotion of products/services	1
Coronation Street	ITV	19/08/2013	Race discrimination/offence	6
Coronation Street	ITV	21/08/2013	Generally accepted standards	1
Coronation Street	ITV	n/a	Materially misleading	1
Coronation Street	ITV2	n/a	Race discrimination/offence	1
Coronation Street	ITV2	n/a	Race discrimination/offence	1
Coronation Street / Emmerdale (trailer)	ITV	10/08/2013	Generally accepted standards	1
Cowboy Traders	Channel 5	14/08/2013	Offensive language	1
Crazy About One Direction	Channel 4	15/08/2013	Generally accepted standards	3
Crazy About One Direction	Channel 4	15/08/2013	Materially misleading	1
CSI: Crime Scene Investigation	Channel 5	19/08/2013	Scheduling	1
Dara O'Briain's Science Club	BBC 2	22/08/2013	Animal welfare	1
Daybreak	ITV	01/08/2013	Television Access Services	1

Daybreak	ITV	15/08/2013	Generally accepted standards	1
De Dejtbara	Kanal 5	22/08/2013	Outside of remit / other	1
Dead Dogs' Memorial (trailer)	Absolute Radio	n/a	Generally accepted standards	1
Direct Wines' sponsorship credit	Classic FM	05/07/2013	Commercial communications on radio	1
Drivetime	Talksport	13/08/2013	Generally accepted standards	1
EastEnders	BBC 1	13/08/2013	Scheduling	1
EastEnders	BBC 1	n/a	Generally accepted standards	1
Emmerdale	ITV Central	07/08/2013	Television Access Services	1
Extra Time on Talksport	Talksport	14/08/2013	Gender discrimination/offence	1
Extreme Diet Ward: A Food Hospital Special	Channel 4	31/07/2013	Materially misleading	2
Fleabag Monkeyface	CITV	n/a	Scheduling	1
Food Unwrapped	Channel 4	29/07/2013	Animal welfare	1
Foxy Bingo's sponsorship of The Jeremy Kyle Show	ITV	n/a	Generally accepted standards	1
Free Music Telly (promotion)	E4	n/a	Materially misleading	1
Geordie Shore	MTV	23/07/2013	Generally accepted standards	1
Get Squiggling	CBeebies	18/08/2013	Outside of remit / other	1
Halfords' sponsorship of Top Gear	Dave	n/a	Sexual orientation discrimination/offence	1
Halfords' sponsorship on Dave	Dave	10/08/2013	Generally accepted standards	1
Have I Got News For You	BBC 1	n/a	Gender discrimination/offence	1
Hollyoaks	Channel 4	15/08/2013	Materially misleading	1
Hollyoaks	Channel 4	15/08/2013	Scheduling	1
Hollyoaks	E4	14/08/2013	Generally accepted standards	2
Homes Under the Hammer	BBC 1	15/08/2013	Animal welfare	1
How Not to Get Old	Channel 4	14/08/2013	Nudity	1
I'm Spazticus	Channel 4	14/08/2013	Disability discrimination/offence	27
I'm Spazticus	Channel 4	21/08/2013	Disability discrimination/offence	1
I'm Spazticus (trailer)	Channel 4	12/08/2012	Disability discrimination/offence	1
I'm Spazticus (trailer)	Channel 4	08/08/2013	Disability discrimination/offence	3
I'm Spazticus (trailer)	Channel 4	12/08/2013	Disability discrimination/offence	1
India's Supersize Kids	BBC 2	21/08/2013	Generally accepted standards	1
It's Not Easy Being a Traveller	Channel 5	22/08/2013	Scheduling	1

