

# **Ofcom Broadcast Bulletin**

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## Introduction

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

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

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

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

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

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

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

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

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

## Standards cases

### In Breach

#### ATN Rannagor

ATN Bangla, 10 June 2014, 17:45

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#### 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”).

*ATN Rannagor* was a cookery show broadcast on 10 June 2014. Ofcom received a complaint about the prominence of branding within the programme. We viewed the material in question, noting a number of commercial references. As the programme was predominantly in Bengali with some English, we commissioned an independent translation of the material.

We noted, in particular:

- The Best’s logo and an accompanying image of the product were regularly visible behind the presenter as she introduced different segments of the programme.
- A large Best’s logo and an accompanying image of the product also appeared prominently on the front of the worktop used throughout the programme.
- On two occasions during the programme, the Best’s logo and an accompanying image of the product were shown on the screen, alongside the text “*Tomato Ketchup and Chilli Sauce, Best’s Tomato Ketchup Kitchen*”.

Ofcom requested information from the Licensee to decide whether these references constituted product placement as defined in the Code<sup>1</sup>. Although the Licensee was unable to confirm whether any commercial arrangements existed between the owner of the Best’s brand and the programme’s producer/broadcaster in Bangladesh, the Licensee did confirm that the references described above were not subject to any commercial arrangement between itself and Best’s. Ofcom therefore considered that the references raised issues warranting investigation under the following rule of the Code:

Rule 9.5: “No undue prominence may be given in programming to a product, service or trade mark. Undue prominence may result from:

- the presence of, or reference to, a product, service or trade mark in programming where there is no editorial justification; or

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<sup>1</sup> The Code defines product placement as “The inclusion in a programme of, or reference to, a product, service or trademark where the inclusion is for a commercial purpose, and is in return for the making of any payment, or the giving of other valuable consideration, to any relevant provider or any other person connected with a relevant provider, and is not prop placement.”

- the manner in which a product, service or trade mark appears or is referred to in programming.”

We therefore asked ATN Bangla for comments on how the material complied with Rule 9.5.

## Response

The Licensee emphasised that it had received “no financial benefit” from the inclusion of the references to Best’s. Further, the Licensee pointed out that Best’s “don’t have any product[s] in the UK” and that “this [product] is only for the Bangladesh market”. ATN Bangla also stated that it had now stopped broadcasting the programme.

## 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, one of which is “that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”. These obligations include ensuring compliance with the Audiovisual Media Services (“AVMS”) Directive.

The AVMS Directive contains a number of provisions designed to help maintain a distinction between advertising and editorial content, including requirements that television advertising is kept visually and/or audibly distinct from programming in order to prevent programmes becoming vehicles for advertising, and limiting the amount of advertising shown in any clock hour. The requirements of the AVMS Directive and the Act are reflected in Section Nine of the Code, including Rules 9.5 among others.

Rule 9.5 states that no undue prominence may be given in programming to a product, service or trade mark, noting that undue prominence may result from a reference to a product, service or trade mark where there is no editorial justification, or from the manner in which a product, service or trade mark is referred to. Ofcom’s published guidance<sup>2</sup> on Rule 9.5 states: “Whether a product, service or trade mark appears in a programme for solely editorial reasons...or as a result of a commercial arrangement between the broadcaster or producer and a third party funder...there must be editorial justification for its inclusion. The level of prominence given to a product, service or trade mark will be judged against the editorial context in which the reference appears.”

In this case, we noted that branding for Best’s featured prominently throughout the programme. Although there may be editorial justification for certain references to ingredients in cookery programmes, in this case we noted that branding for Best’s was regularly visible behind the presenter, and on the front of the worktop. In addition there were two occasions on which the Best’s logo and an accompanying image of the product appeared on the screen, alongside the text “*Tomato Ketchup and Chilli Sauce, Best’s Tomato Ketchup Kitchen*”. We did not consider that there was editorial justification for these references, which strongly resembled brand advertising. Although we noted the Licensee’s arguments both that it had received no financial benefit from the inclusion of these references, and that the product referred to was

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

not available in the UK, it is important to emphasise that the rules relating to undue prominence are primarily intended to protect audiences by limiting the number of commercial messages contained in programming. Accordingly neither the availability of the products in question nor the Licensee's commercial arrangements are directly relevant to our consideration of whether the references within the programme were unduly prominent. Because, for the reasons set above, we concluded that they were, we found the programme in breach of Rule 9.5.

In a Finding published in issue 259 of Ofcom's Broadcast Bulletin<sup>3</sup>, we made clear that we expected the Licensee to take steps to improve its compliance in relation to Section Nine of the Code. In light of our concerns about the Licensee's compliance record, ATN Bangla was required to attend a meeting to discuss its processes on 18 August 2014.

As the programme in this case was broadcast before Ofcom met ATN Bangla to discuss its compliance procedures, we do not propose to take further action at this time. We put ATN Bangla on notice, however, that Ofcom may consider further regulatory action, if similar compliance issues arise.

### **Breach of Rule 9.5**

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<sup>3</sup> See issue 259 of Ofcom's Broadcast Bulletin (28 July 2014), available to view at: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb259/obb259.pdf>.

## In Breach

### Kathryn Wilson

*Cool FM, 6 April 2014, 00:00*

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#### Introduction

Cool FM is a commercial radio station that broadcasts to the Greater Belfast area. The licence for the service is held by Downtown Radio Limited (“Downtown Radio” or “the Licensee”), which is owned by the Bauer Media Group.

Cool FM broadcasts a music programme, hosted by Kathryn Wilson, from midnight each Saturday. During the programme, listeners are invited to contact the station to make general comments and select songs to be played on air. Listeners can make their requests via premium rate (“PRS”) text message, at a cost of 25p plus the user’s standard network rate, or via the social media platforms Twitter and Facebook page.

Ofcom received a complaint from a listener stating that the presenter had been performing a live DJ set at a nightclub on 6 April 2014, at the same time that the programme had been broadcast, suggesting that the show had been pre-recorded. The listener was concerned that invitations made by the presenter to the audience to contribute to the programme were therefore misleading, as there was no possibility that respondents’ contributions could be included in the programme.

In response to Ofcom’s enquiries, the Licensee confirmed that the programme had been pre-recorded and broadcast ‘as live’. Upon listening to the material, Ofcom noted that it contained several invitations from the presenter to contact the station, leave a comment and make a request. For example:

*“As always you can tweet me [presenter’s Twitter handle given] or you can find us on [Facebook page given] and as usual, we’re on the text: COOL space and your message [mobile short code given]. All you’ve got to do is leave your name on the end, let us know who you’re with, what you’re up to and of course, what you want to hear.”*

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*“No excuses – let us know who you’re with, what you’re up to and what you want to hear.”*

Ofcom also noted that the presenter read out what appeared to be requests and contributions from listeners who had contacted the station during the programme; for example:

*“Hello and good morning to Simon who requested that one and Matthew, who fancies rocking out this morning. This is the Foo Fighters with Best of You.”*

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*“Hello and good morning to Steve and Darren, also to Sinead and Kira-Anne...and also to every single one of you who’s requested this one.”*

Ofcom considered the matter raised issues warranting investigation under Rule 2.2 of the Code.

Rule 2.2: “Factual programmes or items or portrayal of factual matters must not materially mislead the audience.”

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

## Response

The Licensee emphasised that it regarded the trust of listeners as paramount. It said that upon receipt of Ofcom’s request for comments, it had conducted an internal investigation and acknowledged that, while this programme is normally broadcast live, on this occasion it had been pre-recorded by the presenter.

Downtown Radio said that programmes were occasionally pre-recorded as a “fallback” for when the usual presenter of a live show was not available, but that presenters using this facility were “required to fully adhere to the same editorial and format guidelines that apply to live output, apart of course from requesting audience feedback”. Although Downtown Radio stated that pre-recorded programmes were not routinely listened to before transmission, the Licensee said that it did conduct “frequent ad hoc checks on both pre-recorded and [live] output”. In the case of this particular broadcast, no additional checks had been undertaken.

The Licensee explained that in this case the presenter had pre-recorded several links to be broadcast “as live” during the show. These links had included references to listeners “that were not genuine”. Once it had become aware of the allegation, the Licensee said that it had spoken to the presenter who “admitted immediately that she had gone against required station practice and procedure” and “offered no defence for [her] lapse in judgement”.

As part of its investigation, Downtown Radio said it had examined the station’s audio logs which covered the previous two months, and security logs for the four months prior to that to ascertain whether other recent pre-recorded programming on Cool FM had contained invitations for listener interaction. It said that having done so, it was satisfied that the show presented by Kathryn Wilson on 6 April 2014 had been an isolated incident.

Downtown Radio said that seven listeners had responded to the invitations to interact via text message during the course of the programme. It confirmed that station had contacted these listeners to apologise and offer a full refund of costs incurred.

Downtown Radio reiterated that it fully accepted that as the Licensee, it was responsible for the broadcast of this material, acknowledging that there had been “a serious mistake” in this case. To prevent a recurrence, the Licensee said it had organised a Code refresher course for its entire on-air team and the presenter in question had been required to attend a disciplinary hearing. It added that all pre-recorded output was now checked prior to transmission.

Finally, the Licensee stated that Ofcom had incorrectly referred to the programme in its Preliminary View as “*The Live AM Request Show*”. Downtown Radio said that: this is not the name of the programme; this phrase was not used on air; and, accordingly, it could not constitute “a promise of intention” (about the live nature of the programme) being made to the audience by the station.

## Decision

Under the Communications Act 2003, Ofcom has a statutory duty to require the application in the case of all television and radio services of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material.

Ofcom also has a duty to set such standards for the content of programmes as appear to it best calculated to secure the standards objectives. These standards are contained in the Code and include Rule 2.2, which states that “the portrayal of factual matters must not materially mislead the audience.”

Ofcom’s guidance to Section Two of the Code<sup>1</sup> lists a number of factors to consider when determining whether a programme is “materially misleading”: the context, the editorial approach taken in the programme, the nature of the misleading material and, above all, either what the potential effect could be or what actual harm or offence has occurred. Programmes which contain information that could, for example, cause financial loss or damage audience trust are likely to be in breach of the Code.

In this case, the programme contained several invitations for listeners to contact the station via PRS text message and other routes to leave messages and request songs to be played in that programme. However, as the programme was pre-recorded, there was no possibility that such messages would be read or requests would be fulfilled. Therefore the programme materially misled listeners that they could interact when they had no chance to do so.

In addition, Ofcom noted that the presenter had pre-recorded fabricated messages from listeners, which were intended to be perceived as real-time contributions to the programme, and inserted them at various points in its six hour running time. For example:

*“Hello to Shea and Zoe who are heading back from Dublin this morning they’re heading back to Belfast. They were down there clubbing it and you’re driving back tonight! Stay awake, that’s all I’m saying.”*

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*“Hello to Jessie and Claire. They’re on their way into work this morning.”*

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In Ofcom’s view, the frequent broadcast of fictitious messages and requests for songs was intended to give the false impression that the presenter was responding to listeners of the programme who had accepted her invitation to contribute to it. This increased the likelihood that listeners would understand that the programme was live and would be encouraged to respond, including via text messages that were charged at a premium rate.

Ofcom noted the Licensee’s comment that the programme’s title was not “*The Live AM Request Show*” and that it was not referred to on air as such. However, we noted that the presenter introduced an element of the programme as follows:

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section2.pdf>

*“So right about now, I’m going to be asking you to get in touch, and let us know what you’re up to, who you’re with and what you want to hear because the AM Request Show Live is on the way very, very soon.”*

In Ofcom’s view, the above reference to the programme served to fuel the impression that the material was live and that listeners’ requests would be referred to on air.

Ofcom accepts that radio broadcasters may produce programming “as live.” In this instance, however, the pre-recorded programme included both repeated invitations to listeners to send messages and request songs, and fabricated messages and requests from fictitious respondents. The pre-recorded links therefore appeared to have been produced to convince listeners they could interact with the programme, when, in fact, they could not. The effect was a breach of the audience’s trust in Cool FM – a significant concern given the fundamental importance of audience trust in broadcasting. We were also particularly concerned by the fact in this case that listeners who elected to respond by PRS text message to the presenter’s repeated invitations to interact with the programme were not only misled, but suffered financial harm. As a result we concluded that the programme was in breach of Rule 2.2 of the Code.

We noted that the Licensee had investigated the incident once it had been brought to its attention by Ofcom and disciplined the presenter concerned. We noted also that the Licensee had taken steps both to prevent a recurrence and to apologise to and reimburse listeners who had paid to interact with the programme.

Nevertheless, Ofcom was concerned that the Licensee’s compliance measures had been insufficient to prevent the broadcast of pre-recorded material that deliberately misled listeners. Ofcom therefore puts Downtown Radio Limited on notice that it will monitor the output of its licensed services. Ofcom will consider further regulatory action, including the imposition of statutory sanctions, in the event of a similar incident.

## **Breach of Rule 2.2**

## In Breach

### UK Local Election 2014

*Geo News, 20 May 2014, 19:00*

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#### Introduction

Geo News is a news channel broadcast in Urdu on the digital satellite platform. The licence for Geo News is held by Geo TV Limited (“Geo TV” or “the Licensee”).

Two complainants alerted Ofcom to this programme, which they considered was not duly impartial in relation to the English local and European Parliamentary elections that took place on 22 May 2014. The complainants consider that the programme only reflected the viewpoints of the Conservative Party and the Labour Party and failed to reflect the viewpoints of the Liberal Democrats and UK Independence Party (“UKIP”).

The content was in Urdu and English. Ofcom therefore commissioned an independent translation and transcript. The programme was of 65 minutes duration. At the start the presenter said:

*“This programme is about the local council and European Parliament elections to be conducted on Thursday [i.e. 22 May 2014]”.*

This programme featured various candidates of Pakistani origin contesting the English local and European Parliamentary elections taking place on 22 May 2014. These individual candidates, who appeared either in the studio or were interviewed by telephone by the programme presenter, discussed a range of issues in relation to the elections. The six candidates featured were:

- Sajjad Karim (Conservative Party candidate in the North West electoral area in the European Parliamentary elections);
- Ahmad Shahzad (Labour Party candidate in the Mapesbury ward in Brent in the English local elections);
- Tamoor Tariq (Labour Party candidate in the Redvales ward in Bury in the English local elections);
- Ibrar Mir (Conservative Party candidate in the Wall End ward in Newham in the English local elections);
- Azher Iqbal (Conservative Party candidate in the East ward in Peterborough in the English local elections); and
- Mohammad Maroof (Labour Party candidate in the Central ward in Sheffield in the English local elections).

In addition, the programme also featured a former Labour Party councillor, Mushtaq Lasharie.

Rule 6.1 of the Code requires that programmes dealing with elections must comply with the due impartiality rules set out in Section Five of the Code. In addition, Rules 6.2 to 6.13 of the Code apply to programmes broadcast during the designated period

running up to the date of elections in the UK known as the 'election period'. Section Six of the Code under the heading 'Meaning of "election"' makes clear that for the purpose of this section: "elections include...[a] local government election...and European parliamentary election".

In the case of the 2014 elections taking place on 22 May 2014, the 'election period' ran from the last date for the publication of the notice of elections on 14 April 2014<sup>1</sup> to the close of polling on 22 May 2014.

Ofcom noted a number of statements made by the presenter and two candidates<sup>2</sup> contesting different wards in the English local elections taking place on 22 May 2014. These referred to the specific electoral contests featuring those two candidates:

- First, statements concerning Ibrar Mir ("IM"), who was contesting the Wall End ward of Newham on behalf of the Conservative Party:

Presenter: "...[Ibrar Mir] is standing for the first time for the seat of councillor from Newham. He is contesting on a Conservative Party ticket..."

\*\*\*\*

IM: "I will speak about my own ward first. Out of 14,000, we are 9,000 Asians – ethnic minority I should say – 5,000 are Muslims, and we don't have voice in the Council. There was a South Asian woman in Labour but they did not give her the ticket and brought forward a white woman – we respect it; it is their problem whatever panel they choose but there has to be community representation..."

\*\*\*\*

IM: "...There [in Newham], they have refused planning permission to seven mosques and they are saying, 'there are too many mosques'. When the population increases, the proportion [of mosques] too should increase. It is in our manifesto that we have to provide freedom to every religion and we must suspend parking [restrictions] when there is an activity whether in a Hindu temple, Sikh temple, church or a mosque. Whoever is having a main activity, we have to suspend parking [restrictions]"

\*\*\*\*

Presenter: "Mr Ibrar Mir, you are saying something before we took the break, the issue of mosques in Newham, that many mosques have not been given planning permission".

IM: "Mosques and Sikh temples as well. They create hardships [by not granting planning permission]. If you go to Saint Michael's Church, you find so much rubbish lying around. I am not speaking for one religion. I am speaking about cohesion. They are allowing betting shops and two of these have been allowed to

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<sup>1</sup> Exceptionally, in relation to the South West electoral area in the European Parliamentary elections, the 'election period' commenced on 10 April 2014 because this electoral area included Gibraltar.

<sup>2</sup> Although six candidates were featured in the programme, we considered that the references to only two of these candidates engaged the electoral area reporting requirements contained in Rules 6.8 to 6.13 of the Code.

*run 24 hours. We asked for a 24 hour pharmacy and they turned a blind eye. Secondly, when I visit many homes, a few say, 'We are born Labour'. I say to them, 'No, we are not born Labour, we are born as Hindus, Sikhs, Muslims, Christians and whatever'...*

\*\*\*\*

Presenter: *"I would like to ask Mr Ibrar Mir about the situation in East London, especially in his area, with reference to racism".*

IM: *"We used to hear that BNP was strong in Dagenham and Labour weakened its power but I have to say that in Newham, Labour is becoming more like BNP. How? As I said, by doing injustice to all religions".*

Presenter: *"What do you mean by injustice? Do you mean your council not granting planning permission to mosques and temples, and this upsets people?"*

IM: *"Yes".*

\*\*\*\*

IM: *"We shall give it a name such as 'social club' in which we will invite families, elderly, youth, once a month to have a cup of tea so that they start knowing each other. This will have a psychological effect, and the interaction between communities will grow. Likewise, even in winters we will walk on the roads which will drive away the criminals. We will encourage the young to take apprenticeships and provide recreational and sports facilities to take them out of streets and drug dealing. These [the current council authorities] have even got rid of the local police station; they have turned our ward into 'the end of the world' and, as if, we are in a state of famine. I would say it again that our borough is showing the mentality of Iraq".*

\*\*\*\*

Presenter: *"Mr Ibrar Mir, you may complete what you were saying about your agenda".*

IM: *"This [Conservative] government is going to hold a referendum which will lead to two official bank holidays; one for the Hindu community Diwali festival and the other for the Eid day. This will not divide but unite the communities. Otherwise, we have to do our Eid prayers and then rush to work. At least we can celebrate Eid. Secondly, they were going to ban our [halal] slaughter houses but this government is not going to implement it. They are hearing the voice of the people. Mr Sajjad Karim did well by highlighting it and I am also saying not to segregate; Labour gave us not a single Asian in our ward of 9,000 [Asians]. Secondly, when you allow betting shops, it straightaway leads to two damages: First, the business and economy of the area goes down; business people are crying. The other thing is, our community is getting affected. It [betting] is not our demand".*

\*\*\*\*

IM: *"I promise to my people that if I won, I will work for my people and even if the Conservative Party disturbed us, I will raise my voice against them too – against my own party".*

- Secondly, statements concerning Mohammad Maroof (“MM”), who was contesting the Central ward in Sheffield on behalf of the Labour Party:

MM: “...I am standing for re-election from the Central Ward...”.

