

# **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.**

## Notice of Sanction

### Yoga for You

Lamhe TV, 17 June 2014, 09:30

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#### Introduction

Lamhe TV was a general entertainment channel for the South Asian community broadcasting in English and Hindi. The licence for Lamhe TV was held by Asia TV Limited (“Asia TVL” or “the Licensee”)<sup>1</sup>.

This sanction relates to an episode of *Yoga for You*, a television series containing lifestyle advice based on ancient Indian practices of yoga, broadcast on 17 June 2014.

#### Summary of Decision

In its decision published on 3 November 2014, in issue 265 of the Broadcast Bulletin<sup>2</sup>, Ofcom found that the programme contained unsubstantiated and unqualified medical advice to treat serious medical conditions, including cancer, with significant potential harm to viewers. In particular, the broadcast included claims by the presenter that certain ayurvedic products and alternative remedies could cure cancer and he suggested that these treatments alone might treat the conditions successfully. Ofcom found that as a result some viewers with serious medical conditions might not seek, forego, or delay conventional medical treatment on the basis of the alternative treatments promoted in the programme. Ofcom concluded that the Licensee failed to provide adequate protection to viewers from the harmful material.

Ofcom found that the programme breached Rule 2.1 of the Code<sup>3</sup> which states:

“Generally accepted standards must be 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”.

In accordance with Ofcom’s penalty guidelines, Ofcom decided that it was appropriate and proportionate in the circumstances to impose a financial penalty of **£25,000** on Asia TVL in respect of the serious Code breach (payable to HM Paymaster General).

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<sup>1</sup> At the time of broadcast the licence was held by Asia TVL. However, the Licensee surrendered its licence for this service on 30 March 2015.

<sup>2</sup> See:<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb2641/obb265.pdf>

<sup>3</sup> In its finding Ofcom stated that Lamhe TV also breached Rules 9.4 (Products, services and trade marks must not be promoted in programming) and 9.5 (No undue prominence may be given in programming to a product, service or trade mark) of the Code. However, Ofcom considered that although the contravention caused concern it was not so serious as to warrant consideration of a statutory sanction.

The full decision is available at:

[http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/Asia\\_TV\\_Limited.pdf](http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/Asia_TV_Limited.pdf)

## Note to Broadcasters

### Code on the Scheduling of Television Advertising

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On 9 July 2015, Ofcom published a Statement<sup>1</sup> setting out:

- revisions to the Code on the Scheduling of Television Advertising (COSTA); and
- the approach we will take to the enforcement of rules which limit advertising interruptions in programmes on the basis of a programme's 'scheduled duration'.

The Statement informed broadcasters that we would begin enforcing compliance on this basis from 1 November 2015.

Following publication of the Statement, Ofcom has received representations from licensees that the implementation period poses significant operational and commercial challenges for certain broadcasters (e.g. in many cases commercial arrangements lasting into 2016 are already in place and that in some cases broadcasters may need to undertake an extensive exercise of editing content in order to secure compliance).

Having regard to these specific challenges, Ofcom has decided to change the implementation date to **1 April 2016**.

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<sup>1</sup> [http://stakeholders.ofcom.org.uk/consultations/scheduling-adverts/statement/?utm\\_source=updates&utm\\_medium=email&utm\\_campaign=costa-statement](http://stakeholders.ofcom.org.uk/consultations/scheduling-adverts/statement/?utm_source=updates&utm_medium=email&utm_campaign=costa-statement)

## Standards cases

### In Breach

#### Britain's Got Talent

ITV, 31 May 2015, 19:30

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#### Introduction

*Britain's Got Talent* ("BGT") is a national television contest broadcast annually on ITV. The programme is complied by the ITV compliance department ("ITV") on behalf of the ITV Network.

In the 2015 series of *BGT*, contestants competed to win a cash prize of £250,000 and the opportunity to perform in the Royal Variety Performance later in the year. Viewers of the series final were invited to vote to determine the show's winner. They were able to vote using a free downloadable smartphone or tablet app, which permitted up to five votes at no cost. Alternatively, viewers could vote via phone or text, charged at a premium rate of 50p per call/text (i.e. per vote), 15p of which ITV donated to the Entertainment Artistes Benevolent Fund – a charity that, among other things, stages the annual Royal Variety Performance.

