



## Guidance Notes:

Section 3:

Crime, Disorder, Hatred and Abuse

## **Section Three**

# **Crime, Disorder, Hatred and Abuse**

## **Guidance**

### **General application**

Ofcom provides this guidance to assist broadcasters and other stakeholders in interpreting and applying Section Three of the Broadcasting Code (“the Code”).

The guidance provides:

- information and guidance on individual rules and how Ofcom considers material against them; and
- summaries and web links to cases which have previously been published in Ofcom’s Broadcast and On Demand Bulletin<sup>1</sup>. Broadcasters may find these examples helpful when considering how to interpret and apply a particular Code rule.

Every complaint or case will be dealt with on a case by case basis according to the individual facts of the case.

We draw broadcasters’ attention to the legislative background to the Code as set out in the beginning section of the Code. In particular:

“Broadcasters are reminded of the legislative background that has informed the rules, of the principles that apply to each section, the meanings given by Ofcom and of the guidance issued by Ofcom, all of which may be relevant in interpreting and applying the Code. No rule should be read in isolation but within the context of the whole Code including the headings, cross references and other linking text.”

This section of the Code does not prohibit particular people or organisations from appearing on television and radio services regulated by Ofcom just because their views or actions have the potential to cause offence. To do so would, in our view, be a disproportionate restriction of the broadcaster’s right to freedom of expression and the audience’s right to receive information and ideas.

This is especially the case in news and current affairs programming, where broadcasters may wish to give coverage to or interview people or organisations with extreme and very challenging views as part of their legitimate and comprehensive coverage of on-going news stories. For example, broadcasters should be and are able to report on terrorist groups that pose potential terror threats internationally and domestically. This is clearly in the public interest. However, where people or organisations are given the chance to articulate their views on television or radio, broadcasters must always ensure that they comply with the Code by challenging and placing in context those views as appropriate.

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<sup>1</sup> From time to time, Ofcom will add and update the weblinks to precedent cases within this guidance document. Broadcasters should refer regularly to the Ofcom Broadcast and On Demand Bulletin (available at: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/>) for the most up to date information about Ofcom’s decisions under the Code. Note: Ofcom’s Broadcast Bulletin was renamed to the Broadcast and On Demand Bulletin in January 2016.

## **Meanings for this section**

As set out in the Code:

“Crime” may relate to any offence under law that is punishable by imprisonment or by a fine.

“Disorder” may include but is not limited to the criminal offence of civil disorder.

“Hate speech” is all forms of expression which spread, incite, promote or justify hatred based on intolerance on the grounds of disability, ethnicity, gender, gender reassignment, nationality, race, religion, or sexual orientation.

“Terrorism”<sup>2</sup> is the use or threat of action which:

- involves serious violence against a person;
- involves serious damage to property;
- endangers a person's life, other than that of the person committing the action;
- creates a serious risk to the health or safety of the public or a section of the public; or
- is designed seriously to interfere with or seriously to disrupt an electronic system,

where the use or threat is designed to influence the government or an international governmental organisation or to intimidate the public or a section of the public, and the use or threat is made for the purpose of advancing a political, religious or ideological cause.

Broadcasters should have regard to the list of proscribed terror groups or organisations in the UK<sup>3</sup>. This document lists the terrorist groups or organisations banned under UK law and is updated regularly by the Home Office. Ofcom often refers to this list where relevant when considering whether material is problematic under the Code. The fact that an organisation is on the list is likely to inform any decision taken in this area. It is important to note, however, that material may breach the Code even if it features individuals, groups, or organisations who are not on this list. On the other hand, use of material relating to a proscribed group does not necessarily mean that the programme will breach Rule 3.1 and broadcasters are encouraged to consider the contextual factors set out under this rule.

### **Rule 3.1: Incitement of crime and disorder**

Rule 3.1 reflects the standards objective in statute to prohibit the broadcast of material likely to encourage or to incite the commission of crime or lead to disorder.