\*\*\*\*

Presenter: “What are your main local issues which you want highlighted in public?”

MM: “I would like to provide some details. You all are aware that since the present government took power, because of its austerity programme and the cuts, Sheffield City Council faces cuts of £250 million. It is affecting local services but, despite all this, because we had Labour running the Council at the local level, they have been striving hard to see how they can protect the most vulnerable people and the frontline services. Despite all the cuts, we have saved local libraries from closure. We saved two local playgrounds and we have tried to save the local youth services”.

Paragraph 1.39 of Ofcom’s Guidance to Section Six (Elections and Referendums) of the Code (“the Guidance”)<sup>3</sup> states:

“...the principal point for broadcasters is to ensure that when interviewing candidates in reports that either raise issues about their constituency/electoral area or raise the profile of the candidate in connection with their constituency/electoral area, other candidates in the constituency/electoral area (as described in Rules 6.9 and 6.10) have an opportunity to take part as appropriate...a useful test for broadcasters is to ask whether a report could be seen as promotional for a candidate within his/her constituency/electoral area. If it is, then it requires input from, at least, the other main parties and potentially others depending on the constituency/electoral area”.

For the reasons explained in this Decision, Ofcom considered that the programme was an electoral area report and discussion relating to the above two named wards in Newham and Sheffield. Rules 6.8 to 6.13 of the Code were therefore engaged. In particular, we considered the material raised issues warranting investigation under the following rules of the Code:

- Rule 6.8: “Due impartiality must be strictly maintained in a constituency report or discussion and in an electoral area report or discussion”.
- Rule 6.9: “If a candidate takes part in an item about his/her particular constituency, or electoral area, then candidates of each of the major parties must be offered the opportunity to take part. (However, if they refuse or are unable to participate, the item may nevertheless go ahead.)”.
- Rule 6.11: “Any constituency or electoral area report or discussion after the close of nominations must include a list of all candidates standing, giving first names, surnames and the name of the party they represent or, if they are standing independently, the fact that they are an independent candidate. This must be conveyed in sound and/or vision...”.

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<sup>3</sup> See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section6.pdf>

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

## Response

Geo TV considered that it had not breached the electoral area reporting requirements in Rules 6.8 to 6.13 of the Code. In its view, this was because: "in context it is abundantly clear that the programme/discussion was not about any specific electoral area but was generally about the elections...general politics, Asians in politics and representations of the Pakistanis in politics". The Licensee added that the "general nature of the programme" was shown by: "the discussion and format of the programme shift[ing] between local elections and European elections". Geo TV also said that: "The clear theme of the programme was not to discuss the politics of any ward...[and if] any participant tried to do so they were interrupted in a polite manner so their comments were brief".

In relation to the participants in the programme, the Licensee said that it had: "tried to invite representatives from all four major political parties and independent candidates as well". However, it added that: "Being an Urdu language channel we had a much limited choice to invite people who could speak or understand Urdu". Geo TV also said that: "Since it was the peak time of [the] election campaign, it was quite difficult to get hold of such persons for the show...[and] a number of candidates/representatives dropped out at last moment for various reasons". The Licensee also said that: "As announced during [the programme] we did try to contact" a UKIP European Parliamentary election candidate from Yorkshire [Amjad Bashir]; and it had invited a UKIP local election candidate from East London [Tariq Saeed], to take part in: "our 19<sup>th</sup> May show".

More generally, Geo TV said that it had arranged for an advertisement to be placed in the "leading Urdu language newspaper in [the] UK, [the] 'Daily Jang'". The Licensee provided a copy of this advertisement and accompanying news report which stated that: "candidates that they should get in touch with our team to highlight their view on the elections".

The Licensee also said that: "In every show the host/presenter repeated a special phone number for candidates from different towns and cities who want to join the general debate and to send their details (name, party and town/city) beforehand to get the graphics made". In addition, Geo TV said that a: "[f]ull list of participants (in studio and on phone line) can be provided as well as a list of people who committed to come but did not".

In conclusion, the Licensee said that as a result of Ofcom's investigation in this case, Geo TV had arranged a meeting involving the programme director, programme producer and the presenter: "to ensure that no complaint of similar nature is received in the future". In particular, these three individuals had been provided with a "refresher" on the Code.

## Decision

Under the Communications Act 2003 ("the Act"), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that the special impartiality requirements set out in section 320 of the Act are complied with. This objective is reflected in Section Five of the Code. Broadcasters are required to follow the rules in Section Five of the Code to ensure that the due impartiality requirements of the Act are complied with. In

addition, Section Six of the Code reflects the specific requirements relating to broadcasters covering elections, as laid out in the Representation of the People Act 1983 (as amended).

When applying the requirement to preserve due impartiality, Ofcom recognises the importance to the right to freedom of expression, as contained in Article 10 of the European Convention on Human Rights. This provides for the broadcaster's and audience's right to freedom of expression, which encompasses the right to hold opinions and to receive and impart information and ideas without undue interference by public authority. However, UK legislation requires broadcasters to preserve due impartiality on major matters of political controversy. This requirement is considered to be particularly important at the time of elections. Broadcasters in covering election issues must ensure that, during the election period, they preserve due impartiality and due weight is given to all the major parties<sup>4</sup> (and other parties where appropriate).

Ofcom's Guidance states that there is no obligation on broadcasters to provide any election coverage. However, if broadcasters choose to cover election campaigns, they must comply with the rules set out in Section Six of the Code, and in particular the constituency and electoral area reporting requirements laid out in Rules 6.8 to 6.13 of the Code. These specific rules apply to the broadcast of a particular constituency and electoral area report or discussion during an election period.

Rule 6.8 states that: "Due impartiality must be strictly maintained in a constituency report or discussion and in an electoral area report or discussion". Paragraph 1.37 of the accompanying Ofcom Guidance states that: "There is a range of editorial techniques by which broadcasters can comply with Rule 6.8, but broadcasters should ensure that they reflect the viewpoints of candidates...".

Rule 6.9 states that: "If a candidate takes part in an item about his/her particular constituency, or electoral area, then candidates of each of the major parties must be offered the opportunity to take part. (However, if they refuse or are unable to participate, the item may nevertheless go ahead.)". The major parties for any given election are listed in the Ofcom list of major parties. For the 2014 English local elections, the major parties were: the Conservative Party; the Labour Party; and the Liberal Democrats.

Rule 6.11 states that: "Any constituency or electoral area report or discussion after the close of nominations must include a list of all candidates standing, giving first names, surnames and the name of the party they represent or, if they are standing independently, the fact that they are an independent candidate. This must be conveyed in sound and/or vision...".

To determine whether the electoral area reporting rules (Rules 6.8 to 6.13) applied in this case, we first had to determine whether the programmes contained an electoral area report or discussion. Paragraph 1.39 of the Guidance states: "...the principal point for broadcasters is to ensure that when interviewing candidates in reports that either raise issues about their constituency/electoral area or raise the profile of the candidate in connection with their constituency/electoral area, other candidates in the constituency/electoral area (as described in Rules 6.9 and 6.10) have an opportunity to take part as appropriate".

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<sup>4</sup> The major parties for any given election are listed in the Ofcom list of major parties (see: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/major-parties.pdf>).

In this case we noted that this programme featured a number of election candidates of Pakistani origin standing in the English local and European Parliamentary elections taking place on 22 May 2014 discussing various issues relating to those elections. In this respect we noted Geo TV's representations that the programme "was not about any specific electoral area but was generally about the elections...general politics, Asians in politics and representations of the Pakistanis in politics", and that the "general nature of the programme" was shown by: "the discussion and format of the programme shift[ing] between local elections and European elections". As already mentioned, we considered that the programme did touch on a number of issues, including the issues being faced by various Pakistani candidates, in the 22 May 2014 elections. In addition, we noted that four of the six candidates featured did not specifically raise issues about their electoral areas. We also noted the programme did not raise their profile in connection with their electoral area.

However, we did not agree with the Licensee's assertion that the programme "was not about any specific electoral area" in relation to two of the candidates featured: Ibrar Mir, who was contesting the Wall End ward of Newham on behalf of the Conservative Party; and Mohammad Maroof, who was contesting the Central ward in Sheffield on behalf of the Labour Party. This was because the programme included a range of statements about both these individuals as outlined in the Introduction, which related to their electoral areas or raised their profile in connection with their electoral areas.

For example, Ibrar Mir made several critical statements about the Labour Party administration in Newham and made points on issues such as parking and youth policy. In addition, Mohammad Maroof made positive statements as to how, in his view, the Labour Party administration in Sheffield had dealt with spending cuts imposed by central government. We therefore considered that these two candidates, Ibrar Mir (representing the Conservative Party in the Wall End ward in Newham) and Mohammad Maroof (representing the Labour Party in the Central ward in Sheffield) were given the opportunity to give their views, within the programme, about policies affecting the electoral area in which they were seeking election.

We disagreed with the Licensee's argument that: "The clear theme of the programme was not to discuss the politics of any ward...[and if] any participant tried to do so they were interrupted in a polite manner so their comments were brief". We noted that the presenter on several occasions gave Ibrar Mir and Mohammad Maroof the opportunity to comment on matters relating to their local areas. For example, the presenter said the following to Ibrar Mir:

*"I would like to ask Mr Ibrar Mir about the situation in East London, especially in his area, with reference to racism".*

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*"What do you mean by injustice? Do you mean your council not granting planning permission to mosques and temples, and this upsets people?"*

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*"Mr Ibrar Mir, you may complete what you were saying about your agenda".*

In addition, the presenter said the following to Mohammad Maroof:

*“What are your main local issues which you want highlighted in public?”*

For all the above reasons, we considered that Rules 6.8 to 6.13 therefore applied.

#### *Rule 6.8*

We considered that at no point during this programme were the viewpoints reflected of any Labour Party or Liberal Democrat candidate contesting the Wall End ward in Newham, or of the Conservative Party and Liberal Democrat candidates contesting the Central ward in Sheffield. Although the programme did reflect Labour Party and Conservative Party policies more generally, there was no reflection of the policy of the Labour Party in relation to the contest taking place in the Wall End ward in Newham, nor of the policy of the Conservative party in relation to the contest taking place in the Central ward in Sheffield. In addition there was no reflection of the policy of the Liberal Democrats in relation to the contests taking place in either ward. We therefore concluded that due impartiality in this electoral area report or discussion was not strictly maintained, and considered the material breached Rule 6.8 of the Code.

#### *Rule 6.9*

To comply with Rule 6.9 of the Code, the Code makes clear that if a candidate is given an opportunity to discuss matters relating to their electoral area then broadcasters must ensure that other candidates from the major parties should also be offered an opportunity to take part. In this case this meant that, as well as featuring Ibrar Mir, one of the three Conservative Party candidates contesting the Wall End ward in Newham, the Licensee was required to offer candidates from the Labour Party and Liberal Democrats contesting that same ward the opportunity to take part in the programme. In addition, as well as featuring Mohammad Maroof, the Labour Party candidate contesting the Central ward in Sheffield, Geo TV was required to offer the Conservative Party candidate and the Liberal Democrat candidate contesting that ward the opportunity to take part in the programme.

In relation to constituencies or electoral areas where several candidates from each party are contesting the relevant election, Paragraph 1.54 of the Ofcom’s Guidance says the following:

“In elections where candidates are being elected from multi-member constituencies or electoral areas, there are likely to be a number of candidates being fielded by each individual party. In each electoral contest, for each party that would qualify for inclusion in constituency/electoral area report or discussion by virtue of Rules 6.9 and 6.10, there is no obligation on broadcasters to offer every candidate representing a single party the opportunity to take part in that constituency/electoral area report or discussion. However, at a minimum, broadcasters should ensure that they do offer the chance to take part in that constituency/electoral area report or discussion to each party that would qualify by virtue of Rules 6.9 and 6.10”.

In this case this meant that, in relation to the Wall End ward in Newham, as well as featuring a Conservative Party candidate as they did, the Licensee was required to offer the opportunity to take part in this electoral area report or discussion to one of the three Labour Party candidates standing and one of the three Liberal Democrat candidates standing.

We noted that Geo TV said that for this programme, it: “tried to invite representatives from all four major political parties and independent candidates as well”. In addition, it said that: “[i]n every show the host/presenter repeated a special phone number for candidates from different towns and cities who want to join the general debate and to send their details (name, party and town/city) beforehand to get the graphics made”. In addition, we noted that the Licensee said that “As announced during [the programme] we did try to contact a UKIP European Parliamentary election candidate from Yorkshire [Amjad Bashir]”; and it had invited a UKIP local election candidate from East London [Tariq Saeed], to take part in: “our 19<sup>th</sup> May show”. However, we did not consider that any of these steps to be evidence of asking the other relevant candidates to take part in this programme.

We also took into account the Licensee’s representation that that it had arranged for an advertisement to be placed in the “leading Urdu language newspaper in [the] UK, [the] ‘Daily Jang’”. We commissioned an independent translation and transcript of this advertisement and accompanying news report. We noted that these said the following.

Advertisement:

“Geo’s Live Transmission about Election 2014 from its London studio”

The leaders of all major parties will be invited on the Talk Shows to be held daily from 7:00 to 9:00 pm until Wednesday 21 May.

The opinions of the candidates standing up for election, and experts, will be included via phone calls.

The participants in these special programmes, to be held about Local and European Elections, will express their views about their party policies, election campaigns, problems facing the community and other issues”.

The news report:

“Geo News

Local and European Election: Geo News Live Transmission from London. There will be live talk shows daily from 18 to 21 May from 7:00 to 9:00 pm. Representatives and candidates from all parties of the country will participate as guests.

Peterborough’s Deputy Mayor Councillor Muhammad Nadeem, Councillor Farooq and Lord Mayor Shabbir Aslam will participate in the panel of today’s first programme.

With reference to the Local and European Elections to be held on 22 May, Geo TV UK has arranged for a special live transmission from its London Studio. From Sunday 18 May to Wednesday 21 May, there will be daily live transmissions of two-hour-long Talk Shows from seven o’ clock in the evening to nine in the night, in which all minor and major political parties, Labour, Conservative, Liberal Democrat, UK Independence Party, and independent candidates will participate in the guest panels. The host of the programmes will be Mr Kaiser Iftikhar, the editor of Jang London, The News, and Geo UK and Europe.

The opinions of the candidates standing up for election, and experts watching the election process will be included in the programmes via phone calls. The representatives of various parties and local politicians will express their views about the election campaign, preparing the candidates, public opinion polls, community problems, equal opportunities policies in the political parties, and other important issues.

Candidates taking part in the elections can express their views about their party policy via live phone calls. If the management has not contacted them, they may participate by calling during the programme on [telephone number].

In today's first Talk Show to be held on Sunday, Conservative Party leader and Peterborough's Deputy Mayor, Councillor Muhammad Nadeem, Lib-Dem party leader Councillor Farooq Qureshi and Mayor Councillor Shabbir Aslam will participate".

We noted Geo TV's representation that the advertisement and news report highlighted: "for the candidates that they should get in touch with our team to highlight their view on the elections". However we did not consider that the Licensee had discharged its obligations under Rule 6.9 (to invite all the relevant candidates mentioned above, in Wall End ward in Newham and the Central ward in Sheffield), by arranging for a general invitation to candidates to be published in a newspaper in this way. This is because Geo TV could not by these means be sure that it had invited the relevant candidates in the above two wards to take part in its programming, not least those candidates who were not able to read and understand Urdu.

We also took account of the Licensee's representations that: "[b]eing an Urdu language channel we had a much limited choice to invite people who could speak or understand Urdu"; and "[s]ince it was the peak time of [the] election campaign, it was quite difficult to get hold of such persons for the show...[and] a number of candidates/representatives dropped out at last moment for various reasons". We recognise the challenges posed by complying the constituency and electoral area reporting rules in Rules 6.8 to 6.13. However, we considered that Geo TV had provided no evidence, nor were there any statements made within the programme, that suggested that that Licensee had invited any of the named candidates above to participate in this programme. Therefore, we considered the programme breached Rule 6.9 of the Code.

#### *Rule 6.11*

Geo TV said that a: "[f]ull list of participants (in studio and on phone line) can be provided as well as a list of people who committed to come but did not". In relation to the programme in this case, electoral area reports or discussions about the two ward elections were broadcast after the close of nominations<sup>5</sup>. The Licensee however did not provide in sound and/or vision a list of all candidates standing in the Wall End ward in Newham and the Central ward in Sheffield, giving first names, surnames and their party labels. We therefore also considered the material breached Rule 6.11 of the Code.

In reaching our Decision in this case, we noted that as a result of Ofcom's investigation in this case, Geo TV had arranged a meeting involving the programme director, programme producer and the presenter "to ensure that no complaint of

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<sup>5</sup> The close of nominations in this case was 24 April 2014.

similar nature is received in the future”, and provided a “refresher” on the Code to these three individuals.

However, for all the reasons outlined above we considered that the Licensee had breached Rules 6.8, 6.9 and 6.11.

### **Breaches of Rules 6.8, 6.9 and 6.11**

## In Breach

### World Championship Boxing

*BoxNation, 6 July 2014, 19:00*

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#### Introduction

BoxNation is owned and operated by Boxing Channel Media Limited (“the Licensee”). The channel is dedicated to boxing programming, and is broadcast on digital platforms.

A complainant alerted Ofcom to flashing images during BoxNation’s live coverage of a World Championship Boxing match.

Certain types of flashing images can trigger seizures in viewers who are susceptible to photosensitive epilepsy (“PSE”). Ofcom therefore carried out an assessment of the broadcast content against Ofcom’s Technical Guidance to broadcasters on flashing images (the “PSE Guidance”)<sup>1</sup>.

We noted that the programme contained sequences from the arena during the build-up to the match. These included shots of a ‘big screen’ video monitor within the arena. During a close-up of this big screen, a video was shown which partly consisted of a bright, pulsating white light against a red background.

During this sequence, which lasted just over seven seconds, the white light flashed at a rate and intensity which exceeded the limits set out in the PSE Guidance. In total, there were 41 ‘flashes’, which meant that the average rate of flashing was just over 5.5 flashes per second. The PSE Guidance states that a sequence containing flashing at a rate of more than three flashes per second may be potentially harmful.