The series final was won by "*Jules O'Dwyer & Matisse*", an act featuring a variety of obedience and agility skills performed by a dog called Matisse under the instruction of his trainer, Jules O'Dwyer. The act "*Jules O'Dwyer & Matisse*" performed in three shows during the series. Although in the first round, shown on 23 May, Matisse was the only dog featured in the act, in both the semi-final, shown on 26 May, and the series final other dogs also took part. In the semi-final Chase, a dog which looked similar to Matisse, appeared onstage alongside Matisse immediately after the act while Jules O'Dwyer spoke to the panel of judges. Likewise, in the final a three-legged dog named Skippy appeared onstage as part of and immediately after the act.

In a television interview on the *Lorraine* programme broadcast on 1 June 2015, Jules O'Dwyer mentioned that, although Matisse had performed the majority of the act in the final, a tightrope-walking sequence had actually been performed by Chase.

Ofcom received 1,175 complaints about the *BGT* final. In summary, complainants were concerned that either they or other viewers who had voted for "*Jules O'Dwyer & Matisse*" in the final had been misled, on the grounds that the programme did not make clear that the tightrope sequence had not been performed by Matisse.

Ofcom considered the programme raised issues warranting investigation under Rule 2.14 of the Code, which states that:

"Broadcasters must ensure that viewers...are not materially misled about any broadcast competition or voting."

We therefore sought ITV's comments on how it considered the programme complied with this rule.

## Response

### The name of the act

ITV said that Jules O'Dwyer was an established dog trainer, who had performed dog obedience shows for some years. It said that "Jules had not historically used '*Jules O'Dwyer & Matisse*' as the name of her act", but that the name had arisen during her original audition interview when she had said, "*I'm Jules, this is Matisse. Together we are Jules and Matisse*". The Licensee said that "the producers had therefore used this name for the act when editing the first audition, with an onscreen caption reading: '*JULES O'DWYER & MATISSE Dog Trainer*'".

According to ITV, "*Jules O'Dwyer & Matisse*" "then became the defacto title of Jules's act going forward into the semi-finals and the final even though her later live performances both involved more than one dog...". The Licensee explained that "...the producers did debate whether the name was appropriate for the semi-final performance, given the participation of Chase in the routine as well as Matisse". The show's producers decided, however, that "signposting the inclusion of these other dog 'friends' in the name of the act, in addition to Matisse, might then spoil the surprise 'reveal' of Chase during the...semi-final performance, and the surprise 'reveal' of Skippy in the final".

ITV said that, "with the benefit of hindsight, the billing of the act as "*Jules O'Dwyer & Matisse*" throughout the series might have contributed to the complaints of some viewers that they had been misled". ITV said it now accepted "that it was unfortunate that the name was not amended for the semi-final and final programmes, to make it more explicit that this was a dog trainer act involving more than one dog". However, the Licensee noted that "the semi-final performance did clearly establish that Jules performs with more than one dog, not simply Matisse". It added that "Jules's first audition, semi-final and final routines were all broadcast within a window of a little over a week, and therefore there was some editorial justification for using the same name throughout for the sake of consistency".

ITV said it had no intention to deceive viewers by using the title, "*Jules O'Dwyer & Matisse*" and it did not consider that, "of itself, the billing of the act...was materially misleading to the audience".

### The performance of the act in the final

ITV said that Chase, who was wearing a collar bearing his name, "appeared and performed the tightrope walk without any sort of disguise or costume" but it acknowledged that the programme did not point out to viewers "that this similar-looking dog on the tightrope was not in fact Matisse". It also accepted that most viewers would not have spotted the collar during broadcast and "that it would not have been obvious to most viewers (other than observant dog-lovers) that another dog rather than Matisse had performed this element of the act".

The Licensee said that "Jules O'Dwyer trains a number of different dogs to appear in her act, in order to produce the best theatrical effect", adding that "Chase has often been used as a twin or 'double' for Matisse in these stories, given their similarities". It considered that "given this context of theatrical storytelling, Jules and the producers never considered that the use of Chase in the tightrope walk sequence might in any way be contentious." Further, ITV said that "as a former worker for the RSPCA, [Jules's] animals' welfare is always her overriding concern when performing with them", and that she had used Chase to perform the tightrope walk instead of Matisse

because, although both Chase and Matisse could perform the task, Chase was more confident with heights.