#### **The seriousness of Rule 3.1**

A high risk of harm will be involved in many cases which engage Rule 3.1. Ofcom takes the broadcast of this type of content extremely seriously. If Ofcom records a breach of Rule 3.1 we will consider whether to revoke the broadcaster's licence or to impose a form of statutory sanction, such as a financial penalty.

<sup>2</sup> As per section 1 of the Terrorism Act 2000.

<sup>3</sup> <https://www.gov.uk/government/publications/proscribed-terror-groups-or-organisations--2>

We recorded the first breach for the broadcast of material likely to encourage or incite the commission of crime or lead to disorder in 2012. We have to date found four broadcasters in breach of this rule.

### **Assessing the *likely* effect**

Ofcom is required to assess the likelihood of material encouraging or inciting the commission of crime or of leading to disorder. The use of the word “likely” in Rule 3.1 means that Ofcom is not required to identify any causal link between the content broadcast and any specific acts of criminal behaviour or disorder.

In assessing the *likely* effect on the audience, the editorial context in which the material is presented to the audience is significant as well as the nature of the material. In particular we would carefully consider the content of any statements and how they were made, and whether the material contained any direct or indirect calls to action.

Material may contain a *direct* call to action – for example, an unambiguous, imperative statement calling viewers to take some form of potentially criminal or violent action. Material may contain an *indirect* call to action if it includes statements that cumulatively amount to an implicit call to act. For example, material which promotes or encourages criminal acts, or material which gives a clear message that an individual should consider it their duty to commit a criminal act.

The filming of criminal activity is not in itself, necessarily, encouragement or incitement in the context of Rule 3.1.

### **“Context” under Rule 3.1**

A range of contextual and editorial factors can either increase or lessen the likelihood that broadcast material could incite crime or disorder under Rule 3.1 and it is important that broadcasters are aware of them, as set out below:

#### **a) The editorial purpose of the programme**

For example, there may be greater potential to encourage or incite criminal action when a programme sets out to influence the audience on a subject or theme, or when a programme provides an uncritical platform for an authoritative figure. Broadcasters should therefore ensure challenge and/or context is provided to controversial views as necessary.

#### **b) The status or position of any individual(s) featured in the material**

Material may be found more likely to amount to a call to action where the contributor(s) is in a position of respect and authority to members of the audience. Appropriate challenge should therefore be provided

#### **c) Whether sufficient challenge is provided**

For example, where there is a legitimate journalistic purpose for including interviews with controversial people or organisations in news or current affairs programming, the inclusion of opposing viewpoints and challenge to extreme statements can serve to mitigate the likelihood of incitement.

Broadcasters should ensure presenters or other people featured in a particular programme, as appropriate, challenge contributors or place contributors’ views and

comments in context to ensure they are not given the freedom to broadcast statements which are likely to encourage or to incite the commission of crime or lead to disorder.

**d) Religious content**

Broadcasters should take care to avoid the broadcast of unambiguous statements which support acts of violence where those statements derive from or are presented as reflecting religious texts and theological belief. This is especially relevant if such statements are presented as the correct and only interpretation of these texts. By presenting such views as established orthodoxy and suggesting there is no scope for interpretation, there is an increased risk that the audience may understand the statements as calls to action to commit crime or disorder.

**e) Providing a platform**

Television and radio services should not provide a platform for people to express views, unchallenged, which might be likely to encourage crime or lead to disorder, including hate speech. When considering whether or not to give someone with extreme political or religious views the opportunity to appear in a programme, broadcasters should carefully assess in advance the risk of a potential breach of the rules in this section. They should consider, for example, the possible effect on viewers or listeners of any statements that the potential contributor has either made in pre-recorded material or that they are likely to make in a live broadcast.

**f) Risk assessments and monitoring live output**

We advise broadcasters to conduct risk assessments in advance of live transmission, when it is likely that a presenter or contributor will express extreme views in a live programme. Appropriate measures to mitigate risks arising from this might include briefing any presenters or contributors about relevant Code requirements, or using a time delay to ensure that any potentially non-compliant material can be edited or stopped before it is transmitted.