Ofcom considered the material raised issues under Rule 2.12 of the Code, which states:

“Television broadcasters must take precautions to maintain a low level of risk to viewers who have photosensitive epilepsy. Where it is not reasonably practicable to follow the Ofcom guidance, and where broadcasters can demonstrate that the broadcasting of flashing lights and/or patterns is editorially justified, viewers should be given an adequate verbal and also, if appropriate, text warning at the start of the programme or programme item”.

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

#### Response

The Licensee said that it regularly broadcasts live programmes covering boxing events happening outside the United Kingdom, and often light shows are a part of these events. It confirmed that this programme was a live broadcast from an international feed that went straight to air, and that no warning about flashing images was broadcast either before or during the programme.

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/812612/section2.pdf>

The Licensee apologised if it had “contravened any procedures regarding flashing images”, and said that it had dropped all repeats of this programme until receiving further guidance from Ofcom.

## **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 “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”.

Given the significant potential for harm to viewers with PSE who are exposed to flashing images, Rule 2.12 makes clear that Ofcom expects broadcasters to maintain a low level of risk in this regard. Further, the PSE Guidance, which was developed with input from medical experts, sets out technical parameters which are intended to reduce the risk of broadcast content provoking seizures.

In this case, Ofcom’s technical assessment of this material found that it significantly exceeded the maximum limits set out in Ofcom guidance to broadcasters on flashing images and therefore posed a significant risk of harm to viewers in the audience with PSE.

As Rule 2.12 makes clear there may be circumstances where “it is not reasonably practicable to follow the Ofcom [PSE] guidance”, and broadcasters can demonstrate that it is editorially justified to broadcast the problematic material containing the flashing images, provided that an adequate warning is given at the start of the programme and/or programme item. It may for example not be reasonably practicable to follow the PSE Guidance with a live broadcast, but it may be editorially justified nonetheless to broadcast material containing problematic flashing images. In these circumstances, it is essential that appropriate warnings are given to assist viewers with PSE to avoid instances of flashing images the broadcaster cannot reasonably control.

Ofcom’s view was that in this case it was not reasonably practicable for the Licensee to follow the PSE Guidance on a continuing basis during transmission of this programme because the material was broadcast live from an international feed. All licensees, however, should carry out where appropriate and necessary a risk assessment before transmission of a live programme if there any reasonable likelihood of flashing images. They should also when monitoring live output be aware of flashing images which may not comply with the PSE Guidance. This is so that licensees can take measures before or during programmes to mitigate the risk from flashing images to viewers affected by PSE.

We therefore went on to consider whether there was sufficient editorial justification in this case for the broadcast of the material containing the flashing images which did not comply with the PSE Guidance. Ofcom noted the Licensee’s comment that: “there are often light shows around boxing events”. Ofcom considered that there was some editorial justification for showing these flashing images as an integral part of the presentation of this boxing event, limited to intermissions between the bouts. Bearing in mind however that the flashing images shown materially exceeded the technical limits, and that there was no particular public interest in broadcasting the sequence containing them, Ofcom on balance did not consider that this editorial justification was sufficient.

In any event, the Licensee did not in this case provide any verbal or text warning about flashing images to viewers before or during the programme.

The broadcast was therefore in breach of Rule 2.12 of the Code.

**Breach of Rule 2.12**

## In Breach

### Sponsorship credits

*Afternoons on TLC, various dates and times*

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#### Introduction

TLC is a general entertainment television channel. The licensee for TLC is Discovery Communications Europe Limited (“Discovery” or “the Licensee”).

Ofcom received a complaint about the sponsorship credits for the strand “Afternoons on TLC”. The complainant felt that the sponsorship credits resembled advertising. We reviewed the material broadcast between 13:00 and 14:00 on 26 June 2014 and noted the following sponsorship credits:

#### 13:00

The first sponsorship credit featured a teenage girl looking upset, wearing a striped top on which the colours had run. The voice-over stated:

*“Next time, mum knows what to do”.*

The girl was then shown smiling, wearing a striped top on which the colours were intact. The voice-over stated:

*“Colour Catcher – helps to avoid colour bleeding”.*

The product was shown, above a website address for the company, and underneath the text: “*Afternoons TLC*”. The voice-over stated:

*“Afternoons on TLC, sponsored by Dylon Colour Catcher Sheets”.*

#### 13:10

The second sponsorship credit featured a teenage girl wearing a white hooded top. She looked at the camera and sighed. The voice-over stated:

*“She knows what to do”.*

The girl was then shown smiling, and doing a celebratory dance, while wearing the same hooded top, but dyed yellow. The voice-over stated:

*“Dylon Fabric Dyes – to help a change in colour”.*

The product was shown, above a website address for the company, and underneath the text: “*Afternoons TLC*”. The voice-over stated:

*“Afternoons on TLC, sponsored by Dylon Fabric Dyes”.*

#### 13:13

The third sponsorship credit featured two teenage girls dressed in school uniform. The shirt of the first girl was grey, in contrast to the shirt of the second girl which was

white. The first girl looked embarrassed, while the second girl was smiling. The voice-over stated:

*"Next time, mum knows what to do".*

Both girls were then shown wearing white shirts and smiling. The voice-over stated:

*"White 'n' Bright – helps stop whites from turning grey".*

The product was shown, above a website address for the company, and underneath the text: "Afternoons TLC". The voice-over stated:

*"Afternoons on TLC, sponsored by Dylon White 'n' Bright Sheets".*

### 13:25

The fourth sponsorship credit featured a man taking a T-shirt out of a washing machine and holding it up to his torso. The T-shirt was too small for him and a slight shade of pink. He looked exasperated. The voice-over stated:

*"Next time, he knows what to do".*

The man was then shown wearing a white T-shirt of the right size and smiling. The voice-over stated:

*"Colour Catcher – helps to avoid colour run accidents".*

The product was shown, above a website address for the company, and underneath the text: "Afternoons TLC". The voice-over stated:

*"Afternoons on TLC, sponsored by Dylon Colour Catcher Sheets".*

### 13:30

The fifth sponsorship credit featured a woman wearing a faded red blouse. She smiled ruefully and shook her head. The voice-over stated:

*"She knows what to do".*

The woman was then shown wearing a bright red blouse, smiling and doing a celebratory dance. The voice-over stated:

*"Dylon Fabric Dyes – to help a change in colour".*

The product was shown, above a website address for the company, and underneath the text: "Afternoons TLC". The voice-over stated:

*"Afternoons on TLC, sponsored by Dylon Fabric Dyes".*

### 13:34

The sixth sponsorship credit featured a man wearing grey jeans. He looked at the camera and sighed.

*"He knows what to do".*

The man was then shown wearing black jeans and smiling. The voice-over stated:

*“Dylon Fabric Dyes – to help a change in colour”.*

The product was shown, above a website address for the company, and underneath the text: *“Afternoons TLC”*. The voice-over stated:

*“Afternoons on TLC, sponsored by Dylon Fabric Dyes”.*

13:49

The seventh sponsorship credit featured a woman crouching in front of a washing machine with several baskets of clothes sorted into colours and whites. She looked frustrated. The voice-over stated:

*“Next time, she knows what to do”.*

The woman was then shown holding a basket of mixed colours and whites and smiling. The voice-over stated:

*“Colour Catcher – helps to allow mixed washes”.*

The product was shown, above a website address for the company, and underneath the text: *“Afternoons TLC”*. The voice-over stated:

*“Afternoons on TLC, sponsored by Dylon Colour Catcher Sheets”.*

13:58

The eighth sponsorship credit featured a woman sat on a bed with beige sheets. She looked at the camera and made a face. The voice-over stated:

*“She knows what to do”.*

The woman was then shown, alongside a man, sat on the bed, which now had red sheets. The woman and the man were both smiling. The voice-over stated:

*“Dylon Fabric Dyes – to help a change in colour”.*

The product was shown, above a website address for the company, and underneath the text: *“Afternoons TLC”*. The voice-over stated:

*“Afternoons on TLC, sponsored by Dylon Fabric Dyes”.*

Ofcom considered that the material raised issues warranting investigation under Rule 9.22(a):

Rule 9.22: “Sponsorship credits must be distinct from advertising. In particular:

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

trade marks for the sole purpose of helping to identify the sponsor and/or the sponsorship arrangement.”

We therefore asked the Licensee for its comments as to how the content complied with Rule 9.22(a).

## Response

The Licensee stated that it takes compliance extremely seriously, ensuring it has robust procedures in place, including regular training for its commercial team which has ongoing interaction with the compliance team. Specifically, Discovery stated: “We have a robust internal process for evaluating sponsorship credits[.]”

In this instance, the Licensee claimed that it “went to great lengths to ensure that these credits were compliant”, drawing on its knowledge of “the requirements [of...] European legislation and the Ofcom Broadcasting Code”, as well as “an understanding of previous cases published in the Ofcom Broadcast Bulletin” and “the guidance Ofcom has published on this issue”. In Discovery’s view: “[W]e consider that overall they [the sponsorship credits] stayed the right side of the line and were compliant with the Code.”

The Licensee stated that it understood the purpose of the rules around sponsorship credits to be twofold: (i) to ensure that sponsorship arrangements are made clear to viewers; and (ii) to ensure that sponsorship credits are not akin to advertising. With regard to (i), Discovery argued that there would have been no doubt that the strand was sponsored by Dylon, citing the on-screen text and the voice-over “*Afternoons on TLC, sponsored by Dylon...*” With regard to (ii), Discovery maintained that viewers would not have confused the sponsorship credits with advertising, and that therefore there was no risk of consumer harm.

In support of this point, the Licensee stated that “there was no call to action or any encouragement to purchase for instance with references to prices or special offers” contained in any of the sponsorship credits. This, it believed, was in accordance with Rule 9.22(a). Further, the Licensee added that the “sponsorship credits did not contain any claims about market leadership or use any promotional language such as superlatives or descriptions of how to use the product”, in reference to Ofcom’s Guidance on Section Nine of the Code. Finally, the Licensee acknowledged that details of the Dylon website were given, but emphasised that these did not form part of a call to action.

Discovery pointed out that explicit reference to a product within a sponsorship credit is permitted under Rule 9.22(a), provided that it is for the sole purpose of helping identify the sponsor. In light of the fact that these sponsorship credits included a range of products made by Dylon, the Licensee decided that a brief description setting out the function of each product was necessary in order for viewers to differentiate between them. Discovery stated: “[We] aimed to ensure that the credits gave the viewers information about the product but that the messages did not amount to advertising. While we appreciate that part of the credit concerned the product, we do not believe that the description of the product in the context of a sponsorship communication amount[ed] to an advertising message.”

Discovery further argued that the messages included in the sponsorship credits were “purely factual”, limited to naming the product and giving a short summary of what it does (for example, “*helps to avoid colour bleeding*”). The Licensee believed that this was “within the letter and the spirit of the Code”, and was consistent with other

sponsorship credits used in the market which had not been found in breach by Ofcom. Discovery emphasised the care it had taken to ensure the sponsorship credits were compliant, including rejecting a number of proposed visuals and scripts which were deemed too akin to advertising messages (for example, “*keeps colours brighter for longer*”).

## 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 “the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”. The rules in Section Nine of the Code, among others, reflect this objective.

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

Rule 9.22(a) of the Code therefore requires that sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action, or encourage the purchase or rental of the products or services of the sponsor or a third party. The focus of the credit must be the sponsorship arrangement itself and references to the sponsor’s products, services or trade marks should be for the sole purpose of helping to identify the sponsor and/or the sponsorship arrangement.

In particular, Ofcom’s Guidance<sup>1</sup> on Rule 9.22(a) states:

“Credits should [...] fulfil the role of identifying the sponsorship arrangement and not be capable of being confused with advertising by, for example, focusing on the products or services of the sponsor. [...] Rule 9.22 permits references to the products and services of a sponsor in sponsorship credits. However, care is needed to ensure that such references do not constitute advertising messages. [...] [C]redits that focus predominantly on the sponsorship arrangement, rather than the sponsor or its products/services, are more likely to be compliant with the Code.”

We first noted that in each case the sponsorship arrangement was clearly identified (“*Afternoons on TLC, sponsored by Dylon Colour Catcher Sheets*”), but that each credit additionally included brief descriptions of the relevant product’s functions (e.g. “*White ’n’ Bright – helps stop whites from turning grey*”). Although we noted the Licensee’s argument that these brief descriptions did not constitute advertising messages, in our view they each represented a claim about product efficacy which served to place the emphasis of the credit on the benefits of the Dylon range, rather than the sponsorship arrangement itself.

This emphasis was, in our view, further demonstrated by the narrative of the credits, which in each case featured ‘before and after’ sequences designed to highlight the effect of each product when applied to fabrics. In the credit shown at 13:00 for Dylon

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

Colour Catcher Sheets, for example, an upset teenage girl was first seen wearing a striped top on which the colours had run and then again, smiling, wearing a striped top on which the colours were intact. The transition between these two parts was accompanied by the voice-over: *“Next time, mum knows what to do”*. In Ofcom’s view, these sequences – which appeared in each credit – served simply to highlight the use of each product rather than the sponsorship arrangement.

In conclusion, Ofcom considered that these sponsorship credits focused on the products of the sponsor to a greater extent than would have been necessary in order to identify the sponsor or the sponsorship arrangement. The combination of verbal and visual references to the products, in particular the way in which in each case they were presented as the solution to a problem, also resembled advertising messages. The sponsorship credits were therefore in breach in Rule 9.22(a).

### **Breaches of Rule 9.22(a)**

## Resolved

### Sky News with Lorna Dunkley

*Sky News, 20 July 2014, 12:00*

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#### Introduction

On 20 July 2014 at approximately 12:07 Sky News broadcast a live report by journalist Colin Brazier from the crash site in eastern Ukraine of Malaysian Airlines' flight MH17. The plane had crashed there three days earlier, killing all 298 people on board. Ofcom received 205 complaints from viewers who were offended by Mr Brazier picking up items from the suitcase of one of the victims.

Ofcom noted that during the report, Mr Brazier stood amongst the belongings of some of the victims of the tragedy. He reported that the belongings had now started to be gathered together, having previously been scattered across the crash site. Having described some of the items he could see, Mr Brazier then crouched down and briefly picked up first a water bottle and then a set of keys from an open suitcase. As he did this, he said:

*"Here are, I think it's a small girl's bag by the look of things...a set of keys...toothbrush".*

Mr Brazier almost immediately returned the items to the suitcase and said:

*"We shouldn't really be doing this, I suppose really".*

Ofcom considered the content raised issues warranting investigation under the following rule of the Code:

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

We therefore asked British Sky Broadcasting Ltd ("Sky" or "the Licensee"), which holds the licence for Sky News, for its comments on how the content complied with this rule.

#### Response

Sky told Ofcom that the live reporting of such significant news events presents unique challenges, and difficult editorial decisions "need to be made at speed and with conviction". In this case, the Licensee said it had sent an experienced news team to the crash site and that: "at all times consideration was given to minimising offence to viewers while trying to reflect the unfolding story accurately".

However, Sky said that on this occasion it "fell short of the high standards" to which it aspired. The Licensee said that Mr Brazier had realised almost immediately he had

made an error of judgement and said so on camera. Sky also said that the following statement was released later the same afternoon on behalf of Sky News and Mr Brazier:

“Today whilst presenting from the site of the MH17 air crash Colin Brazier reflected on the human tragedy of the event and showed audiences the content of one of the victims’ bags. Colin immediately recognised that this was inappropriate and said so on air. Both Colin and Sky News apologise profusely for any offence caused”.

The Licensee also provided Ofcom with a copy of Mr Brazier’s further apology<sup>1</sup>, published in The Guardian newspaper two days later (22 July 2014).

Following the broadcast, Sky said it had reminded its news teams of the need to exercise sensitivity and: “to respect the dignity of all those involved in reporting such harrowing events”. The Licensee said it would also re-emphasise the point in its updated guidelines for its journalists.

## Decision

Under the Communications Act 2003, Ofcom has a duty to set standards for the content of programmes as appear to it best calculated to secure the standards objectives. One of these is that “generally accepted standards” are applied so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material. This objective is reflected in Section Two of the Code.

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

Flight MH17 crashed on 17 July 2014. All 283 passengers and 15 crew died. Colin Brazier broadcast his live report three days later. Because of the military and political situation in eastern Ukraine, the main crash site was not screened off at that time by airline investigators. In these circumstances journalists had relatively free access to the area and were able to record footage of, and broadcast from, the crash site. To report live from such a site required great care. In the circumstances of this case, it was Ofcom’s view that for a reporter to pick up and handle the belongings of a victim of the crash as Mr Brazier did, clearly had the potential to cause offence as was accepted by Sky.

Ofcom therefore went on to assess whether the offence was justified by the context.

Mr Brazier handled two items belonging to a victim of the crash very briefly, and he appeared to almost immediately regret his actions and expressed this to viewers. Nonetheless in Ofcom’s view these actions were capable of causing considerable offence and this was not mitigated by an immediate broadcast apology. On balance we therefore considered that the offence was not justified by the context and Rule 2.3 was breached.

However we took into account that news crews reporting from the crash site found themselves reporting from an unusual and emotionally charged situation. Ofcom recognised that in these circumstances, the editorial decisions taken by reporters

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<sup>1</sup> <http://www.theguardian.com/media/2014/jul/22/mh17-sky-news-reporter-colin-brazier-crash-victims-luggage>

were particularly challenging, especially when made in the context of a live report broadcast on a rolling news channel.

Ofcom also had regard to the fact that Sky News and Mr Brazier issued an apology in the hours after the broadcast, which was followed by a further detailed and frank apology from Mr Brazier published in The Guardian newspaper on 22 July. We also noted that Sky has reminded its news teams of the need to exercise sensitivity and respect the dignity of those involved when reporting harrowing events, and Sky will emphasise this point in its updated guidelines to journalists.

We also had regard to the importance of the broadcaster's and audience's right to freedom of expression. Despite the offence caused in this case, Ofcom considered that this brief but significant lapse of judgement by a news reporter should not prevent broadcast journalists from reporting live on sensitive and challenging news stories.

Taking all these factors into account, Ofcom considered the matter resolved.

**Resolved**

## Resolved

### Monty Python Live (Mostly)

Gold, 20 July 2014, 19:30

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*Monty Python Live (Mostly)* was a live broadcast of the final stage performance of the remaining members of Monty Python at London's O2 arena, on the classic comedy channel Gold. The licence for Gold is held by UK Gold Services Limited ("UKTV" or "the Licensee").

Ofcom received two complaints about offensive language being used during the broadcast.

Ofcom noted the following exchange around 19:24. It was part of a sketch involving Australian 'Bruce' characters, where all the performers on stage wore the same khaki shirts, shorts and hats with corks hanging from them, and spoke with Australian accents.