Nevertheless, the Licensee considered that, on reflection, “the programme could have made clear Chase’s inclusion in the act, by bringing him on stage at the end of the act, or by a reference to his contribution being made...during the discussion...after the performance and before voting began”. However, the Licensee explained that no editorial decision was made by the show’s producers that Chase, having performed the tightrope walk, should *not* appear; this was “simply an omission”. It said that “at no time did they consider the possibility of viewers being misled in relation to the act or in voting for the act, and therefore never considered whether the dog should or should not [have been] brought on stage”.

ITV said that, during the rehearsals and the performance in the final, “Chase was cared for and supervised backstage by Jules’s partner”, who, “at one point...asked a production staff member whether Chase should be brought on to the front of the stage at the end of the act”. However, in light of the elaborate nature of the set and the “extremely cluttered” backstage area, after the performance Jules’s partner (with Chase), was “advised...to clear the set via a designated exit route for safety reasons”.

ITV also explained that the producers at Thames<sup>1</sup> did not disclose to the ITV Compliance or ITV Interactive representatives present in the studio during the dress rehearsal and the live broadcast that the tightrope walk was performed by Chase rather than Matisse. The Licensee stated that its staff “remained unaware of this fact during the broadcast” and “likewise, the judges were also unaware of this fact on the night”. ITV said that, although “one of the ITV commissioning team on site was aware that a different dog performed the tightrope walk...[he] had wrongly assumed (on the basis of the semi-final performance, where both dogs involved had been present on stage at the end) that all three dogs [i.e. Matisse, Skippy and Chase] would appear on stage at the end of the performance”. The Licensee added that the member of the ITV commissioning team “did not however consider...during the broadcast...that the failure of Chase to appear at the end was of any particular significance, and therefore whether it could or should [have been] remedied at that point”.

ITV acknowledged that the set design and the timing of the exit and entrances of the dogs did in fact contribute to the belief of many viewers that Matisse’s ‘character’ had been performed throughout by one dog. ITV said that had its Compliance and Interactive representatives at the studios on the day been advised about the use of Chase in the tightrope walk, “they would have ensured that the dog was brought on stage, or that his role was at least referred to after the performance, in the interests of complete transparency to viewers...”. However, it added that the “failure to anticipate that some viewers might feel misled by the staging and construction of this performance, once it became known that a third dog had been involved, should be viewed in the context of a hectic week of activity during the preparation and staging of six evenings of live programming featuring 45 different acts”.

In conclusion, ITV said it accepted that, “although at no point was there an active decision made not to reveal Chase as a performer for editorial reasons, the resulting failure to reveal his part in the act explicitly to viewers was an editorial mistake” (emphasis in original).

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<sup>1</sup> Thames were, with Syco Entertainment, the co-producers of the programme. Thames is part of FremantleMedia Ltd.

## Rule 2.14

ITV said it “prides itself in being the broadcast industry leader in the use of interactive services in its editorial programming” adding that compliance with the principles set out in its ‘Guidelines for Producers’ is a “contractual obligation on all producers of programmes with interactive elements”. It emphasised that the producers of *BGT* “aim to maintain the highest editorial standards, and strive to ensure that fair and transparent competition between the contestants is maintained at every stage of the series, and that voting is conducted fairly”.

The Licensee said that it had this year introduced free voting in *BGT* via an app, with the principal purpose of encouraging wider engagement with viewers, and that almost 90% of votes in the final had been cast in this way. ITV said that “*Jules O’Dwyer & Matisse*” had won the contest “by a commanding margin”, with the large majority of votes for the act coming from the free entry route.

ITV said that it had conducted an internal investigation led by its own Director of Programme Governance and Operations into voting at the *BGT* final. The Licensee said it was satisfied in this case there was neither an “editorial intention to actively mislead viewers about Jules’s act in order to influence the vote”, nor any “editorial or commercial incentive whatever in seeking to do so...”.