Broadcasters should also have appropriate procedures in place to monitor or intervene as necessary during the broadcast of live material to prevent potential breaches of Rule 3.1. This means, for example, that during live broadcasts, the broadcaster should ensure that it has staff in control of transmissions who have an adequate knowledge of the language being used in such broadcasts. Presenters or production staff should also be able to understand the significance of what is being broadcast so they can intervene promptly as necessary.

**Precedent cases**

This guidance document is updated whenever breaches of Section Three, or notable decisions in this area, are recorded to ensure broadcasters have available up to date precedent cases. So far Ofcom has recorded four breaches under Section Three, all against Rule 3.1.

The breaches recorded under Rule 3.1 to date have involved religious services. Importantly, the Section Three rules can apply to all content, regardless of any particular religion or view it features. For example, far right discourse or propaganda may be considered problematic under Section Three if broadcast on television or radio without sufficient contextualisation.

We draw broadcasters' attention to decisions Ofcom has made previously involving incitement to crime. There are clear similarities in the material found in breach to date: these all contained direct call/s to action to commit violent crime; the incitement was aimed towards a group with protected characteristics (three were religiously motivated, one was against homosexual people); in three cases an individual of status or with authority to the audience was involved; and there was insufficient or no challenge to the views contained within all cases.

Links to Ofcom's previous decisions in which breaches were recorded for the broadcast of material likely to encourage or incite the commission of crime or lead to disorder are set out below. Ofcom will always consider whether to impose a statutory sanction (including a financial penalty) when there is a breach of Rule 3.1.<sup>4</sup>

### Breaches and sanctions

#### **Rehmatul Lil Alameen, DM Digital**

Breach Finding: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb205/obb205.pdf>

DM Digital was a satellite channel primarily aimed at an Asian audience in the UK. This programme consisted of an Islamic scholar who delivered a live televised lecture from Pakistan about Islamic theology with reference to the shooting dead in early 2011 of the Punjab governor Salmaan Taseer by his bodyguard Malik Mumtaz Qadri.

During the broadcast, the scholar unambiguously stated that all Muslims had a duty to kill anyone who criticises or insults the Prophet Mohammed and also praised the killing of Salmaan Taseer.

We recorded serious breaches against DM Digital Television Limited under Rule 3.1 (incitement to crime), 4.1 (responsibility in religious programmes), 4.2 (religious abuse), 5.4 (Licensee's views in programmes) and 5.5 (due impartiality).

### Not in breach cases

#### **Report on Al Shabaab, Channel 4 News**

Finding: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb2521/obb253.pdf>

This news bulletin featured a report from a training camp in Somalia of the proscribed terrorist organisation Al Shabaab. In the report was an interview with an Al Shabaab leader, Sheikh Ali Dhere, during which he appeared to invite young British Muslims to join Al Shabaab. We considered there was a strong public and news interest for Channel 4 to examine: the role of Al Shabaab in the 2013 Westgate Shopping Mall attack in Kenya; the extent to which UK nationals had joined this group; and whether the UK might be a future target for Al Shabaab. We concluded that Channel 4 provided sufficient context in the report and surrounding content. In particular, we concluded that Sheikh Ali Dhere's comments were contextualised by balancing content which would have served to emphasise the negative ramifications of Al Shabaab's philosophy and actions. Ofcom found the material not in breach of Rule 1.3 (appropriate scheduling), Rule 2.3 (potentially offensive material must be justified by the context) and Rule 3.1 (incitement to crime).

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<sup>4</sup> Ofcom's sanction adjudications can be found on Ofcom's website:  
<http://stakeholders.ofcom.org.uk/enforcement/content-sanctions-adjudications/>

## **Undercover Mosque, Channel 4**

Finding: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb97/issue97.pdf>

Undercover Mosque was an edition of Channel 4's investigative current affairs series Dispatches. The programme reported the observations of an undercover reporter who visited a number of Mosques and Islamic organisations in Britain. The programme stated that it had discovered extremism being preached in the UK.