Eric Idle: *"Have we got anything? Punk Bruce, can you give us a hand?"*

Bruce character: [Off-screen] *"I can give him a hand here."*

Eric Idle: *"Oi, oi, stop that Bruce. You, oi. [Produces a football referees' red card] Straight off, off. Go on. Off. Fuck off –"*

[A loud bleep was then heard]

At 20:55, the presenter of the programme Dara O'Briain said the following:

*"One thing I must explain, viewers at home missed certain parts of the show. And this I have to explain, Gold would like to explain, was not their choice. In particular, it was these two later versions of the penis song, the second was about bottoms and the third about lady gardens, that's the most polite way I can put this. This is all regarded by Ofcom as being a little bit too much at 7:46 in the evening. Equally some bad language was bleeped. Gold obviously want to apologise for that, being the policy they have to make because of Ofcom...By the way, one naughty swearword, by the way, did slip through. So I apologise for that. And I want my face to indicate a level of professional sincerity as I read those words off the autocue. I cannot apologise enough."*

Ofcom considered the broadcast of the word "fuck" raised issues warranting investigation under Rule 1.14 of the Code, which states:

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

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

## Response

UKTV said this was Gold's first live transmission and it was aware "of the fine balance between maintaining the editorial [integrity] of the show and ensuring compliance with the Code."

The Licensee said it considered that: "given Gold's mature audience, the vast majority of sketches would be fine to transmit before 21:00." However, to ensure that viewers were aware that they were about to watch a live Monty Python performance, UKTV said it asked the presenter Dara O'Briain to: "inform the Gold audience that Part 1 of the programme [the pre-watershed part] would contain some adult humour." Part 2 of the programme was broadcast after the 21:00 watershed.

The Licensee said it had seen the script for the performance in advance, and it "decided to replace a short section of the show...with a monologue delivered by Michael Palin."

UKTV said it had decided to put in place a three minute delay on the live feed of the performances from the venue to enable its compliance team to bleep the language where necessary. It said the scripted language was "successfully bleeped throughout Part 1 but unfortunately an unscripted "fuck" was not successfully bleeped...the bleep [came] in fractionally too late. This was the result of human error...for which we sincerely apologise."

The Licensee said its compliance team then: "instructed host Dara O'Briain to apologise to viewers for the missed language."

## Decision

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

Rule 1.14 states that the most offensive language must not be broadcast before the watershed. Ofcom research on offensive language<sup>1</sup> clearly notes that the word "fuck" and other variations of this word are considered by audiences to be among the most offensive language, particularly when used in an aggressive manner.

The broadcast of the word "fuck" in this programme around 19:24 was therefore a clear example of the most offensive language being broadcast before the watershed.

However, Ofcom took into account that the Licensee had chosen to take measures before the programme to minimise the risk of offensive language being broadcast by delaying the on-air feed, that the use of "fuck" was not scripted, and that the host of the programme apologised on air after the incident. In light of these factors Ofcom considered the matter resolved.

## Resolved

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

## Broadcast Licence Condition Cases

### In Breach

#### Non-payment of broadcasting licence fees

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Ofcom is partly funded by the licence fees it charges television and radio licensees. Ofcom has a statutory duty to ensure that the aggregate amount of fees paid by licensees meets the cost of Ofcom's regulation of broadcasting. The principles which Ofcom applies when determining the fees to be paid by licensees are set out in the Statement of Charging Principles<sup>1</sup>. The detailed fees and charges which are payable by broadcasting licensees are set out in Ofcom's Tariff Tables<sup>2</sup>.

The payment of a fee is a licence requirement<sup>3</sup>. Failure by a licensee to pay its licence fee when required represents a serious and fundamental breach of a broadcast licence, as it means that Ofcom is unable properly to carry out its regulatory duties.

#### In Breach

The following licensee has failed to pay its annual licence fee in accordance with the original deadline. This licensee has therefore been found **in breach** of its licence. As a consequence of this serious and continuing licence breach, Ofcom is putting this licensee on notice that its present contravention of its licences is being considered for the imposition of a statutory sanction, which may include licence revocation.

Licensee	Licence Number	Service Name
Leith Community Mediaworks Ltd	CR000080BA	Castle FM

#### Resolved

The following licensee has failed to pay its annual licence fee in accordance with the original deadline, and has therefore been found in breach of its licence. It has subsequently submitted a late payment and we therefore consider the matter **resolved**. This decision will be kept on record and will be taken into account should any similar issues arise in the future.

Licensee	Licence Number	Service Name
Radio Elwy Point FM Ltd	CR000157BA	Point FM

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[http://stakeholders.ofcom.org.uk/binaries/consultations/socp/statement/charging\\_principles.pdf](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 Contained in Licence Condition 3 for radio licensees and Licence Condition 4 for television licensees.

## Fairness and Privacy cases

### Upheld in Part

#### Complaint by Dr Halla Diyab

*Al Manbar Al Suri, Al Ghad TV, 1 February 2014*

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#### Summary

Ofcom has upheld in part a complaint made by Dr Halla Diyab of unjust or unfair treatment in the programme as broadcast. However, Ofcom has not upheld Dr Diyab's complaint of unwarranted infringement of privacy in the programme as broadcast.

The programme *Al Manbar Al Suri* shown on 1 February 2014 included comments by the studio presenter, Mr Mousa Alomar, about a report in the *This Week* television programme broadcast two days earlier on BBC1. That programme had featured a report and a studio debate about whether the UK should take in refugees fleeing from the conflict in Syria. One of the contributors to the *This Week* programme was the complainant, Dr Diyab, who said that the British Government should not allow Syrian refugees into the UK (save in exceptional cases), and that they would be better served by taking refuge in neighbouring countries that are close to Syria culturally and demographically like the United Arab Emirates, Jordan, Egypt, Saudi Arabia and Lebanon.

Ofcom found that:

- With regards to Dr Diyab's complaint that incorrect statements were made about her in the programme (as set out at head a) below), the broadcaster took reasonable care to satisfy itself that material facts were not presented, disregarded or omitted in a way that was unfair to Dr Diyab.
- However, concerning Dr Diyab's complaint that comments she had made in the *This Week* programme were misrepresented in the programme *Al Manbar Al Suri* (as set out at head b) below), the broadcaster did not take reasonable care to satisfy itself that material facts were not presented, disregarded or omitted in a way that was unfair to Dr Diyab.
- With regards to Dr Diyab's complaint that personal and private information about her had been revealed in the programme (as set out at head c) below), we considered that Dr Diyab did not have a legitimate expectation of privacy in the circumstances of this particular case. Ofcom therefore concluded that Dr Diyab's privacy was not unwarrantably infringed in the programme as broadcast.

#### Introduction and programme summary

Al Ghad TV is an Arabic language news channel broadcast under an Ofcom licence held by Alghad TV Limited. The complainant provided Ofcom with a translated transcript of the programme ("the translation"), which was verified as accurate by an independent translation service used by Ofcom. The broadcaster was then given the opportunity to comment on the translation, and confirmed that it was satisfied with the translation and that Ofcom could rely on it for the purposes of its investigation into Dr

Diyab's complaint. Ofcom has therefore relied on this translation agreed by both parties in its consideration of Dr Diyab's complaint.

On 1 February 2014, Al Ghad TV broadcast an item in the *Al Manbar Al Suri* programme that included comments by the studio presenter, Mr Alomar, about a report in the *This Week* programme broadcast two days earlier (i.e. 30 January 2014) on BBC1. That programme had featured a report and a studio debate about whether the UK should take in refugees fleeing from the conflict in Syria. One of the contributors to the *This Week* programme was the complainant, Dr Diyab. In the programme she had said that the British Government should not allow Syrian refugees into the UK (save in exceptional circumstances), and that they would be better served by taking refuge in neighbouring countries that are close to Syria culturally and demographically like the United Arab Emirates, Jordan, Egypt, Saudi Arabia and Lebanon.

Mr Alomar said the following:

*"Before I start, I would like to shed some light on a matter that has been denounced on all social media outlets, both from Syrians and non-Syrians, including Brits. On a famous TV show named This Week, that runs on BBC1, a pseudo-writer or pseudo-intellectual... called on the British Government not to receive persecuted people from Syria and neighbouring countries, because these people suffer from psychological problems and would be living in Britain at the expense of tax-payers, including herself... She also said that Syrians should not be admitted into Britain as refugees, because they are lower level of other peoples in the world; Syrians have bad education and they do not speak English. She also said Syrians do not fit in English culture, and English culture fits her only! As one of the activists has put it: so, you think that you're the only one who can fit the English culture, so how did you learn English?"*

*Many people had mentioned a point, since she chose to deny her Syrianism and culture, why do you sit... [being filmed for this programme] in a Syrian restaurant in Edgware Road, if you dislike Syrians or they are vulgar and unproductive. In fact, Syrians are the most hard-working and productive people in the world. In London alone, there are 400 Syrian hairdressers...*

*She also claims that Syrians represent a threat to Britain and that it would be better to resettle them in neighbouring countries such as Egypt and Jordan, since they are of the same level as that of the Syrians. Now, Syrians have learned about everything she said and I don't want to go on about this because I don't want to raise the blood pressure of the viewers, but there is one thing I would like to point out. Former Information Minister, Muhsin Bilal, had said in a public ceremony, which was reported by the media before 2011, that this pseudo-writer is indebted to the University of Damascus which had funded her to pursue a PhD in London. Neither [did] she return to Syria to teach the children she is now insulting, nor did she clear her debts with the University. She is supposed to be a doctor! She is showing off at the expense of the Syrian children, the Syrian State and the Syrian people, then she decided not to return to pass that culture on to Syria's children, and now she shows up on a British channel to call against admitting Syrian refugees into the United Kingdom because they need a lot of time to learn English and to integrate in the society. What a shame!*

*In this respectful country, have you ever heard of an Iraqi inviting the British government not to admit other Iraqis? Of course not! 250,000 Somalis have sought asylum in Britain. Some Somalis as they look alike sometimes take five or*

*four of their children's passports back to Somalia, and use them to bring their look-alike nephews and nieces to Britain, in order to educate them in a country that respects them and provides them with everything. When people come to the West, especially in Britain, the first thing they learn is to respect human beings and peoples. When one rides a bus in London, they find people of 34 different nationalities speaking the same language, English, despite they come from different cultures and speak 40 languages. The first thing they learn is not to discriminate against anyone and that people are all equal. British people, to be honest, treat Syrians with utter respect, because this is a democratic country that respects everyone who lives in it.*

*Instead, she [should] try to convince the British government to take 20,000 Syrians instead of 500? Numbered at about 15,000, Syrians actually make the smallest Arab community in Britain. What a shame! I pity this time. What a shame for each came to be a hypocrite liar, Now, we'll start with our first file, the case of Daria".*

Dr Diyab was not named in the broadcast, nor was she identified in any way other than by the reference to her appearance on the *This Week* programme.

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

### Unjust or unfair treatment

Dr Diyab complained that she was treated unjustly or unfairly in the programme as broadcast because material facts were presented, disregarded or omitted in a way that was unfair to her and damaging to her character. Dr Diyab said that the programme resulted in her receiving death threats and her being subject to a hate campaign. In particular, Dr Diyab said that:

a) The programme stated incorrectly that:

- She was "a pseudo-writer or pseudo-intellectual". Dr Diyab said that she was not a "pseudo-writer" or "pseudo-intellectual" and that she had a master's degree from Warwick University and a PhD from the University of Leicester. She also said that she was a leading TV screen writer with six award winning dramas broadcast all over the Middle East and that she was an author, and a producer and filmmaker of TV documentaries and films broadcast on Middle Eastern and international channels.

In response, solicitors acting on behalf of Al Ghad TV said that the word used in the programme was "*kouitba*" which in Arabic means "small writer". It said that this was how Dr Diyab was described on social media platforms and, in any event, it did not consider the statement to be incorrect as it expressed an opinion.

- She had insulted Syrian children. Dr Diyab said that this was completely untrue, and that the accusation was based on the presenter's own judgement which was not based on any fact or phrase she said in the *This Week* programme.

In response, Al Ghad TV's solicitors said that the reference to Syrian children was intended to mean Syrian people as a whole. It said that Dr Diyab was "seen to be insulting to Syrians generally".

- She was a liar and a hypocrite by making a link between her and a quoted Arabic verse: *“What a shame for each came to be a hypocrite liar”*.

Al Ghad TV’s solicitors explained that this line was from a famous Arabic poem and was used to describe Dr Diyab because she had implied that Syrians were not educated and that while she herself had come to Britain and had adapted to the British culture, she argued that other Syrians would be incapable of doing so. Also, it said that it was a further case of the presenter expressing his opinion.

- She considered her fellow Syrians as *“vulgar and unproductive”* and she *“chose to deny her Syrianism and culture”*. Dr Diyab said that she was proud of her Syrian roots and that she was presented in the *This Week* programme as a Syrian writer and filmmaker.

In response, Al Ghad TV’s solicitors said that activists on social media platforms had expressed anger at the fact that Dr Diyab had argued against the UK taking Syrian refugees as they considered that she should be supporting the contrary view. Al Ghad TV’s solicitors said that in the *This Week* programme Dr Diyab asked: *“As a British tax payer, will I have to subsidize for a new Syrian population in this country?”* Al Ghad TV’s solicitors said that this inferred that Syrian people would not work or contribute to society if they came to the UK and so would be unproductive.

b) The programme stated wrongly that she had said in her *This Week* interview that:

- The British Government should not accept refugees from Syria because: *“these people suffer from psychological problems”*.

In response, Al Ghad TV’s solicitors said that in the *This Week* programme, Dr Diyab stated: *“These people are already traumatised”*. Al Ghad TV’s solicitors said that her statement implied clearly that Syrian people were suffering psychological damage.

- The British Government should not accept refugees from Syria because: *“they are lower level of other peoples in the world”*.

Al Ghad TV’s solicitors said that, during the *This Week* programme, Dr Diyab’s attention was drawn to the fact that refugees had been accepted into the UK for many years and that they had adapted well to the cultural change. It said that Dr Diyab had responded by saying that Syrian people: *“are living in very inferior situation”*. It said that this implied that Dr Diyab believed that Syrians would be less capable of adapting than other refugees. It said that the meaning of what she said was clear as another panellist on the programme disagreed with her assertion that Syrian refugees would not be able to adapt to British culture.

- *“Syrians have bad education”*.

In response, Al Ghad TV’s solicitors said that in the programme *This Week* Dr Diyab, when discussing people in the refugee camps, had said *“...and some of these people, they come from Homs, or some outskirts cities in Damascus and some of them are not very much educated”*. It said that it was therefore

reasonable for the presenter to have summarised this by suggesting that she said that “*Syrians have bad education*”.

- “*Syrians represent a threat to Britain*”.

Al Ghad TV’s solicitors said that Dr Diyab suggested in the *This Week* programme that Syrian refugees would not adapt to British culture easily as she had said that “...*they still like the Middle East Culture*”. Al Ghad TV’s solicitors said that this could be taken to mean that they “will be or become a threat to British culture”.

- “*It would be better to resettle them [Syrian refugees] in neighbouring countries such as Egypt and Jordan, since they are of the same level as that of the Syrians*”.

Al Ghad TV’s solicitors responded that Dr Diyab had said in the *This Week* programme that other neighbouring countries “...are close to Syria culturally and demographically like United Arab Emirates, Jordan, Egypt, Saudi Arabia, and Lebanon” and so Syrian refugees should resettle only in these Arab countries. It pointed out that Dr Diyab had specifically identified Egypt and Jordan as two such countries.

In relation to both heads a) and b) of Dr Diyab’s complaint set out above, Al Ghad TV’s solicitors explained that *Al Manbar Al Suri*, the programme complained about, was a Syrian forum based programme which included various opinions about Syria. It said that at the core of the programme was live audience participation through various social media platforms including Twitter and Facebook. It said that the presenter both paraphrased and responded to viewers’ concerns and opinions throughout the programme. It provided Ofcom with examples of the type of messages sent to the programme from viewers.

Al Ghad TV’s solicitors also said that several attempts were made by the broadcaster to contact Dr Diyab in order for her to clarify her views and/or appear on the programme. However, it was unable to contact her. It said that the broadcaster’s intention was not to insult Dr Diyab, but to highlight a subject which had attracted a lot of attention from the Syrian people.

#### Unwarranted infringement of privacy

- c) In summary, Dr Diyab complained that her privacy was unwarrantably infringed in the programme as broadcast in that private and personal information about her was included in the programme.

In particular, Dr Diyab objected to the information included in the programme about her education. The programme stated that she was: “...*indebted to the University of Damascus which had funded her to pursue a PhD in London. Neither [did] she return to Syria to teach the children she is now insulting, nor did she clear her debts with the University*”. Dr Diyab said that details about whether or not she owed money for her education were private and personal.

In response, Al Ghad TV’s solicitors said that the information relating to Dr Diyab’s education had been in the public domain for a number of years. It said that this information was provided to the press by the Syrian Information Minister at a press dinner (attended by approximately 300 journalists) around December 2010 and was also widely published at the time in the Syrian newspaper,

“Alwatan”, and other online news websites. Al Ghad TV’s solicitors provided Ofcom with extracts from several websites in support of this. It said that as this information was already widely known, there was no infringement of Dr Diyab’s privacy.

### **Representations on Ofcom’s Preliminary View**

Ofcom prepared a Preliminary View in this case that Dr Diyab’s complaint of unjust or unfair treatment in the programme as broadcast should be upheld in part, but her complaint of unwarranted infringement of privacy in the programme as broadcast should not be upheld. Both parties were given the opportunity to comment on the Preliminary View.

Although Dr Diyab made representations on the Preliminary View (that she had received death threats and been the subject of a hate campaign following the comments made on *Al Manbar Al Suri*), we took the view after careful consideration that her comments raised points that had already been appropriately addressed and reflected in the Preliminary View. Ofcom therefore concluded that her comments did not materially affect Ofcom’s final decision in this case.

Al Ghad TV’s solicitors also made representations on the Preliminary View. However, we considered that its comments were also either not directly relevant to the complaint as entertained or raised points that had already been adequately addressed and reflected in the Preliminary View. Ofcom concluded that these comments also did not materially affect Ofcom’s final decision.

### **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 and translated transcript of the *Al Manbar Al Suri* programme as broadcast, a recording and transcript of the *This Week* programme, both parties’ written submissions, and supporting documentation. We also took account of the representations made by Dr Diyab and Al Ghad TV’s solicitors in response to Ofcom’s Preliminary View. We concluded that neither party had raised any issues to persuade Ofcom to alter its decision to partially uphold Dr Diyab’s complaint of unjust or unfair treatment in the programme as broadcast and to not uphold her complaint of unwarranted infringement of privacy in the programme as broadcast.