Although ITV acknowledged that “some viewers clearly felt they were misled by the presentation of the act” (emphasis in original), it said that it “[did] not believe that viewers were in fact materially misled in relation to the vote”. It noted that Jules O’Dwyer was a dog trainer, her act was a dog-training act and the talents being showcased were “not only those of the dogs performing various tricks, but her skill in training the animals and weaving these tricks into an entertaining narrative”. It considered the tightrope walk to be “simply one element of the act”, that, irrespective of the identity of the dog, was “self-evidently an impressive display of dog training and agility”.

The Licensee also suggested that the “press furore” following Jules O’Dwyer’s subsequent television interview, in which she mentioned that Chase (and not Matisse) had performed the tightrope walk, had “unfairly detracted from her evident skills as a dog trainer and a storytelling performer, and the talents of her troupe of dogs.” ITV also said it believed that “most viewers who did vote for Jules & Matisse would not have voted differently whether or not Chase’s contribution [had] been made clear to them, and that most viewers do not consider that the vote was misleading and therefore invalid”. Consequently, the failure to inform the audience about Chase’s part in the performance did not “significantly affect the vote substantially or the outcome of the vote”. As a result, ITV said it did not believe that the programme was materially misleading in relation to the voting.

The Licensee noted it was regrettable that a number of viewers had complained about being misled, but considered “many of these complaints [had] been reactive to the generally hostile press reporting about the issue”. ITV quoted comments it had received “from a number of other viewers expressing support for the outcome [of the contest] and concern for Jules”.

The Licensee said: “most viewers would accept that this was a simple mistake of omission by the production team at Thames, and did not constitute any inadequacy or failure in the broadcaster’s compliance processes, or any unfairness or negligence in the operation of the vote that would thereby invalidate that vote or its outcome”. ITV also did not consider that, “in terms of potential harm...this incident...significantly

undermined the trust of viewers in this particular programme or vote, or in the use of voting in talent shows generally". In relation to actual financial harm, the Licensee noted that only two viewers had contacted it seeking any refund of costs incurred in their having voted, only one of whom appeared to have voted for "*Jules O'Dwyer & Matisse*".

In conclusion, ITV reiterated its "sincere regret concerning this unfortunate editorial mistake" and noted that it had "agreed with the producers that in future it will initiate a formal compliance review meeting at the end of each dress rehearsal and before the live performances, where producers can raise any matters not self-evident from the performance itself that might require ITV compliance input". The Licensee added that, nevertheless, it considered "this mistake did not lead to material misleadingness or cause any significant harm, and should therefore not be viewed as resulting in a breach of the Code".

## Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure standards objectives, including "that generally accepted standards are applied to the contents of television...services so as to provide adequate protection for members of the public from the inclusion in such services of...harmful material."

This objective is reflected in Section Two of the Code. Rule 2.14 requires broadcasters to ensure that viewers and listeners are not materially misled about any broadcast voting.

The focus in the rule on *material* misleadingness is important as it clarifies that programming is likely only to be in breach of the rule in circumstances where actual or potential harm or offence may be caused to the audience. It is not, therefore, for Ofcom to determine whether the act "*Jules O'Dwyer & Matisse*" was the rightful winner of the 2015 series of *BGT*, but whether ITV ensured that viewers were not materially misled about the vote that took place in the final of this series.

Ofcom's Guidance to Section Two<sup>2</sup> makes clear that audience participation may cause harm or offence in one of two ways:

- "The audience's trust may have been abused, whether or not the interactive mechanism is free or charged for. Where the audience feels it has been misled or otherwise treated unfairly or negligently, this may cause serious offence; and where trust in broadcasting is undermined Ofcom is likely to conclude that harm has been caused; and/or
- Where a viewer or listener has paid a premium to interact with a programme, there is a clear potential for financial harm."

We noted ITV's comments about the billing of the act and the actions of the production team during the final. In particular, we noted that ITV:

- considered that, although it had not intended to deceive viewers, "with the benefit of hindsight, the billing of the act as '*Jules O'Dwyer & Matisse*' throughout the

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<sup>2</sup> See: <http://stakeholders.ofcom.org.uk/binaries/broadcast/code-july-15/section2-july15.pdf>.

series might have contributed to the complaints of some viewers that they had been misled”;

- stated that “the programme could have made clear Chase’s inclusion in the act [during the final], by bringing him on stage at the end of the act, or by a reference to his contribution being made...during the discussion...after the performance and before voting began”; and that
- it had not been an editorial decision for Chase to perform the tightrope walk and not appear on stage at the end of the performance, “but simply an omission”.