The programme featured secretly filmed footage of teaching in Mosques and Islamic organisations that appeared to condone taking violent or criminal action in the name of Islam. While the programme contained strong emotive language, Ofcom did not consider that the transmission of these clips, when taken in the context of an investigative documentary, could have amounted to an incitement to crime.

### **Rules 3.2 and 3.3: Hatred and Abuse**

These rules reflect the standards objective set out in statute requiring the application of generally accepted standards to provide adequate protection for members of the public from offensive and harmful material<sup>5</sup>.

The rules should be read in conjunction with: Rule 2.1 (generally accepted standards must be applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material), Rule 2.4 (programmes must not include material which condones or glamorises violent, dangerous, or seriously antisocial behaviour), and Rule 4.2 (religious views should not be subject to abusive treatment). Broadcasters should also refer to the guidance issued for these sections.

Rules 3.2 and 3.3 require material to be justified by the context. This means that the decision to broadcast material at all must be justified, and the way in which the material is presented to the audience must be justified.

### **Generally accepted standards for Rules 3.2 and 3.3**

We recognise that some programming may include material that has the potential to be harmful or offensive. Ofcom will assess material in this area against a background of generally accepted standards in the UK, but will take into account all relevant circumstances when assessing content.

Broadcasters and the public view and listen to material measured against a background of generally accepted standards. Ofcom's understanding of "generally accepted standards" is underpinned by relevant Ofcom research. Generally accepted standards will change over time and will also vary according to the context. Ofcom takes into account the nature of the audience receiving a service as well as other relevant factors such as, for example, when a channel is only broadcast outside the UK.

Ofcom recognises there are certain genres such as drama, comedy or satire where there is likely to be editorial justification for including challenging or extreme views in keeping with audience expectations, provided there is sufficient context. The greater the risk the material may cause harm, the greater the need for more contextual justification.

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<sup>5</sup> The relevant standards objective states: "that generally accepted standards are applied to the content of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material."

The Code does not prohibit any person or organisation from appearing on television and radio services regulated by Ofcom just because their views or actions have the potential to cause offence. However, where people or organisations are given the chance to articulate their views on television or radio, broadcasters must always ensure that they comply with the Code by challenging and placing in context those views as appropriate.

### **“Hate speech”**

The meaning of “hate speech” in Rule 3.2 is given at the start of this document. The cases where Ofcom has previously recorded breaches of Rule 3.1 (see above) have, for the most part, concerned variations of what can be described as “hate speech”. These cases resulted in a breach under Rule 3.1 as they all contained a direct or indirect call to action and were therefore ‘likely’ to encourage or to incite the commission of crime. Were similar material to amount to “hate speech” but not contain a direct or indirect call to action, it may be likely to breach Rule 3.2.

Broadcasters’ attention is drawn to sections 22 and 29F of the Public Order Act 1986, which set out criminal offences relating to broadcasts of material stirring up hatred relating to race, religion, or sexual orientation.

In the context of Rule 3.2, Ofcom consider examples of the types of issues that may form the basis of hate speech by one person or group against another to include, but are not limited to, disability, ethnicity, gender, gender reassignment, nationality, race, religion, or sexual orientation.

### **“Abusive or derogatory treatment”**

Under Rule 3.3, the abusive or derogatory treatment of individuals, groups, religions or communities may be in an individual programme or programmes taken as a whole.

When considering “abusive treatment” of religions, Ofcom takes a similar approach to material as under Rule 4.2 (religious views within religious programming must not be subject to abusive treatment). We would consider if the material included statements which sought to revile, attack or vehemently express condemnation towards individuals, groups, religions or communities, without sufficient justification by the context.