#### **Unjust or unfair treatment**

When considering complaints of unjust or unfair treatment, Ofcom has regard to whether the broadcaster’s actions ensured that the programme as broadcast avoided

unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of Ofcom's Broadcasting Code ("the Code"). Ofcom had regard to this rule when reaching its decision. When considering both heads a) and b) of the complaint below, Ofcom took into consideration Practice 7.9 of the Code. This states that before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation. Ofcom also took into consideration Practice 7.13 of the Code which states that, where it is appropriate to represent the views of a person or organisation that is not participating in the programme, this must be done in a fair manner.

Ofcom also took into account the fact that the right to freedom of expression is crucial and that broadcasters must be able to make programmes that express critical and sometimes offensive opinions without undue constraints. However, this comes with responsibility and an obligation on broadcasters to comply with the Code and, with particular reference to this case, avoid unjust or unfair treatment of individuals or organisations in programmes.

To assess whether or not the programme complained of created unfairness to Dr Diyab, Ofcom first considered whether she was identifiable in the programme as broadcast. Although the *Al Manbar Al Suri* programme did not name Dr Diyab, in our view she was identifiable by the reference to her appearance on the *This Week* programme. The presenter stated:

*"On a famous TV show named This Week, that runs on BBC1, a pseudo-writer or pseudo-intellectual...called on the British Government not to receive persecuted people from Syria and neighbouring countries, because these people suffer from psychological problems and would be living in Britain at the expense of tax-payers, including herself..."*

We noted that neither party disputed that Dr Diyab was identifiable in the programme.

Having established that Dr Diyab was identifiable in the programme as broadcast, we then considered in turn each of the heads of the complaint as set out in the "Summary of the complaint and the broadcaster's response" section above.

- a) Ofcom first considered Dr Diyab's complaint that the programme included incorrect comments about her and was, therefore, unfair or unjust as broadcast.

It is important to clarify from the outset that Ofcom is not able, nor is required, for the purpose of making a decision on this complaint, to express a view on the truth or otherwise of each of the individual statements made in the programme about Dr Diyab. Rather our role is to consider whether by broadcasting these comments the broadcaster treated Dr Diyab unfairly and, in particular, took reasonable care not to present, disregard or omit material facts in a way that was unfair to Dr Diyab. In assessing whether or not the programme complained of resulted in unfairness to Dr Diyab, Ofcom considered separately each of the particular comments complained of, as outlined in "the complaint" section above and set out below, and then the programme overall.

In reaching a view on the potential unfairness of each of these comments and so under head a), we took particular account of the broadcaster's, presenter's and audience's right to freedom of expression. Clearly the plight of the millions of Syrians forcefully displaced by the conflict in Syria, and whether any of them should be permitted to live in the UK, is a very emotive subject (especially for

Syrians). It was not surprising that Dr Diyab's views on this topic were controversial and aroused strong reactions, and that a presenter on an Arabic language channel broadcast in the UK would wish to discuss and criticise them.

- *Dr Diyab was "a pseudo-writer or pseudo-intellectual"*

Ofcom considered that this comment had the potential to be hurtful and insulting to Dr Diyab to some extent and was made in the context of an attempt to criticise her and her opinion on the issue of whether Syrian refugees should be allowed into the UK. However, Ofcom took account of the fact that Dr Diyab was an established writer and producer who had agreed to appear on the *This Week* programme, with the intention of expressing her views on Syria and its refugees. We therefore considered that she was someone who had intentionally put herself in the public eye and as such had to expect that both her and her views would come under critical scrutiny.

We acknowledged that viewers would have understood the presenter's description of Dr Diyab as "*a pseudo-writer or pseudo-intellectual*" to be potentially insulting to Dr Diyab, but considered that reasonable viewers would have understood that the comment was made in the context of the presenter expressing his personal opinion of Dr Diyab's publicly expressed views on the refugee issue. In Ofcom's opinion, a reasonable viewer would not have understood these statements as expressing a serious view of her academic or other professional achievements. We therefore considered that the comment was unlikely to be perceived by viewers in a way that would materially and adversely change any existing perceptions they may have already held about Dr Diyab and her ability as a writer in a way that was unfair.

Therefore, in this respect and in this context, we considered that the material facts were not presented, disregarded or omitted in a way that portrayed Dr Diyab unfairly in the programme as broadcast.

- *Dr Diyab insulted Syrian children*

In our view, in this programme the presenter expressed his anger at the fact that Dr Diyab, being Syrian herself, had told the *This Week* programme that she did not think that the British Government should allow Syrian refugees into the UK. Dr Diyab gave several reasons in the *This Week* programme to explain why she held this opinion. The presenter and (according to Al Ghad TV's solicitors) *Al Manbar Al Suri*'s viewers had taken offence at her views (as evidenced it said via live audience participation through various social media platforms including Twitter and Facebook).

As part of his commentary the presenter said: "*Neither [did] she [Dr Diyab] return to Syria to teach the children she is now insulting...*". Ofcom interpreted this remark to mean that the presenter believed Dr Diyab, having been educated at a university in Syria, should have returned there to teach Syrian children and that, by staying in England, she was insulting Syrian children. In its response to the complaint, Al Ghad TV's solicitors had said that this reference was not intended to mean Syrian children specifically but that the presenter meant Dr Diyab was "insulting to Syrians generally".

We considered this was plausible. However it was not necessary for us to reach a view on this issue to decide if the use of this comment was unfair to Dr Diyab.

Ofcom noted this comment was quite general. It did not for example clearly suggest any particular action by Dr Diyab that was directly insulting to identifiable Syrian children. Further we considered again that this comment was presented in the clear context of the presenter expressing a strongly held personal opinion on Dr Diyab's views about Syrian refugees, and that he considered that through her comments she had insulted Syrian people (including children). In our opinion, in accordance with his right to freedom of expression, the presenter was entitled to express this view, although we recognised that this comment may have had the potential to be hurtful and insulting to Dr Diyab to some extent.

Given the factors above, in respect of this comment, we did not consider that the material facts were presented, disregarded or omitted in a way that portrayed Dr Diyab unfairly in the programme as broadcast.

- *Dr Diyab was a liar and a hypocrite*

Ofcom noted that the programme's presenter stated:

*"Instead [of stating that the British government should not allow Syrian refugees into the UK], she [Dr Diyab, should] try to convince the British government to take 20,000 Syrians instead of 500?...What a shame! I pity this time. What a shame for each came to be a hypocrite liar..."*

In its response to Dr Diyab's complaint, Al Ghad TV's solicitors explained that the line "*What a shame for each came to be a hypocrite liar*" was from a famous poem. It said that the presenter had used it to describe Dr Diyab because in her comments on *This Week* she had implied that Syrians were not educated and that while she herself had come to Britain and had adapted to British culture, she argued that other Syrians would be incapable of doing so.

Considering the context of the comment, it was our view that viewers were likely to understand the use of the line "*What a shame for each came to be a hypocrite liar*" to mean that the presenter considered Dr Diyab to be a hypocrite, given her opinion that Syrian refugees should not be allowed into the UK, rather than a liar. Although we considered that referring to Dr Diyab as a hypocrite had the potential to be insulting to her, in our view it would have been clear to viewers that his quoting this particular line from a poem was a means of his expressing his personal view of Dr Diyab's publicly expressed opinions on the refugee issue.

We again took into account that this was quite a generalised comment about Dr Diyab, made more indirect by the fact that she was not named and the presenter gave his view by means of citing a line of poetry rather than expressing his view in direct language. In context, we did not consider that these comments had the potential to materially and adversely affect Dr Diyab's reputation in a way that was unfair to her, or that the material facts were presented, disregarded or omitted in a way that portrayed Dr Diyab unfairly in the programme as broadcast.

- *Dr Diyab considered her fellow Syrians as "vulgar and unproductive" and she "chose to deny her Syrianism and culture"*

The programme's presenter stated:

*"Many people [on social media sites] had mentioned a point, since she [Dr Diyab] chose to deny her Syrianism and culture, why do you sit...[being filmed for this programme] in a Syrian restaurant in Edgware Road, if you*

*dislike Syrians or they are vulgar and unproductive. In fact, Syrians are the most hard-working and productive people in the world”.*

Ofcom noted that Al Ghad TV’s solicitors had explained that *Al Manbar Al Suri* was a Syrian forum based programme which included various opinions about Syria, and, in particular, that:

“At the core of the programme is live audience participation through various social media platforms including Twitter and Facebook. The presenter both paraphrases and tries to deal with and respond to viewers concerns and the opinions of the audience throughout the programme”.

We also noted again that the comments in question were quite general in nature and took account of the fact that the presenter introduced the item as follows: *“Before I start, I would like to shed some light on a matter that has been denounced on all social media outlets”* and then preceded the comments in question with *“Many people had mentioned a point...”*. It was therefore likely that viewers would understand that the comments suggesting that Dr Diyab *“chose to deny her Syrianism and culture”* and considered Syrians to be *“vulgar and unproductive”* were the opinions of people on social media sites cited by the presenter. We considered that most viewers would understand that these comments from social media sites were merely summarizing opinions reacting to Dr Diyab’s publicly stated views, and were not intended to summarise with due accuracy what Dr Diyab had actually stated in the *This Week* programme. In this respect, we considered that the material facts were not presented, disregarded or omitted in a way that portrayed Dr Diyab unfairly in the programme as broadcast. In context, our view was that these comments would not have materially and adversely affected viewers’ opinions of Dr Diyab in a way that was unfair to her.

Having considered each of the particular comments complained of individually, we then considered the programme as a whole. We recognised that the presenter made comments which had the potential to be hurtful and insulting to Dr Diyab to some extent. But taking especially into account the importance of the right to freedom of expression, we considered that viewers would understand that much of what was said in the programme was the expression of opinions – both those of the presenter and of those reacting to Dr Diyab’s appearance on the *This Week* programme through various social media platforms.

Therefore, overall, we considered that in respect of the comments referred to under this head a), Dr Diyab was not treated unfairly or unjustly, and in particular that material facts were not presented, disregarded or omitted in a way that portrayed Dr Diyab unfairly or unjustly in the programme as broadcast.

- b) Ofcom next considered the complaint that the programme misrepresented what Dr Diyab had said in her interview on the *This Week* programme in a way that was unfair to her.

In assessing this head of complaint, Ofcom first compared the comments Dr Diyab made in the *This Week* programme against the summaries provided by the presenter in the programme *Al Manbar Al Suri*.

1. In the *This Week* programme Dr Diyab said:

*“Here the situation of the Syrian people is very different and peculiar given what’s happening in Syria. These people are already traumatised. They*

*feel they have been deported or they have left their own country...and they are displaced”.*

The *Al Manbar Al Suri* presenter summarised Dr Diyab’s comments:

[Dr Diyab] *“...called on the British Government not to receive persecuted people from Syria and neighbouring countries because these people suffer from psychological problems”.*

2. In the *This Week* programme Dr Diyab said:

*“...and they left...they are living in a very inferior situation, especially in Arab countries, and alienating them more into a western country which doesn’t speak the same language, where the culture is different, will alienate them more. They will be more traumatized”.*

The *Al Manbar Al Suri* presenter summarised Dr Diyab’s comments:

*“Syrians should not be admitted into Britain as refugees, because they are lower level of other peoples in the world”.*

3. In the *This Week* programme Dr Diyab had said:

*“...but it is about picking [on] the most vulnerable people who are in the refugee camps and some of these people, they come from Homs, or some outskirts cities in Damascus, outside Damascus and some of them are not very much educated and that is the problem in adapting to another culture”.*

The *Al Manbar Al Suri* presenter summarised Dr Diyab’s comments:

*“Syrians have bad education”.*

4. In the *This Week* programme Dr Diyab had said:

*“Who will help them [Syrian refugees] learn English? It would be much better for them to stay in neighbouring countries that are close to Syria culturally and demographically like United Arab Emirates, Jordan, Egypt, Saudi Arabia, and Lebanon”.*

The *Al Manbar Al Suri* presenter summarised Dr Diyab’s comments:

*“It would be better to resettle them [Syrian refugees] in neighbouring countries such as Egypt and Jordan, since they are of the same level as that of the Syrians”.*

Ofcom also noted that Dr Diyab complained that the *Al Manbar Al Suri* presenter wrongly stated that she had said that: *“Syrians represent a threat to Britain”*. In Ofcom’s opinion, Dr Diyab did not make any comment in the *This Week* programme which could be equated with this statement.

In our view the four statements set out at head b) above, made by the presenter of the *Al Manbar Al Suri* programme, were not presented by him as fairly summarising the comments that Dr Diyab had made in the programme *This Week*. Having watched this programme and taken particular note of Dr Diyab’s

contribution, Ofcom noted that these statements were not word for word quotes from Dr Diyab. There were some material differences between the views of Dr Diyab on particular issues related to Syrian refugees as expressed in the *This Week* programme, and as they were summarised in the *Al Manbar Al Suri* programme. Her views on these issues were considerably simplified and exaggerated in Ofcom's opinion. Our view was strengthened by reading the full transcript of Dr Diyab's remarks in the *This Week* programme.

It appeared to Ofcom that statements attributed to Dr Diyab were based on either the presenter's own view of what he considered Dr Diyab to have said and/or that of various people commenting on social media networking platforms such as Twitter and Facebook. The presenter did not make this clear, nor place his summary of Dr Diyab's views in any form of context – by for example providing any form of cautionary note about the accuracy of his summary to viewers.

In its response to the complaint, Al Ghad TV's solicitors said that several attempts were made by the broadcaster to contact Dr Diyab in order for her to clarify her views and/or appear on the programme. However, it said that it was unable to contact her. Dr Diyab disputed this. Nevertheless, Ofcom noted that, although the broadcaster claimed it had attempted to contact Dr Diyab, it did not make clear in the programme that it had sought Dr Diyab's response to the comments made or reflect her alleged lack of comment or response.

Viewers were therefore not given sufficient and accurate information about what Dr Diyab said on *This Week* to assess her remarks or other people's views on them. They would have relied for any assessment on the summary provided by the presenter, which was not in Ofcom's view duly accurate. As a result, by misrepresenting Dr Diyab's views so as to suggest they were more extreme and exaggerated than how she expressed them in *This Week*, in our opinion these comments had the potential to adversely and materially affect viewers' opinions of Dr Diyab in a way that was unfair to her.

Taking all of the factors set out above into account, we were of the view that the broadcaster had not taken reasonable care to satisfy itself that material facts were not presented, disregarded or omitted in a way that was unfair to Dr Diyab.

#### Unwarranted infringement of privacy

Ofcom considers that the individual's right to privacy has to be balanced against the competing rights of the broadcaster to freedom of expression. Neither right as such has precedence over the other, and, where there is a conflict between the two, it is necessary to focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate. This is reflected in how Ofcom applies Rule 8.1 of the Code, which states that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.

- c) Ofcom considered Dr Diyab's complaint that her privacy was unwarrantably infringed in the programme as broadcast in that private and personal information about her was included in the programme. In particular, Dr Diyab objected to the information included in the programme about her education and said that details about whether she owed money for her education were private and personal.

In assessing whether or not Dr Diyab's privacy was unwarrantably infringed in the programme as broadcast, Ofcom first considered the extent to which she had a legitimate expectation of privacy in relation to the material broadcast. In doing so, Ofcom had regard to Practice 8.6 of the Code which states that, if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast unless the infringement of privacy is warranted.

We first considered whether Dr Diyab was identifiable in the programme as broadcast. Although the programme did not name Dr Diyab, in our view she was identifiable by the reference to her appearance on the *This Week* programme (as outlined in more detail above).

We then considered the nature of the information revealed about Dr Diyab. As set out in detail in the "Introduction and programme summary" section above, the programme stated that Dr Diyab was:

*"...indebted to the University of Damascus which had funded her to pursue a PhD in London. Neither [did] she return to Syria to teach the children she is now insulting nor did she clear her debts with the University".*

Ofcom took the view that, ordinarily, information relating to an individual's personal financial situation, including information related to outstanding loans and debts, would be regarded as being private and sensitive and therefore attract a legitimate expectation of privacy.

However, we noted that the information relating to Dr Diyab's education and her alleged debts owed to the University of Damascus appeared to have been in the public domain for a number of years. Ofcom understood that this information was provided to the press by the Syrian Information Minister at a press dinner around December 2010 and was also widely published at the time in Syria's Alwatan newspaper and other online news sites. Al Ghad TV's solicitors provided Ofcom with extracts from what appeared to be several websites (although none of the websites were identified) in support of this. The information on the websites referred to the fact that Dr Diyab "*owes Damascus University*".

We also noted that the programme did not give any specific information about Dr Diyab's financial affairs. While it stated that she was "*indebted to the University of Damascus*" and "*nor did she clear her debts with the University*", it did not provide any further details, such as for example the alleged amount of any outstanding student debt owed to Damascus University.

In considering this head of complaint, and as above, we also took account of the fact that Dr Diyab was an established writer and producer who had volunteered to appear on *This Week* to express her views on Syria and its refugees. We therefore considered that she was someone who had intentionally put herself in the public eye and as such had to expect that both her and her background would come under some scrutiny.

Taking all of the factors above into account, on balance, we concluded that Dr Diyab did not have a legitimate expectation of privacy concerning the references to her education and her being "indebted" to the University of Damascus.

Having decided on the particular facts of this case that Dr Diyab did not have a legitimate expectation of privacy, Ofcom did not need to go on to consider the complaint any further, including the broadcaster's right to freedom of expression.

Ofcom's decision is therefore that Dr Diyab's privacy was not unwarrantably infringed in the programme as broadcast.

**Accordingly, Ofcom has upheld in part Dr Diyab's complaint of unfair treatment in the programme as broadcast. However Ofcom has not upheld Dr Diyab's complaint of unwarranted infringement of privacy in the programme as broadcast.**

## Not Upheld

### Complaint by the Council of the Isles of Scilly

*Various news reports, Radio Scilly, 2 June 2014*

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#### Summary

Ofcom has not upheld this complaint of unjust or unfair treatment in the programmes as broadcast made by the Council of the Isles of Scilly (“the Council”).

On 2 June 2014, Radio Scilly broadcast a series of brief morning news reports which included a story about Mr Bryce Wilby (a former head teacher on the Isles of Scilly). The news reports included an allegation from Mr Wilby that the Council had refused to give him a copy of an independent report which had been commissioned to investigate a series of complaints made about the Council by Mr Wilby.

Ofcom found that the Council was given an appropriate and timely opportunity in the circumstances of this case to respond to the allegation made about it in the programmes. Therefore, it was not treated unfairly in this respect.