On the basis of the information supplied to Ofcom by ITV, we have no reason to believe that there was any intention to deceive viewers that the tightrope walk actually involved a second dog. In particular, we noted that Chase, the dog which performed this part of the act, had been introduced to viewers in a previous episode in the series. We also noted that, in her appearance on the *Lorraine* programme the following day, Jules O’Dwyer was shown with both Matisse and Chase, and spoke openly about the role that the latter had played in the previous night’s performance.

Nevertheless, we did consider that the combination of a range of factors served to mislead a number of viewers as to which dogs participated in the *BGT* final. In particular, these were:

- the editorial decision made, after the televised audition of “*Jules O’Dwyer & Matisse*”, to maintain the name of the act for its performances in the semi-final and final of the series, so as to ensure that the introduction in each of another dog, in a subsidiary role, surprised viewers;
- various comments in the final which reinforced the audience’s perception that “*Jules O’Dwyer & Matisse*” was likely to feature only a single dog. This included the fact that the presenters introduced the performers as a “*double act*” and that a short recorded segment featuring Jules O’Dwyer and Matisse focused on Matisse’s role to the exclusion of other animals (“*When we go on that stage tonight, we’re going to give it our all; we’re going to do our best. Let’s go get ’em, eh, boy...*”);
- the set design and the timing of the exit and entrances of the dogs in the final, which contributed, as ITV recognised, “to the belief of many viewers that Matisse’s ‘character’ had been performed throughout by one dog”; and
- the fact that Chase did not appear alongside Jules O’Dwyer, Matisse and Skippy after the performance with the result that “the contribution of the third dog Chase was not disclosed explicitly to viewers during the [final]”.

Taking all of these factors into account, we considered that, although the Licensee may not have intended to deceive viewers, the presentation of the act “*Jules O’Dwyer & Matisse*” not only had the potential to mislead, but was likely to have done so.

Ofcom acknowledges that live broadcasts featuring numerous professional and amateur performers may create significant production pressures. However we were concerned by the Licensee’s comment that “the ITV Compliance or ITV Interactive representatives present in the studio... remained unaware” of the role played by Chase during the performance. In circumstances where viewers are encouraged to

participate in a vote, especially when they are invited to pay to do so, licensees have a particular responsibility to ensure that viewers are clear what they are voting for. In this case, the fact – as evidenced by numerous complainants to Ofcom – many viewers were not aware that a central part of a dog agility act was performed by a second animal, indicates the Licensee did not take sufficient steps to ensure that the broadcast was not materially misleading.

We welcomed the action taken by the Licensee to avoid recurrence. Nonetheless, taking into account all of the above, Ofcom concluded that ITV failed to ensure that viewers were not materially misled by the broadcast vote in the final of *BGT* 2015, in breach of Rule 2.14 of the Code.

### **Breach of Rule 2.14**

## In Breach

### News

*Geo News, 7 May 2015, 08:00 and 14:00*

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#### Introduction

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

Ofcom received four complaints from viewers objecting to the broadcast of reports relating to the UK General Election while polls were open<sup>1</sup>.

During the reports, broadcast at 08:00 and 14:00, we noted brief discussion of various election issues including:

- the NHS and immigration being key areas of concern for voters;
- the major policies of the SNP and UKIP;
- the likely outcome of the election both at a national level and in the Parliamentary Constituency of Walthamstow; and
- the potential consequences if Ed Miliband became Prime Minister.

Ofcom considered the material raised issues warranting investigation under Rule 6.4 of the Code:

“Discussion and analysis of election and referendum issues must finish when the poll opens. (This refers to the opening of actual polling stations. This rule does not apply to any poll conducted entirely by post).”

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

#### Response

The Licensee stated that the reports represented “accidental” breaches of Rule 6.4.