Importantly, the Code does not prohibit legitimate criticism of any religion or its founder. There is scope within the Code for the followers of one religion to engage in religious debate with, or criticise, other religions provided such criticism does not amount to pejorative abuse.

Ofcom also acknowledges that licensees have the right to broadcast programmes that contain particular personal interpretations of the role of different nations and communities through history. However, in doing so any potential offence has to be justified by the context.

The use of language (including offensive language) is constantly developing. Whether language is offensive, or deemed abusive or derogatory depends on a number of factors. Language is more likely to be offensive if it is contrary to audience expectations. Sensitivities can vary according to generation and communities/cultures. Offensive material (including offensive language) must be justified by the context (see also Rule 2.3 in the Broadcasting Code). The latest research conducted by Ofcom can be viewed [on our website](#).

Broadcasters should be aware that there are areas of offensive language and material which are particularly sensitive. Racist terms and material should be avoided unless their inclusion can be justified by the context. Broadcasters should take care in their portrayal of culturally diverse matters and should avoid stereotyping unless editorially justified.

Broadcasters should be aware of any links to matters of current or recent public or community sensitivity, and the potential susceptibility of the audience. For example, recent international, national or local events, or notable periods such as religious festivals might increase the potential for the material to cause harm or offence.

### **Relevant precedent cases**

Before the introduction of Rules 3.2 and 3.3 on 9 May 2016 Ofcom recorded some breaches of material under Section Two and Section Four which are relevant.

The cases below were found in breach of Rule 4.2: “The religious views and beliefs of those belonging to a particular religion or religious denomination must not be subject to abusive treatment”.

*Global Khatm-E-Nabuwat Movement*, Takbeer TV:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb222/obb222.pdf>

*Debate Night*, Ummah Channel:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb196/obb196.pdf>

*Tafheem al Masyal*, Takbeer TV:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb184/obb184.pdf>

*Seal of the Prophets*, Ummah Channel:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb167/issue167.pdf>

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

*Sister Ruby Ramadan Special*, Radio Asian Fever:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb207/obb207.pdf>

Aden Live: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb191/obb191.pdf>

*Maranam Muttuppalli Alla and Vanakathukuriyavarkal*, Global Tamil Vision:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb136/Issue136.pdf>

Ofcom regularly publishes complaints bulletins which provide information on matters members of the public have found harmful or offensive and Ofcom’s decision.

### **Rules 3.4 to 3.8: Portrayals of crime and criminal proceedings**

Caution may be required in programmes showing relatively common but criminal behaviour such as shoplifting, car or computer-related crime. This is to ensure that broadcasts do not include or demonstrate any particular techniques that would assist with the commission of crime.

## **Payments to criminals**

Rule 3.5 refers to payments made to convicted or confessed criminals for a programme contribution related to their crimes. Family members, friends and associates may be paid in money or in kind for a contribution to a programme about the crime but not if it is known that such payment will benefit the criminal.

The application of Rule 3.5 relates to both the on-screen participation of convicted or confessed criminals, or any other contribution (for example, research or the provision of information) related to their crimes. It covers any form of payment to such criminals for their contribution, including payment of their expenses; however such payments may be made when it is in the public interest.

This rule would not automatically disqualify anyone convicted of a crime being paid for a programme contribution, as long as that contribution was not about his/her crime.

In cases when a broadcaster has good reason to consider it in the public interest for a payment to be made to a convicted or confessed criminal for a programme contribution relating to their crimes, there may be occasions where it is appropriate to inform the audience that a payment (and how much) has been made to a contributor. Ofcom believes there may be benefits to the audience, in terms of transparency, of declaring on-air when a payment has been made to a convicted or confessed criminal about his or her crime for a contribution to a programme. The larger the payment made, the more likely it is for it to be appropriate to declare on air that a payment has been given.

## **Payments while criminal proceedings are active**

Expenditure refers to legitimate costs (expenses) reasonably incurred in the production or pre-production of a programme or part of programme; for example, travel and subsistence.