#### Introduction and programme summary

Radio Scilly is a community radio station, based on and broadcasting to the Isles of Scilly. On Monday, 2 June 2014, it broadcast a series of five news reports (at 07:00, 08:00, 09:00, 10:00 and 11:00) which included a news story about Mr Wilby, a former head teacher of the Five Islands School on the Isles of Scilly. The news reports said that Mr Wilby alleged that the Council had refused to give him a copy of an independent report which had been commissioned to investigate a series of complaints about the Council made by Mr Wilby. In the reports broadcast at 07:00, 09:00 and 11:00 the story was introduced by the newsreader:

*“The former head teacher of the Five Islands School alleges the Council is refusing to give him a copy of an independent report they’ve commissioned which investigates a series of complaints he made...”*

An audio recording of Mr Wilby was also played in which he said:

*“I would imagine it’s more delaying tactics from the Isles of Scilly Council, but obviously the process is underway now. So, it’s just a question of whether or not they give it to us prior to us issuing a court order for it, or we have to wait and go through the process. You know, they are doing their best to delay things. They’ve delayed it as much as they could throughout the process”.*

The reports broadcast at 08:00 and 10:00 reported the same story in a slightly different manner. During these reports, the newsreader said:

*“The former head teacher of the Five Islands School alleges the Council are refusing to give him a copy of an independent report they’ve commissioned which investigates a series of complaints he’s made”.*

The newsreader also said:

*“He [Mr Wilby] says that not giving the complainant a copy [of the report] is not right and proper and contrary to the Council’s own complaints procedure”.*

In each report, the newsreader concluded the story by saying:

*“We are waiting for a response from the Town Hall over Bryce’s claims”.*

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

The Council complained that it was treated unjustly or unfairly in the programmes as broadcast because it was not given an appropriate and timely opportunity to respond to the allegation made by Mr Wilby that the Council was refusing to provide him with a copy of the independent report. It said that the broadcaster contacted the Council’s Community Relations Officer asking for a response to the allegation by email at 21:28 on 1 June 2014 (a Sunday). Mr Wilby’s allegation was first broadcast by Radio Scilly the following morning at 07:00.

In response, Radio Scilly said that each week it broadcasts at least 25 Scilly-centred news stories, most of which are sourced from attending the Council Chamber or talking to councillors and officers. It said it had regular dealings with the Council and it always deals with the Council’s Community Relations Officer via email for comment before running a story.

The broadcaster said that ITV Westcountry aired a news story relating to Mr Wilby on Sunday, 1 June 2014 during the early evening local bulletin. It said that as it is “committed to timely news coverage, [it] felt compelled to feature this development at the next opportunity, which was 07:00 Monday (2 June 2014)”.

Following the broadcast of ITV Westcountry’s news report, Radio Scilly said that it contacted Mr Wilby and received details of his allegation against the Council. Subsequent to this, it said that it sent an email to the Council’s Community Relations Officer at 21:28, also on the evening of Sunday 1 June 2014. Radio Scilly said it believed that this email made clear its intent to offer the Council a right to respond to Mr Wilby’s comments.

Radio Scilly said that it believed the Council’s Community Relations Officer started work at 08:30. An email was received from the Council at 13:17 on Monday, 2 June 2014 which stated that the Council “would respond in due course”.

Further, the broadcaster said that it made it clear in each news report broadcast on the morning of 2 June 2014 that it was waiting for the Council’s response to Mr Wilby’s claims.

Radio Scilly said that it had received no further response from the Council regarding this matter and that it was still unaware of any inaccuracies or misrepresentation in the news reports as broadcast.

### **Decision**

Ofcom’s statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unjust or unfair treatment and unwarranted infringement of

privacy in, or in connection with the obtaining of material included in, programmes in such services.

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

In reaching this Decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and a transcript of the programmes as broadcast, both parties' written submissions and supporting material. A Preliminary View (which was not to uphold the Council's complaint) was prepared by Ofcom and the parties were given an opportunity to make representations on it. The parties chose not to make any representations on Ofcom's Preliminary View.

When considering complaints of unjust or unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programmes as broadcast avoided unjust or unfair treatment of individuals or organisations, as set out in Rule 7.1 the Code. We had regard to this Rule when reaching our decision on the complaint.

Ofcom also had regard to Practice 7.11 of the Code. This states that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond. We also had regard to Practice 7.12 of the Code which states that where a person approached to contribute to a programme chooses to make no comment or refuses to appear in a broadcast, the broadcast should make clear that the individual concerned has chosen not to appear and should give their explanation if it would be unfair not to do so.

The news reports broadcast on Radio Scilly included an allegation made by Mr Wilby that the Council were delaying the release of a report into complaints made about the Council by Mr Wilby. We considered that this statement amounted to an allegation of wrongdoing or incompetence and that, in accordance with Practice 7.11 of the Code, the programme makers needed to offer the Council an appropriate and timely opportunity to respond to it in order to avoid unfairness.

We first considered what steps, if any, were taken by the broadcaster to provide the Council with an opportunity to respond to Mr Wilby's allegation.

We noted that Radio Scilly contacted the Council regarding the allegation by email at 21:28 on Sunday 1 June 2014. As far as Ofcom was aware, no further attempt to contact the Council was made by the broadcaster. The following day (2 June 2014) at 13:17, the Council responded to the email to state that they would be in contact in due course. The broadcaster received no further response from the Council.

It is important to note the use of the word 'appropriate' within Practice 7.11 as it ensures that the responsibility placed on the broadcaster is proportionate in the circumstances of each case. Therefore, there are circumstances where the requirements on a broadcaster to offer an opportunity to respond to individuals or parties who have had allegations made against them may be greater or less than others.

In light of the above, Ofcom took account of the nature and seriousness of the allegations made about the Council. We considered that the claims made by Mr Wilby (namely that the Council were withholding the release of a report), were not so serious in nature that they were likely to have a very significant impact on the manner in which listeners perceived the Council. Therefore, while the requirements of Practice 7.11 did apply in this case, we considered that the responsibility placed on the broadcaster was less than if the allegations had been more serious in nature.

Ofcom also noted from published sources that news involving Mr Wilby had been a major and long-running story on the Isles of Scilly. We therefore considered that there would be strong public interest in Radio Scilly broadcasting any developments in the story quickly and comprehensively, and that this would be the expectation of their audience.

Taking the above into account, Ofcom was required to balance the freedom of expression of Radio Scilly in telling a news story of local importance (and the right of its audience to receive such information in a timely manner), with the obligation on the broadcaster to have given the Council a timely and appropriate opportunity to respond to Mr Wilby's allegation. While the email to the Council was sent out of normal office hours, this did not exclude the possibility of the Council either giving a full response to the allegation or informing Radio Scilly that it intended to fully respond at a later time before the first news report was broadcast at 07:00. We considered it not unreasonable that those with a specific job responsibility to respond to media enquiries (such as the Council's Community Relations Officer) may, on occasion, need to be prepared do so out of traditional office hours.

Ofcom took the view that the time afforded to the Council to respond to the allegation was relatively short, particularly given that the Council was asked to respond to the allegation on the Sunday evening before the broadcast of the programmes intended to report on the matter. However, in a broadcast news environment, editorial decisions about whether to include a certain news story must be made swiftly. It may be a disproportionate restriction on the broadcaster's right to freedom of expression to give individuals or organisations a longer period of time to respond to an allegation in order to avoid unfairness. In our view, Radio Scilly was justified in the public interest to make the editorial decision to include the news story about the Council in the news bulletins without having first received a response from the Council.

In addition, we noted that Radio Scilly broadcast this news story five times across a four hour period throughout the morning of 2 June 2014. Therefore, the opportunity for the Council to reply to the broadcaster's email and provide a response to Mr Wilby's allegation extended beyond the initial broadcast at 07:00. In its representations to Ofcom, Radio Scilly confirmed that it would have added any comment from the Council to the reports if any response had been forthcoming. As noted above, Radio Scilly received no further response from the Council in relation to Mr Wilby's allegation. Ofcom also noted that the broadcaster made it explicitly clear in each of the five reports in which Mr Wilby's allegations were made that it was awaiting a response from the Council. We therefore considered that listeners were unlikely to be left with an unfair or inaccurate impression of whether or not the Council intended to respond to Mr Wilby's allegations.

Taking all of the above into account, and in the particular circumstances of this case, the opportunity afforded to the Council to respond to Mr Wilby's allegation was appropriate and it did not result in any unfairness.

**Therefore, Ofcom has not upheld the Council of the Isles of Scilly's complaint of unjust or unfair treatment in the programmes as broadcast.**

## Not Upheld

### Complaint by Mr Patrick Gardner

*Life and Death on the A9, BBC1 Scotland, 6 March 2014*

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#### Summary

Ofcom has not upheld this complaint by Mr Patrick Gardner of unwarranted infringement of privacy in connection with the obtaining of material included in the programme and in the programme as broadcast.

The programme included footage of Mr Gardner after being stopped by the police for speeding in a heavy goods vehicle (“HGV”). His face was shown unobscured in the programme and while he was not named in the programme, Mr Gardner’s voice was heard.

Ofcom found that Mr Gardner had a legitimate expectation of privacy, albeit limited. However, the public interest in filming and subsequently broadcasting footage showing the work of the police in dealing with speeding motorists on a particularly hazardous roadway outweighed Mr Gardner’s limited legitimate expectation of privacy. Therefore, on balance, Mr Gardner’s privacy was not unwarrantably infringed in connection with the obtaining of material included in the programme and in the programme as broadcast.

#### Introduction and programme summary

On 6 March 2014, BBC1 Scotland broadcast a reality documentary programme entitled *Life and Death on the A9*. The A9 is the longest road in Scotland and the programme featured motorists and other individuals and organisations that relied on the road for business and transport links. It also featured police and other emergency service personnel who patrolled the road and dealt with the many incidents that occurred on the road, which was, according to the programme, notorious for fatal accidents.

The part of the programme that related directly to the complaint focused on speeding and the fact that many HGVs travelled faster than the 40 mph speed limit on a particular part of the A9. The programme showed footage of two HGVs which had been stopped for speeding by the police. One HGV was driven by the complainant, Mr Gardner, whose face could be seen clearly and unobscured through the cab window of his lorry. His voice was heard when talking to the police officer. He was not named in the programme.

The programme showed Mr Gardner sitting in the cab of the lorry with a police officer, who explained that he had seen Mr Gardner slow down for a speed camera and then speed up once he had passed it, therefore indicating that he was aware of the speed limit. The police officer also estimated that Mr Gardner had been travelling at an average speed of about 56 mph in a 40 mph speed limit area. Mr Gardner told the police officer that he knew he should not have been speeding.

The other HGV driver who had been stopped by the police had been travelling at an estimated average speed of 58 mph in a 40 mph speed limit area. Footage of this driver was not shown in the programme, nor was he otherwise identified.

The part of the programme featuring the two HGV drivers was approximately one minute in duration.

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

By way of background to Mr Gardner's complaint, Mr Gardner said that he lived in a small community and that the programme had been viewed by most of the people in his village. He said that his son had been made fun of at school and that people had been asking his wife questions about the programme at her work. Mr Gardner also said that his reputation in his community had been damaged by the showing of his face unobscured. He said that the BBC had filmed many drivers caught speeding, but that only his face was shown in the programme. Mr Gardner said that he had accepted and paid a fine for speeding, but that he did not deserve to be shown on television purely for entertainment.

- a) Mr Gardner complained that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme.

Mr Gardner said that when he was stopped by the police, he had a camera "shoved into his face" and was told that the filming was for a television programme for the BBC. He said that he had asked the programme makers to stop filming and told them that he wanted to take no part in the programme, but they continued to film him. Mr Gardner said that the camera crew entered the lorry and "took some footage from the passenger footwell".

In response, the BBC said that the unedited and untransmitted material of Mr Gardner showed that he did not have a camera "shoved into his face". It said that the programme's director ("the director"), who also operated the camera, began filming from close to the police car, at first directing the camera mainly at the windscreen of Mr Gardner's vehicle and varying the focus from time to time. The initial conversation between Mr Gardner and one of the police officers was as follows (extract from the unedited material):

Police officer: "How are you doing, driver, y'all right?...[company name] you work for, I take it...right, em, just, em, just...so you're aware we've actually got a film crew out today, but we'll not be divulging anything you don't need to be divulged.

Mr Gardner: I hope she's no got that on me, has she?

Police officer: Ehm, yes.

Mr Gardner: Aye, well.

Police officer: OK? It's the BBC, all right? Because it's a public thing, OK? Whether it gets used or not I don't know, OK?

Mr Gardner: Aye.

Police officer: But that's not up to us to decide what gets used and what's not gets used, OK? But just so you're aware for what you're saying and what you're speaking about, OK?

Mr Gardner: Aye".

The broadcaster said that although Mr Gardner expressed reservations about being filmed when he was first approached, he did not, in fact, ask that the programme makers stop filming him. Nor did he do so later on when he returned to the topic of the filming during his conversation with the police officer (extract from the unedited material):

Mr Gardner: "Can I just check, you say she's filming that...(indistinct)...I'm no goin' to appear on anything am I?"

Police officer: Yeah, yeah, you can go and have a word with her, she'll have a word with you.

Police officer: Chances are it's more for us than yourself.

Mr Gardner: I appreciate that no it's just I wouldn't want to be...

Police officer: No, I understand that as well".

Similarly, the BBC said that there was no request to stop filming during Mr Gardner's conversation with the director (extract from the unedited material):

Director: "Hello, how are you?"

Mr Gardner: Alright, you're not going to be using that for anything are you?

Director: Well, it's just to let you know I am filming a documentary for BBC Scotland about life on the A9 so I've been spending a couple of days with the patrol car, just a day in the life following them.

Mr Gardner: Aye.

Director: Ehm, it may or may not be used I don't know at the moment, ehm.

Mr Gardner: Right.

Director: But I just wanted to take, well, any comments you have".

Mr Gardner then made a few comments about how he felt about being caught speeding (for example, he said it was "just sod's law" and "just my luck"... "but I know, I've learnt my lesson") before the director asked for his contact details (extract from the unedited material):

Director: "Ehm, can I take a note of your name and number in case we need to follow anything up?"

Mr Gardner: Aye, aye, you can do, but I don't really want to, to be honest with you, cause I'm just...

Director: It's, I'm recording, so that's all being taken into consideration.

[...]

Director: So, it's Patrick is it?

Mr Gardner: Aye.

Director: And what's your number just in case I need to follow up just...

Mr Gardner: It's eh...

Director: It's unlikely that I will but, just in case, just so...

Mr Gardner: Eh my house number is".

The BBC said that Mr Gardner's legitimate expectation of privacy was limited because he was filmed in a public place and because he had been stopped by the police for breaking the law. It also said that the footage of him was recorded for potential inclusion in this programme which sought to convey an understanding of the work of the police in managing traffic and dealing with incidents on a road which presented particular hazards. The BBC added that Ofcom has consistently held that fostering an understanding of the work of the police was in the public interest.

For these reasons the BBC did not accept that Mr Gardner's consent to filming was required in this case, or that a request to stop filming (had he made one) need have been complied with. With regard to the footage of Mr Gardner recorded "from the passenger footwell" of his vehicle, the BBC said that it included nothing of an intrinsically private nature and it was not used in the programme.

- b) Mr Gardner complained that his privacy was unwarrantably infringed in the programme as broadcast because unobscured footage of him was included in the programme without his consent.

Mr Gardner said that his face was the only one shown as the "face of speeding lorry drivers on the A9". He said he was shocked to see himself on the programme and that his face should have been blurred. Mr Gardner said that the programme could have presented its point about speeding without showing his face. He said that it was "laughable" that the broadcaster considered that obscuring the HGV's number plate and not mentioning his name in the programme made a difference. He added that the broadcast of this item had a material impact on the relationship with his employer and on his family.

Mr Gardner said that he had given the programme makers his contact details and was informed that he would be contacted. He said that he had assumed that this was to ask for his consent to use the footage. However, at no point following the filming was he told that the footage would be used without his consent.

In response, the BBC said that it accepted that the images of Mr Gardner through the windscreen of his vehicle included in the programme, though brief and of poor resolution, would have allowed him to have been identified by those already familiar with his appearance. However, it argued that that the decision not to blur his face did not result in the unwarranted infringement of his privacy. The broadcaster said that the fact that Mr Gardner's was the only face of a speeding HGV driver shown in the programme was the result of circumstance, not design. It added that had the face of the driver of the other HGV driver who was caught

speeding and included in the programme, been visible<sup>1</sup>, the programme makers would not have thought it necessary to blur it.

The BBC said that it was clear from Mr Gardner's conversation with the director, as transcribed above under head a), that he was not told that he would be contacted. He was asked for his contact details in case the director needed "to follow up", but was also told that it was unlikely that she would do so. The broadcaster said that nothing the director said warranted the assumption that Mr Gardner would be contacted in order to seek his consent for any use of the footage in question. The BBC said that for reasons already given (see Summary of the broadcaster's response at head a) above), it does not believe that the programme makers were under any obligation to obtain Mr Gardner's consent for the broadcast of the footage of him.

In conclusion, the BBC argued that any infringement of Mr Gardner's privacy, either in filming him or in the broadcast of some of the resulting footage, was warranted. This was because of the general interest in fostering the audience's understanding of police work and the particular interest of throwing light on the issues connected with the introduction of average speed cameras on part of the A9; notably, the impact of this decision on road safety, the experience of road-users, and the situations likely to be encountered by the police patrolling the road. The BBC said that in this context, the manner in which Mr Gardner featured in the programme was neither gratuitous nor (as Mr Gardner suggested in his complaint) "purely for entertainment".

### **Representations on Ofcom's Preliminary View**

Ofcom prepared a Preliminary View on this case that Mr Gardner's complaint should not be upheld. The complainant commented on the Preliminary View, while the BBC chose not to do so. The further points made by the complainant which are relevant to the complaint being considered are summarised below.

Mr Gardner said that it was perfectly clear from his conversation with the police that he was "unhappy with the filming; felt very uncomfortable and did not want to appear in any television programme". He added that despite this Ofcom had concluded that because he did not say "stop filming me" to the camera operator he (Mr Gardner) "was somehow giving his consent".

In addition, Mr Gardner asked why he was not asked to sign a release form allowing his face to be shown. He said that he understood that this was a legal requirement in such circumstances and that this is why some people's faces are blurred out in reality television programmes featuring the police.

Mr Gardner also argued that Ofcom had not given sufficient consideration to the effect that his inclusion in the programme had on his family and his relationship with his employer.

### **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

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<sup>1</sup> The HGV driver's face was obscured in the footage by the reflection from the windscreen of his vehicle.

privacy in, or in connection with the obtaining of material included in, programmes in such services.

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

In reaching our Decision, we considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast and both parties' written submissions. We also examined the unedited and untransmitted footage of Mr Gardner during the incident in question. Ofcom also took careful account of the representations made by the complainant in response to Ofcom's Preliminary View on this complaint.

An individual's right to privacy has to be balanced against the competing rights of the broadcasters to freedom of expression. Neither right as such has precedence over the other and where there is a conflict between the two, it is necessary to 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 obtaining material included in programmes, must be warranted.

- a) Ofcom first considered Mr Gardner's complaint that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme in that he had a camera "shoved into his face" and was told that the filming was for the BBC. Also, he complained that despite requesting the filming be stopped, it continued and some footage of him was taken from the passenger footwell of his vehicle.