ITV News and Weather	ITV	31/07/2013	Generally accepted standards	1
ITV News and Weather	STV	01/08/2013	Generally accepted standards	1
ITV News at Ten and Weather	ITV	31/07/2013	Generally accepted standards	1
ITV News London	ITV	22/08/2013	Outside of remit / other	1
John Bishop's Only Joking	Sky1	21/08/2013	Offensive language	1
Kashi	Venus TV	21/07/2013	Religious/Beliefs discrimination/offence	1
Kiss FM Breakfast Show	Kiss FM (London)	29/07/2013	Generally accepted standards	1
Law and Order: UK	ITV	04/08/2013	Race discrimination/offence	1
Legally High	Channel 4	08/08/2013	Drugs, smoking, solvents or alcohol	1
Long Lost Family	ITV	12/08/2013	Generally accepted standards	1
Marrying Mum and Dad	CBBC	12/08/2013	Scheduling	1
Merapakistan Charity Appeal 2013	Venus TV	05/08/2013	Charity appeals	1
Myra Hindley: The Untold Story	Channel 5	17/07/2013	Generally accepted standards	1
Neighbours	Channel 5	21/08/2013	Generally accepted standards	1
News	Al Jazeera	24/07/2013	Generally accepted standards	1
News programming	BBC channels / ITV channels	06/08/2013	Due impartiality/bias	1
News programming	BBC channels	18/08/2013	Outside of remit / other	1
News programming	Various	n/a	Outside of remit / other	1
Nick Ferrari's Review of the Week	LBC 97.3FM	03/08/2013	Race discrimination/offence	1
Nick Grimshaw	BBC Radio 1	02/08/2013	Drugs, smoking, solvents or alcohol	1
Phil Taggart and Alice Levine	BBC Radio 1	14/08/2013	Generally accepted standards	1
Programming	ILC Tamil Radio	18/06/2013	Race discrimination/offence	1
Phones 4U's sponsorship credit	E4	10/08/2013	Generally accepted standards	1
Phones 4U's sponsorship of Films on 4	Channel 4	12/08/2013	Generally accepted standards	1
Phones 4U's sponsorship of Films on 4	Channel 4	17/08/2013	Generally accepted standards	1
PhoneShop	E4	01/08/2013	Race discrimination/offence	1
Press Preview	Sky News	09/08/2013	Generally accepted standards	1
Programme trailers	Virgin Media	n/a	Scheduling	1
Programming	BBC channels and ITV channels	n/a	Outside of remit / other	1
Programming	BBC Radio 4 extra	n/a	Outside of remit / other	1

Programming	ITV2	n/a	Outside of remit / other	1
Programming	Various	n/a	Due impartiality/bias	1
Programming	Various	n/a	Product placement	1
Radio 5 Live News	BBC Radio 5 Live	16/08/2013	Outside of remit / other	1
Regional News and Weather	BBC 1	08/08/2013	Outside of remit / other	1
Regional News and Weather	BBC 1	12/08/2013	Outside of remit / other	1
Regional News and Weather	BBC 1	19/08/2013	Outside of remit / other	1
Remote gambling	Red Light	26/07/2013	Outside of remit / other	1
Richard Bacon	BBC Radio 5 Live	13/08/2013	Religious/Beliefs discrimination/offence	1
Rip Off Food	BBC 1	14/08/2013	Materially misleading	1
Rocks and Co	Rocks and Co	20/08/2013	Outside of remit / other	1
Saints and Scroungers	BBC 2	07/08/2013	Crime	1
Saturday Edition	BBC Radio 5 Live	17/08/2013	Generally accepted standards	1
Simon Mayo Drivetime	BBC Radio 2	22/08/2013	Offensive language	1
Six O'clock News	BBC Radio 4	31/07/2013	Generally accepted standards	1
Sky Midnight News	Sky News	09/08/2013	Due impartiality/bias	1
Sky News	Sky News	10/08/2013	Due accuracy	1
Sky News with Kay Burley	Sky News	12/08/2013	Outside of remit / other	1
Sky Sports	Sky Sports	n/a	Outside of remit / other	1
Snog, Marry, Avoid?	BBC 3	12/08/2013	Generally accepted standards	1
Soul Galore	Redroad 102.4 FM	n/a	Outside of remit / other	1
Southcliffe	Channel 4	18/08/2013	Offensive language	1
Stacey Dooley Investigates	BBC 3	12/08/2013	Crime	1
Storm Evening	Storm	02/08/2013	Participation TV - Offence	1
STV News at Six	STV	22/08/2013	Generally accepted standards	1
Subtitling	Channel 5	n/a	Television Access Services	1
Subtitling	NBC Universal HD channels	n/a	Television Access Services	1
Subtitling	Sky channels	n/a	Television Access Services	1
Subtitling	SyFy	n/a	Television Access Services	1
Subtitling	Various	n/a	Television Access Services	2
Sunrise	Sky News	06/08/2013	Race discrimination/offence	1
Take on the Twisters	ITV	31/07/2013	Due impartiality/bias	1
The Breakfast Show with Penny Smith and Paul Ross	BBC London 94.9	07/08/2013	Scheduling	1
The Devil's Disciple -	Channel 5	18/08/2013	Scheduling	1

Born to Kill (trailer)				
The Dreamers	Movie Mix	17/08/2013	Generally accepted standards	1
The Girl	BBC 2	26/12/2012	Outside of remit / other	1
The Killer Prophet: Born to Kill (trailer)	Channel 5	21/08/2013	Scheduling	1
The Late Show	Heart FM (Birmingham)	31/07/2013	Generally accepted standards	1
The Magaluf Weekender	ITV2	25/06/2013	Gender discrimination/offence	1
The One Show	BBC 1	14/08/2013	Generally accepted standards	1
The One Show	BBC 1	19/08/2013	Outside of remit / other	1
The One Show	BBC 1	19/08/2013	Outside of remit / other	1
The Simpsons	Sky1	10/08/2013	Religious/Beliefs discrimination/offence	1
The Trip	BBC 2	16/08/2013	Generally accepted standards	1
The World at One	BBC Radio 4	15/08/2013	Due impartiality/bias	1
This Morning	ITV	21/08/2013	Generally accepted standards	1
Today	BBC Radio 4	23/07/2013	Race discrimination/offence	1
Tonight: The Great Housing Crisis	ITV	08/08/2013	Due impartiality/bias	1
Tonight: Who'd Be a Teacher?	ITV	06/06/2013	Due impartiality/bias	1
Top Boy	Channel 4	20/08/2013	Race discrimination/offence	3
Top Gear	BBC 2	28/07/2013	Sexual material	1
Top of the Lake	BBC 2	20/07/2013	Generally accepted standards	1
Top of the Pops	BBC 4	14/08/2013	Offensive language	1
Truth Exposed	Peace TV	07/08/2013	Religious/Beliefs discrimination/offence	1
Under the Dome	Channel 5	19/08/2013	Advertising minutage	1
UTV Live	UTV	07/08/2013	Due impartiality/bias	1
Volume levels of trailers and credits	BBC channels	n/a	Outside of remit / other	1
Wimbledon 2013	BBC 1	03/07/2013	Offensive language	3
World Athletics Championship	British Eurosport	16/08/2013	Outside of remit / other	1
XFM Weekend Breakfast Show with Gareth Brooks	XFM Manchester	10/08/2013	Scheduling	1
You've Been Framed!	ITV	27/07/2013	Offensive language	1
You've Been Framed!	ITV	10/08/2013	Sexual orientation discrimination/offence	1
You've Been Framed!	ITV	17/08/2013	Generally accepted standards	6

Investigations List

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

Here is an alphabetical list of new investigations launched between 15 and 28 August 2013.

Programme	Broadcaster	Transmission date
Advertising minutage	ITV4	7 July 2013
Advertising minutage	More4	5 March 2013
Charity Appeal	NTV Europe	9 July 2013
Desi Radio	Desi Radio 160.2AM	29 July 2013
Greatest Little Britons	Sky1	18 July 2013
Temptation	Klear TV	25 July 2013
The Agony of the Christ	Klear TV	21 July 2013
The Poplars Care Home	BBC 1	17 June 2013
Y Byd Ar Bedwar	S4C Digital	2 July 2013

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

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

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

For fairness and privacy complaints go to:

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