In assessing this head of Mr Gardner's complaint, Ofcom had regard to Practice 8.5 which states that any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted and Practice 8.7 which states that if an individual's or organisation's privacy is being infringed, and they ask that the filming, recording or live broadcast be stopped, the broadcaster should do so, unless it is warranted to continue. Ofcom also had regard to Practice 8.9 which states that the means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme.

In considering whether or not Mr Gardner's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme, Ofcom first considered the extent to which he had a legitimate expectation of privacy in the circumstances in which he was filmed.

Ofcom noted from the unedited and untransmitted material provided by the broadcaster that Mr Gardner was filmed after being stopped by the police for speeding on a public highway. Mr Gardner was filmed sitting behind the wheel in the cab of the HGV he was driving while being dealt with by the police officers and also while talking to the director (who stood on the "passenger footwell" of the HGV in order to speak to him). The filming was conducted openly and it was apparent that Mr Gardner was aware that he was being filmed by a programme

maker from the BBC, and that the material being recorded might be included in a television programme. We also noted that the conversation between Mr Gardner and the director was amicable and there was no suggestion from the unedited footage seen by Ofcom that Mr Gardner had the camera “shoved in his face”.

There may be circumstances in which an individual could have a legitimate expectation of privacy in a public place. With regard to this case, we noted that Mr Gardner was not a vulnerable person and was not in a distressed state (for example, as a result of consuming alcohol or drugs or because of an illness, disability or accident) at the time he was filmed. In the particular circumstances of this case, Ofcom considered that, the programme makers had filmed Mr Gardner in a situation that could reasonably be considered to be sensitive (being dealt with by a police officer at the road side having been caught speeding) and that, notwithstanding the public and open nature of the filming, an individual may expect some degree of privacy in these circumstances. Therefore, we concluded that Mr Gardner had a legitimate expectation of privacy in relation to the obtaining of the footage of him. However, given the circumstances in which Mr Gardner was filmed, i.e. on a public road, in the course of normal police business, Ofcom considered that his legitimate expectation of privacy was limited.

Having found that Mr Gardner had a limited legitimate expectation of privacy, Ofcom considered whether the programme makers had secured his consent to be filmed. It was clear from the unedited and untransmitted material provided by the broadcaster that the director did not seek Mr Gardner’s consent to film him (or that Mr Gardner voluntarily provided that consent). In addition, we observed that the BBC did not indicate that she had done so in its response to the complaint.

Ofcom also considered whether Mr Gardner had, at any point, requested that the programme-makers cease filming him. We recognised that there was some disparity between the recollections of Mr Gardner and the broadcaster’s position in relation to whether Mr Gardner asked for the filming to be stopped. Having carefully watched the unedited footage of Mr Gardner and read the transcript of his conversation with the director (as set out above), it appeared to Ofcom that Mr Gardner did make various comments that could be reasonably interpreted as requesting that the director stop filming him. On that basis, we believe that Practice 8.7 was relevant in this case.

In relation to Practice 8.5, taking all these factors into account, Ofcom also considered that Mr Gardner had not given his consent to this filming. Ofcom therefore considered that, in these circumstances, the filming may have resulted in an unwarranted infringement of Mr Gardner’s limited legitimate expectation of privacy.

In his representations on the Preliminary View, Mr Gardner said that because Ofcom considered that he did not tell the camera operator to stop filming him he (Mr Gardner) “was somehow giving his consent”. However, as set out above, in our view Mr Gardner had not consented to the filming.

We then went on to consider whether, in the absence of Mr Gardner providing his consent, the programme maker’s recording of the relevant footage was warranted. The Code states that “warranted” has a particular meaning. It means that, where broadcasters wish to justify an infringement of privacy as warranted, they should be able to demonstrate why, in the particular circumstances of the case, it is warranted. If the reason is that it is in the public interest, then the broadcaster should be able to demonstrate that the public interest outweighs the

right to privacy. Examples of public interest could include revealing or detecting crime, protecting public health or safety, exposing misleading claims by individuals or organisations or disclosing incompetence that affects the public.

We consider that there was a genuine public interest in the broadcast of this programme, in that it examined the work of the police with the aim of conveying to viewers an understanding of the work they do in managing traffic and dealing with incidents on a particular road which has a high level of road traffic accidents. In our view, allowing the programme maker to record the footage of Mr Gardner was important. This is because it enabled the broadcaster to use actual examples to illustrate the public work the police undertake and convey the messages in the programme. On this basis, notwithstanding the fact that Mr Gardner did not give his consent to the filming, Ofcom concluded that any infringement of his legitimate expectation of privacy in the making of the programme was warranted under Practice 8.5.

Finally, Ofcom considered whether, in accordance with Practice 8.9 of the Code, the means of obtaining the footage was proportionate in all the circumstances and, in particular, to the subject matter of the programme.

In assessing the manner in which the material was obtained, Ofcom noted that the programme maker filmed the footage as they followed police officers patrolling the A9 road in Scotland. The filming appeared to be unobtrusive. Ofcom noted that in addition to the footage of Mr Gardner's interaction with the police, the recording also resulted in the obtaining of Mr Gardner's full name and contact details. However, in Ofcom's view, the obtaining of such information was proportionate in this case. This is firstly in circumstances where it appears that the provision of the information was an integral part of the interview between Mr Gardner and the police in the routine course of police business, and secondly where the programme makers sought the information in order to be able to contact Mr Gardner at a later date if need be (which was explained to him). On that basis, Ofcom concluded that the means of obtaining the material for the programme were proportionate in the circumstances. Having taken all the factors above into account, Ofcom considered that, on balance, the broadcaster's right to freedom of expression and the public interest in obtaining the footage of Mr Gardner, outweighed the complainant's limited legitimate expectation of privacy in the circumstances of this case. Therefore, we found that there was no unwarranted infringement of Mr Gardner's privacy in connection with the obtaining of material for inclusion in the programme.

- b) Ofcom then considered Mr Gardner's complaint that his privacy was unwarrantably infringed in the programme as broadcast because unobscured footage of him was included in the programme without his consent.

In assessing Mr Gardner's complaint that his privacy was unwarrantably infringed in the broadcast of the programme because footage of him was shown without his consent, Ofcom had regard to Practice 8.6 of the Code. This states that, if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

As set out in the "Introduction and programme summary" section above, footage which included clear images of Mr Gardner's face (through the cab windscreen of his lorry) as a policer officer told him that he and his colleague had witnessed the complainant speeding was shown in the programme.

In considering whether or not Mr Gardner's privacy was unwarrantably infringed in the programme as broadcast, Ofcom first assessed the extent to which he might have a legitimate expectation of privacy in relation to the footage of him as broadcast.

The test as to whether a legitimate expectation of privacy arises is objective: it is fact sensitive and must always be judged in light of the circumstances in which the individual concerned finds him or herself.

In our view, whether or not someone who has been filmed while being questioned by the police in relation to an incident has a legitimate expectation of privacy in the broadcast of that footage depends on all the relevant circumstances.

In relation to the specific circumstances of Mr Gardner's case, as already referred to in head a) above, Ofcom considered that Mr Gardner had been filmed openly and that his conversations with the police officer and director demonstrated that he was aware that he was being filmed by a television camera and that his conduct and conversations had been recorded during the course of that filming. However, despite this and the public and open nature of the filming, Mr Gardner had been filmed in a situation that could reasonably be considered to be sensitive (being dealt with by a police officer at the road side having been caught speeding), and in which an individual may expect some degree of privacy. We also noted that Mr Gardner admitted that he had been speeding, which is a criminal offence, and that he was issued with a speeding ticket for this offence. Ofcom understands that a speeding ticket does not normally result in a criminal record. It is therefore unlikely that this information would have been put into the public domain.

Taking account of all the factors noted above, and in the particular circumstances of this case, Ofcom concluded that Mr Gardner had a legitimate expectation of privacy in relation to the broadcast of the footage of him in the programme. Nonetheless, given the circumstances in which Mr Gardner was filmed and the fact that, as he acknowledged to the police officer, he had committed a criminal offence by speeding, Ofcom considered that Mr Gardner's legitimate expectation of privacy in relation to the broadcast of the relevant footage was limited.

Ofcom then considered whether Mr Gardner was identifiable in the programme as broadcast. While Mr Gardner was not named in the programme, his face was shown unobscured and his voice was heard. We therefore considered that Mr Gardner was identifiable from the footage included in the programme (and, in fact, was so identified by members of his local community).

We then assessed whether Mr Gardner's consent had been secured before the footage was broadcast in accordance with Practice 8.6. We noted that in his complaint Mr Gardner said that he had assumed that the director had taken his contact details so that the programme could contact him to secure consent to use the relevant footage but that none of the programme makers contacted him. We also noted that, in its statement in response to the complaint, the BBC said that it was not under an obligation to obtain Mr Gardner's consent prior to broadcasting the footage given the circumstances in which he was filmed. Therefore, we concluded that the programme makers did not obtain Mr Gardner's consent for the footage of him to be included in the programme and that the broadcast of this footage may therefore have resulted in an unwarranted infringement of Mr Gardner's privacy.

In his representations on the Preliminary View, Mr Gardner questioned why he had not been asked to sign a release form allowing his face to be shown and explained that he understood this to be a legal requirement. Ofcom noted that programme makers are not required to secure consent for the filming and/or inclusion of footage of information about individuals in all circumstances. We also noted that in circumstances where a programme maker considers that he or she does need to secure consent in order to avoid the unwarranted infringement of the privacy of an individual or organisation it is for he or she to decide how best to secure that consent (i.e. the Ofcom Broadcasting Code does not require programme makers to get a signed release form in such circumstances).

However, given our conclusions that Mr Gardner had a legitimate (albeit limited) expectation of privacy with regard to the broadcast of the footage of him and that he had not consented to the broadcast of this footage, we went on to consider whether any infringement of Mr Gardner's privacy in this respect was warranted.

As already referred to above in head a), we considered that there was a genuine public interest in broadcasting this programme because it examined the work of the police with the aim of conveying to viewers an understanding of how they manage traffic and deal with incidents on a road that has a high level of road traffic accidents. In particular, the inclusion of this footage in the programme enabled the broadcaster to illustrate to the public the work the police undertake when dealing with the type of speeding infringements which can lead to accidents. We also noted that, this footage formed part of a sequence which, taken in its entirety, showed not only the challenges faced by the police, but also the pressure which some HGV drivers feel to meet commercial deadlines or to avoid frustrating other drivers who are caught behind them. In our view, the inclusion of this footage thereby contributed to the public debate on the appropriate level of the speed restrictions placed on our roads and the best way to police them.

Ofcom acknowledged Mr Gardner's claim (in response to the Preliminary View) that the inclusion of the relevant footage of and information about him in the programme had an impact on him, his family and his relationship with his employer. However, in determining if the infringement of his privacy was warranted, we balanced this against the broadcaster's right to freedom of expression and viewers' right to receive information and ideas without unnecessary interference.

Ofcom took all the factors set out above into account (in particular, that Mr Gardner was filmed openly in a public place and had committed the criminal offence of speeding at the time he was filmed; and, that the inclusion of the material served the public interest and contributed to public debate). As a result, Ofcom considered that the broadcaster's right to freedom of expression, and the public interest in broadcasting the relevant material in order to illustrate the points noted above, outweighed Mr Gardner's legitimate expectation of privacy in relation to the inclusion of the footage in the programme.

Therefore, Ofcom found that there was no unwarranted infringement of Mr Gardner's privacy in the programme as broadcast.

**Ofcom found that Mr Gardner's complaint of unwarranted infringement of privacy in connection with the obtaining of material included in the programme and in the programme as broadcast should not be upheld.**

## Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed between 9 and 22 September 2014 and decided that the broadcaster did not breach Ofcom's codes, licence conditions or other regulatory requirements.

### Investigations conducted under the Procedures for investigating breaches of content standards for television and radio<sup>1</sup>

Programme	Broadcaster	Transmission date	Categories
Shajbaatir Rupkotha	Channel Nine UK	25/04/2014	Product placement

For more information about how Ofcom conducts investigations about content standards, go to: <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/>.

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<sup>1</sup> This table was amended after publication to correct a factual inaccuracy.

## Complaints Assessed, Not Investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 9 and 22 September 2014 because they did not raise issues warranting investigation.

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

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

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Home and Away	5*	28/08/2014	Sexual material	1
The Expendables	5*	20/08/2014	Generally accepted standards	1
The Walking Dead (trailer)	5*	25/08/2014	Scheduling	1
Rough Night in Jericho	5USA	17/08/2014	Violence and dangerous behaviour	1
The Dam Busters	5USA	07/09/2014	Race discrimination/offence	1
Christian O'Connell Breakfast Show	Absolute Radio	11/09/2014	Under 18s in programmes	1
Frank Skinner	Absolute Radio	06/09/2014	Race discrimination/offence	1
News	ARY News	30/08/2014	Scheduling	1
BBC News	BBC 1	05/08/2014	Generally accepted standards	1
BBC News	BBC 1	07/08/2014	Due impartiality/bias	1
BBC News	BBC 1	15/08/2014	Outside of remit / other	1
BBC News	BBC 1	16/08/2014	Outside of remit / other	1
BBC News	BBC 1	09/09/2014	Due impartiality/bias	1
BBC News	BBC 1	09/09/2014	Elections/Referendums	1
BBC News	BBC 1	10/09/2014	Due impartiality/bias	1
BBC News	BBC 1	13/09/2014	Due impartiality/bias	2
BBC News	BBC 1	14/09/2014	Due impartiality/bias	2
BBC News	BBC 1	14/09/2014	Religious/Beliefs discrimination/offence	1
BBC News	BBC 1	Various	Due impartiality/bias	1
BBC News at One	BBC 1	14/08/2014	Outside of remit / other	3
BBC News at One	BBC 1	21/08/2014	Outside of remit / other	1
BBC News at One	BBC 1	09/09/2014	Due impartiality/bias	1
BBC News at One	BBC 1	16/09/2014	Nudity	1
BBC News at Six	BBC 1	14/08/2014	Outside of remit / other	7
BBC News at Six	BBC 1	15/08/2014	Outside of remit / other	1
BBC News at Six	BBC 1	11/09/2014	Due impartiality/bias	44

BBC News at Six	BBC 1	Various	Television Access Services	1
BBC News at Ten	BBC 1	14/08/2014	Outside of remit / other	9
BBC News at Ten	BBC 1	10/09/2014	Due accuracy	1
BBC News at Ten	BBC 1	11/09/2014	Due impartiality/bias	18
BBC News at Ten	BBC 1	19/09/2014	Due impartiality/bias	1
Big School	BBC 1	05/09/2014	Disability discrimination/offence	1
Boomers	BBC 1	29/08/2014	Violence and dangerous behaviour	1
Breakfast	BBC 1	15/08/2014	Outside of remit / other	1
Breakfast	BBC 1	08/09/2014	Under 18s in programmes	1
Breakfast	BBC 1	09/09/2014	Due impartiality/bias	3
Breakfast	BBC 1	11/09/2014	Due impartiality/bias	1
Doctor Who	BBC 1	30/08/2014	Generally accepted standards	1
Doctor Who	BBC 1	30/08/2014	Violence and dangerous behaviour	2
EastEnders	BBC 1	09/09/2014	Sexual material	2
EastEnders	BBC 1	16/09/2014	Scheduling	3
EastEnders	BBC 1	16/09/2014	Violence and dangerous behaviour	1
F1: Grand Prix	BBC 1	07/09/2014	Violence and dangerous behaviour	2
Great North Run 2014	BBC 1	07/09/2014	Outside of remit / other	1
Holby City	BBC 1	02/09/2014	Generally accepted standards	1
John Bishop: The Sunshine Tour	BBC 1	12/07/2013	Race discrimination/offence	1
Kevin Bridges: Live at the Referendum	BBC 1	06/09/2014	Generally accepted standards	1
New Tricks	BBC 1	08/09/2014	Generally accepted standards	1
Our Zoo	BBC 1	03/09/2014	Animal welfare	1
Our Zoo	BBC 1	03/09/2014	Generally accepted standards	1
Panorama	BBC 1	01/09/2014	Scheduling	1
Pointless	BBC 1	19/08/2014	Materially misleading	1
Scotland Decides	BBC 1	16/09/2014	Due impartiality/bias	1
Scotland Decides: The Big, Big Debate	BBC 1	11/09/2014	Due impartiality/bias	3
Scotland Decides: The Big, Big Debate	BBC 1	11/09/2014	Outside of remit / other	1
Scotland Decides: The Big, Big Debate	BBC 1	11/09/2014	Sexual material	1
Scrappers	BBC 1	05/09/2014	Violence and dangerous behaviour	1
Strictly Come Dancing	BBC 1	N/A	Voting	1
The One Show	BBC 1	16/09/2014	Due impartiality/bias	1
This Week	BBC 1	11/09/2014	Due impartiality/bias	1
Tumble	BBC 1	23/08/2014	Generally accepted standards	1

Reporting Scotland	BBC 1 Scotland	28/08/2014	Due impartiality/bias	1
Reporting Scotland	BBC 1 Scotland	16/09/2014	Due impartiality/bias	2
Athletics	BBC 2	07/09/2014	Outside of remit / other	1
BBC News	BBC 2	16/09/2014	Due impartiality/bias	2
Horizon	BBC 2	03/09/2014	Crime	1
Only Connect	BBC 2	08/09/2014	Disability discrimination/offence	2
Operation Stonehenge: What Lies Beneath	BBC 2	11/09/2014	Scheduling	1
Top Gear	BBC 2	02/03/2014	Generally accepted standards	1
Top Gear	BBC 2	09/03/2014	Religious/Beliefs discrimination/offence	1
Top Gear	BBC 2	17/08/2014	Religious/Beliefs discrimination/offence	1
TOTP 2	BBC 2	13/09/2014	Generally accepted standards	1
Family Guy	BBC 3	07/09/2014	Generally accepted standards	1
Family Guy	BBC 3	08/09/2014	Generally accepted standards	1
The Call Centre	BBC 3	08/09/2014	Offensive language	1
BBC iPlayer promotion	BBC channels	Various	Materially misleading	1
BBC News	BBC channels	14/08/2014	Outside of remit / other	1
BBC News	BBC channels	18/09/2014	Due impartiality/bias	1
BBC News	BBC channels	22/09/2014	Due accuracy	1
BBC News	BBC channels	Various	Due impartiality/bias	1
BBC News	BBC channels	Various	Due impartiality/bias	1
BBC News	BBC channels	Various	Television Access Services	1
BBC News	BBC News Channel	14/08/2014	Generally accepted standards	1
BBC News	BBC News Channel	10/09/2014	Generally accepted standards	1
BBC News	BBC News Channel	11/09/2014	Due impartiality/bias	2
BBC News	BBC News Channel	12/09/2014	Outside of remit / other	1
BBC News	BBC News Channel	13/09/2014	Due impartiality/bias	1
Jeremy Vine	BBC Radio 2	12/08/2014	Generally accepted standards	1
Jeremy Vine	BBC Radio 2	09/09/2014	Due impartiality/bias	1
BBC News	BBC Radio 4	17/09/2014	Due impartiality/bias	1
The Martin Beck Killings	BBC Radio 4	23/08/2014	Generally accepted standards	1
The Now Show	BBC Radio 4	12/09/2014	Generally accepted standards	1
5 Live Breakfast	BBC Radio 5 Live	18/09/2014	Materially misleading	1
Call Kaye	BBC Radio Scotland	19/09/2014	Generally accepted standards	1
Advertisement	Boomerang	18/09/2014	Advertising content	1
Harriet's Army	CBBC	10/09/2014	Offensive language	1

Wipeout USA	Challenge +1	24/08/2014	Offensive language	1
Advertisement	Channel 4	14/09/2014	Advertising content	1
All Creatures Great and Stuffed	Channel 4	10/09/2014	Animal welfare	1
Channel 4 News	Channel 4	12/08/2014	Generally accepted standards	4
Channel 4 News	Channel 4	06/09/2014	Generally accepted standards	1
Channel 4 News	Channel 4	08/09/2014	Generally accepted standards	1
Channel 4 News	Channel 4	10/09/2014	Under 18s in programmes	1
Channel 4 News	Channel 4	18/09/2014	Violence and dangerous behaviour	1
Come Dine with Me	Channel 4	30/08/2014	Race discrimination/offence	3
Cutting Edge: Going to the Dogs	Channel 4	12/06/2014	Animal welfare	2
Dispatches	Channel 4	18/08/2014	Violence and dangerous behaviour	1
Don't Stop the Music	Channel 4	09/09/2014	Offensive language	1
Grand Designs	Channel 4	10/09/2014	Violence and dangerous behaviour	1
Hollyoaks	Channel 4	05/09/2014	Scheduling	1
Hollyoaks	Channel 4	17/09/2014	Generally accepted standards	1
Jimmy Carr: Telling Jokes	Channel 4	05/09/2014	Religious/Beliefs discrimination/offence	1
Jimmy Carr: Telling Jokes	Channel 4	05/09/2014	Sexual orientation discrimination/offence	1
Paradise: Love	Channel 4	01/09/2014	Generally accepted standards	1
Posh Pawn	Channel 4	09/09/2014	Offensive language	2
The Last Leg	Channel 4	05/09/2014	Generally accepted standards	1
The Real Noah's Ark: Secret History	Channel 4	14/09/2014	Religious/Beliefs discrimination/offence	1
The Simpsons	Channel 4	11/09/2014	Religious/Beliefs discrimination/offence	1
Advertisement	Channel 5	12/09/2014	Advertising content	1
Big Brother	Channel 5	Various	Outside of remit / other	1
Can't Pay? We'll Take it Away!	Channel 5	17/09/2014	Television Access Services	1
Celebrity Big Brother	Channel 5	18/08/2014	Generally accepted standards	10
Celebrity Big Brother	Channel 5	18/08/2014	Outside of remit / other	2
Celebrity Big Brother	Channel 5	18/08/2014	Transgender discrimination/offence	1
Celebrity Big Brother	Channel 5	19/08/2014	Offensive language	1
Celebrity Big Brother	Channel 5	20/08/2014	Generally accepted standards	162
Celebrity Big Brother	Channel 5	20/08/2014	Outside of remit / other	1
Celebrity Big Brother	Channel 5	20/08/2014	Sexual orientation discrimination/offence	4

Celebrity Big Brother	Channel 5	21/08/2014	Generally accepted standards	101
Celebrity Big Brother	Channel 5	22/08/2014	Generally accepted standards	220
Celebrity Big Brother	Channel 5	23/08/2014	Generally accepted standards	78
Celebrity Big Brother	Channel 5	24/08/2014	Generally accepted standards	71
Celebrity Big Brother	Channel 5	25/08/2014	Generally accepted standards	17
Celebrity Big Brother	Channel 5	26/08/2014	Generally accepted standards	16
Celebrity Big Brother	Channel 5	26/08/2014	Race discrimination/offence	3
Celebrity Big Brother	Channel 5	27/08/2014	Generally accepted standards	36
Celebrity Big Brother	Channel 5	28/08/2014	Generally accepted standards	243
Celebrity Big Brother	Channel 5	28/08/2014	Transgender discrimination/offence	2
Celebrity Big Brother	Channel 5	29/08/2014	Generally accepted standards	11
Celebrity Big Brother	Channel 5	29/08/2014	Race discrimination/offence	1
Celebrity Big Brother	Channel 5	30/08/2014	Generally accepted standards	24
Celebrity Big Brother	Channel 5	30/08/2014	Transgender discrimination/offence	1
Celebrity Big Brother	Channel 5	31/08/2014	Generally accepted standards	102
Celebrity Big Brother	Channel 5	31/08/2014	Outside of remit / other	1
Celebrity Big Brother	Channel 5	01/09/2014	Offensive language	1
Celebrity Big Brother	Channel 5	02/09/2014	Generally accepted standards	1
Celebrity Big Brother	Channel 5	03/09/2014	Generally accepted standards	1
Celebrity Big Brother	Channel 5	04/09/2014	Generally accepted standards	51
Celebrity Big Brother	Channel 5	05/09/2014	Generally accepted standards	16
Celebrity Big Brother	Channel 5	05/09/2014	Materially misleading	1
Celebrity Big Brother	Channel 5	06/09/2014	Generally accepted standards	6
Celebrity Big Brother	Channel 5	07/09/2014	Generally accepted standards	5
Celebrity Big Brother	Channel 5	07/09/2014	Materially misleading	1
Celebrity Big Brother	Channel 5	08/09/2014	Generally accepted standards	79
Celebrity Big Brother	Channel 5	08/09/2014	Nudity	1
Celebrity Big Brother	Channel 5	08/09/2014	Outside of remit / other	1
Celebrity Big Brother	Channel 5	09/09/2014	Generally accepted standards	2
Celebrity Big Brother	Channel 5	09/09/2014	Sexual orientation discrimination/offence	1
Celebrity Big Brother	Channel 5	10/09/2014	Generally accepted standards	12
Celebrity Big Brother	Channel 5	10/09/2014	Outside of remit / other	2

Celebrity Big Brother	Channel 5	11/09/2014	Gender discrimination/offence	6
Celebrity Big Brother	Channel 5	11/09/2014	Generally accepted standards	12
Celebrity Big Brother	Channel 5	12/09/2014	Generally accepted standards	2
Celebrity Big Brother	Channel 5	12/09/2014	Outside of remit / other	2
Celebrity Big Brother's Bit on the Side	Channel 5	18/08/2014	Generally accepted standards	2
Celebrity Big Brother's Bit on the Side	Channel 5	29/08/2014	Generally accepted standards	1
Celebrity Big Brother's Bit on the Side	Channel 5	03/09/2014	Transgender discrimination/offence	1
Marston's Brewery: One Ale of a Job!	Channel 5	29/08/2014	Violence and dangerous behaviour	1
The Dog Rescuers	Channel 5	08/09/2014	Offensive language	1
The Gadget Show	Channel 5	15/09/2014	Violence and dangerous behaviour	1
The Gadget Show	Channel 5	18/09/2014	Advertising/editorial distinction	1
The Secret Life of Pets	Channel 5	16/09/2014	Materially misleading	1
The Walking Dead (trailer)	Channel 5	06/09/2014	Scheduling	1
The Wright Stuff	Channel 5	01/09/2014	Crime	1
The Wright Stuff	Channel 5	15/09/2014	Due impartiality/bias	1
The Wright Stuff	Channel 5	16/09/2014	Animal welfare	2
Coco Pops' sponsorship of CITV Breakfast	CITV	21/08/2014	HFSS	1
Inside Amy Schumer (trailer)	Comedy Central	07/09/2014	Scheduling	1
Alpen's sponsorship	Dave	14/01/2014	Sponsorship	1
Have I Got News For You	Dave	N/A	Generally accepted standards	1
Top Gear	Dave	07/09/2014	Generally accepted standards	1
Programming	Drama	N/A	Television Access Services	1
The Bill	Drama	27/08/2014	Offensive language	1
The Bill	Drama	31/08/2014	Offensive language	1
The Bill	Drama	02/09/2014	Offensive language	1
The Bill	Drama	07/09/2014	Offensive language	1
Hollyoaks	E4	29/08/2014	Generally accepted standards	1
Hollyoaks	E4	09/09/2014	Offensive language	1
Melissa and Joey	E4	25/08/2014	Sexual material	1
Rude Tube	E4	13/09/2014	Violence and dangerous behaviour	1
Breakfast Show	Fire Radio	03/09/2014	Generally accepted standards	1
Breakfast Show	Fire Radio	04/09/2014	Generally accepted standards	3
Sehr Transmisson	GEO UK	26/07/2014	Undue prominence	1
Jack Van Impe Presents	God TV	11/09/2014	Outside of remit / other	1
Vikings	History	15/06/2014	Surreptitious	1

			advertising	
Advertisement	ITV	10/09/2014	Advertising content	1
Advertisement	ITV	13/09/2014	Advertising content	1
Advertisement	ITV	N/A	Outside of remit / other	1
Chasing Shadows	ITV	04/09/2014	Undue prominence	1
Cilla	ITV	15/09/2014	Disability discrimination/offence	1
Comparethemarket.com's sponsorship of Coronation Street	ITV	01/09/2014	Generally accepted standards	1
Coronation Street	ITV	27/08/2014	Generally accepted standards	1
Coronation Street	ITV	01/09/2014	Disability discrimination/offence	1
Coronation Street	ITV	03/09/2014	Race discrimination/offence	1
Coronation Street	ITV	05/09/2014	Materially misleading	1
Coronation Street	ITV	07/09/2014	Generally accepted standards	1
Coronation Street	ITV	15/09/2014	Violence and dangerous behaviour	1
Coronation Street	ITV	17/09/2014	Generally accepted standards	1
Dickinson's Real Deal	ITV	19/09/2014	Materially misleading	1
Gems TV	ITV	02/09/2014	Materially misleading	2
Good Morning Britain	ITV	28/08/2014	Elections/Referendums	1
Good Morning Britain	ITV	08/09/2014	Competitions	1
ITV Football Coverage (Trailer)	ITV	28/09/2014	Materially misleading	1
ITV News	ITV	11/09/2014	Due impartiality/bias	2
ITV News and Weather	ITV	06/09/2014	Due accuracy	1
ITV News and Weather	ITV	08/09/2014	Due impartiality/bias	2
ITV News at Ten and Weather	ITV	12/09/2014	Due impartiality/bias	1
Loose Women	ITV	08/09/2014	Generally accepted standards	1
Programming	ITV	Various	Scheduling	1
Prom Crazy: Frocks and Ferraris	ITV	28/08/2014	Crime	1
Sunday Night at the Palladium	ITV	14/09/2014	Generally accepted standards	1
Sunday Night at the Palladium	ITV	14/09/2014	Nudity	1
Sunday Night at the Palladium	ITV	14/09/2014	Offensive language	1
The Alan Titchmarsh Show	ITV	15/09/2014	Generally accepted standards	1
The Chase	ITV	19/09/2014	Materially misleading	1
The Jeremy Kyle Show	ITV	08/09/2014	Religious/Beliefs discrimination/offence	1
The Jeremy Kyle Show	ITV	12/09/2014	Sexual material	1
The Jeremy Kyle Show	ITV	16/09/2014	Generally accepted standards	1

The Suspicions of Mr Whicher	ITV	07/09/2014	Outside of remit / other	1
The X Factor	ITV	06/09/2014	Generally accepted standards	1
The X Factor	ITV	06/09/2014	Sexual orientation discrimination/offence	1
The X Factor	ITV	07/09/2014	Generally accepted standards	1
The X Factor	ITV	07/09/2014	Religious/Beliefs discrimination/offence	7
The X Factor	ITV	13/09/2014	Generally accepted standards	3
The X Factor	ITV	20/09/2014	Competitions	1
This Morning	ITV	27/08/2014	Materially misleading	1
This Morning	ITV	01/09/2014	Generally accepted standards	1
This Morning	ITV	02/09/2014	Transgender discrimination/offence	1
This Morning	ITV	08/09/2014	Gender discrimination/offence	10
This Morning	ITV	09/09/2014	Materially misleading	1
This Morning	ITV	09/09/2014	Scheduling	2
This Morning	ITV	17/09/2014	Competitions	1
Through the Keyhole	ITV	06/09/2014	Generally accepted standards	1
Through the Keyhole	ITV	13/09/2014	Generally accepted standards	1
You've Been Framed!	ITV	23/08/2014	Harm	1
You've Been Framed!	ITV	06/09/2014	Generally accepted standards	1
The Jeremy Kyle Show	ITV2	28/08/2014	Generally accepted standards	1
The Job Lot	ITV2	02/09/2014	Generally accepted standards	1
The Only Way is Essex	ITV2	08/09/2014	Offensive language	1
The Xtra Factor	ITV2	06/09/2014	Generally accepted standards	1
The Xtra Factor	ITV2	07/09/2014	Violence and dangerous behaviour	1
You've Been Framed!	ITV2	11/09/2014	Generally accepted standards	1
Foyle's War	ITV3	23/08/2014	Advertising minutage	1
Heartbeat	ITV3	12/09/2014	Generally accepted standards	1
Nick Ferrari	LBC 97.3FM	21/08/2014	Religious/Beliefs discrimination/offence	1
Nick Ferrari	LBC 97.3FM	21/08/2014	Religious/Beliefs discrimination/offence	1
Nick Ferrari	LBC 97.3FM	27/08/2014	Race discrimination/offence	1
Four in a Bed	More4	26/08/2014	Race discrimination/offence	1
Jimmy Carr: Being Funny	More4	23/08/2014	Sexual orientation discrimination/offence	1
UK Top 40	MTV	12/09/2014	Generally accepted	1

			standards	
Survive the Tribe	National Geographic	20/08/2014	Animal welfare	1
Programming	Premier Christian Radio	31/08/2014	Violence and dangerous behaviour	1
Outspoken	Radio Verulam	02/09/2014	Commercial communications on radio	1
Most Haunted	Really	21/08/2014	Materially misleading	1
Most Haunted	Really	28/08/2014	Materially misleading	1
News	Rock FM	26/08/2014	Materially misleading	1
News	RT	10/09/2014	Due accuracy	1
Decision Time Scotland (trailer)	Sky Livingit	05/09/2014	Due impartiality/bias	1
Decision Time Scotland (trailer)	Sky News	04/09/2014	Due impartiality/bias	1
Decision Time Scotland (trailer)	Sky News	05/09/2014	Due impartiality/bias	1
Decision Time Scotland (trailer)	Sky News	06/09/2014	Elections/Referendums	1
Decision Time Scotland (trailer)	Sky News	08/09/2014	Elections/Referendums	1
Decision Time Scotland (trailer)	Sky News	09/09/2014	Elections/Referendums	1
Decision Time Scotland (trailer)	Sky News	11/09/2014	Due impartiality/bias	1
Decision Time Scotland (trailer)	Sky News	15/09/2014	Due impartiality/bias	1
Sky News	Sky News	17/09/2014	Offensive language	43
Sky News at 5 with Jeremy Thompson	Sky News	03/09/2014	Generally accepted standards	1
Sky News at 6 with Jeremy Thompson	Sky News	28/08/2014	Due impartiality/bias	1
Sky News at Ten	Sky News	10/09/2014	Due impartiality/bias	1
Sky News Tonight with Adam Boulton	Sky News	16/09/2014	Due impartiality/bias	2
Sky News with Colin Brazier	Sky News	05/09/2014	Race discrimination/offence	1
Sky News with Dermot Murnaghan	Sky News	08/09/2014	Under 18s in programmes	1
Sunrise	Sky News	27/08/2014	Due impartiality/bias	1
Sunrise	Sky News	16/09/2014	Due impartiality/bias	2
Sunrise with Steve Dixon	Sky News	09/08/2014	Generally accepted standards	1
Programming	Sky Sports	Various	Outside of remit / other	1
Football League: Sheffield Wednesday v Nottingham Forest	Sky Sports 1	30/08/2014	Generally accepted standards	1
Premier League Football	Sky Sports 1	16/08/2014	Offensive language	1
Sky Sports 5 promo	Sky Sports 1	23/08/2014	Materially misleading	1
Programming	Sky Sports 5	Various	Materially misleading	1
Gillette Soccer Saturday	Sky Sports News	23/08/2014	Generally accepted standards	1
Programming	Sky Sports News	15/09/2014	Materially misleading	1

Road Wars	Sky1	06/09/2014	Offensive language	1
The Simpsons	Sky1	06/09/2014	Offensive language	1
Referendum Campaign Broadcast	STV	08/09/2014	Due impartiality/bias	1
Scotland Tonight	STV	09/09/2014	Due impartiality/bias	2
STV News at Six	STV	03/09/2014	Due impartiality/bias	1
News	Sunrise Radio	24/07/2014	Due impartiality/bias	1
Alan Brazil Sports Breakfast	Talksport	12/08/2014	Generally accepted standards	28
Hawksbee and Jacobs	Talksport	02/09/2014	Generally accepted standards	1
Hawksbee and Jacobs	Talksport	09/09/2014	Race discrimination/offence	1
Killer Karaoke	TruTV	21/08/2014	Animal welfare	1
Adult Channels	Various	Various	Outside of remit / other	1
News	Various	08/09/2014	Due impartiality/bias	1
Programming	Various	10/09/2014	Offensive language	1
Programming	Various	Various	Competitions	1
Programming	Various	Various	Race discrimination/offence	1
Electronic Programme Guide	Virgin Media	23/07/2014	Generally accepted standards	1
The Hits	Viva	15/09/2014	Offensive language	1
Ancient Black Ops (trailer)	Yesterday	04/09/2014	Violence and dangerous behaviour	1

## Investigations List

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

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

Here are alphabetical lists of new investigations launched between 11 and 24 September 2014.

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

Programme	Broadcaster	Transmission Date
Advertising minutage	HUM Europe	various
Bait Car	truTV	23/08/2014
Countdown to Murder	Channel 5	03/09/2014
ITV News	ITV	28/08/2014
ITV News London	ITV London	28/08/2014
Lovett Estate Agent's sponsorship	Jack FM (South Coast)	various
Newsbeat	BBC Radio 1	03/09/2014
Radio Clyde News	Radio Clyde	11/08/2014
Saturday Breakfast	Metro Radio	13/09/2014
Today	BBC Radio 4	20/08/2014

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

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

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

<b>Licensee</b>	<b>Licensed service</b>
Bangla TV (UK) Limited	Bangla TV
Amir Ahmed	Radio Ramadan

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

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