Geo TV explained that the breaches were primarily the result of its “UK Editorial team working on the news” being “replaced by [its] Pakistan News Team as the UK Editorial team had taken the shift off due to a tiring day and night on 6 May 2015”. The Licensee said that although its Pakistan News Team had been “briefed on the Ofcom codes” it was “primarily looking after the content on GEO News in Pakistan”. Geo TV said that the Head of its UK News Desk had “accepted that he made an error”.

As a result of these incidents, the Licensee said that “procedures have been put in place to ensure that no reoccurrence of the above events takes place in the future” including compliance training “for all concerned in the UK and Pakistan”. Further, the

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<sup>1</sup> On 7 May 2015, polling stations were open between 07:00 and 22:00.

Licensee told Ofcom that its “UK news team will in future ensure it is always present when elections are taking place so that any errors do not take place”.

### **Decision**

Under the Communications Act 2003, Ofcom has a statutory duty to ensure special impartiality requirements are observed, in particular during elections. Section Six of the Code also reflects the specific requirements relating to broadcasters covering elections, as set out in the Representation of the People Act 1983 (as amended).

Rule 6.4 requires that discussion and analysis of election issues must finish when the polls open. The purpose of this rule is to ensure that broadcast coverage on the day of an election does not directly affect voters’ decisions.

As noted above, the reports broadcast at 08:00 and 14:00 on Geo News included discussion on various aspects of the General Election including the likely outcome and political issues which were of key concern to voters. Although we noted the actions taken by the Licensee to ensure there would be no recurrence, the broadcast of these reports while polling stations were open represented clear breaches of Rule 6.4.

### **Breaches of Rule 6.4**

## In Breach

### Different Anglez

*New Style Radio 98.7 FM, 7 May 2015, 10:00*

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#### Introduction

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

A complainant alerted Ofcom to the programme *Different Anglez*, objecting to this programme discussing the elections<sup>1</sup> taking place on 7 May 2015 while polling stations were open<sup>2</sup>.

Ofcom reviewed the programme, which was introduced as an “*Election Day Special*” and included discussion about:

- the likely outcomes in local elections taking place that same day in some seats on Birmingham City Council and the 10 Parliamentary seats being contested in Birmingham;
- the electoral prospects of Andrew Mitchell, the Conservative Party incumbent in the Parliamentary seat of Sutton Coldfield;
- whether the Conservative Party and Labour Party were contesting the General Election on ideological grounds;
- local issues discussed at Parliamentary hustings; and
- the views of a listener on the General Election.

Ofcom considered the material raised issues warranting investigation under Rule 6.4 of the Code, which states:

“Discussion and analysis of election and referendum issues must finish when the poll opens. (This refers to the opening of actual polling stations. This rule does not apply to any poll conducted entirely by post.)”

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

#### Response

ACMC admitted that the material breached the Code but said that “there was at no point any deliberate attempt to flout the electoral codes”.

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<sup>1</sup> On 7 May 2015 the General Election and local elections in some parts of England took place.

<sup>2</sup> On 7 May 2015, polling stations were open between 07:00 and 22:00.

The Licensee told Ofcom that the presenter of *Different Anglez* “believed that as none of the guests were from a political party there would be no party political comments” and “hence the programme would be objective”. The Licensee accepted that “this was a complete misunderstanding of the strict rules dealing with election matters on election day”.

In mitigation, ACMC asked Ofcom to recognise that it has held “a Community [radio] Licence for nearly fifteen years” and while “there was an element of a lack of vigilance” on this occasion “the matter has never occurred before”. The Licensee also highlighted that it had also not had any Ofcom “complaints upheld against [it]” during this time.

As a result of the broadcast of the above material, ACMC said that it “will be providing more training to all [its] presenters in relation of Ofcom codes and regulations”.

### **Decision**

Under the Communications Act 2003, Ofcom has a statutory duty to ensure special impartiality requirements are observed, in particular during elections. Section Six of the Code also reflects the specific requirements relating to broadcasters covering elections, as laid out in the Representation of the People Act 1983 (as amended).

Rule 6.4 requires that discussion and analysis of election issues must finish when the polls open. This programme however was broadcast after the polls had opened and prior to the polls closing at 22:00. The purpose of Rule 6.4 is to ensure that broadcast coverage on the day of an election does not directly affect voters’ decisions.

This “*Election Day Special*” included detailed comment on various electoral battles that were taking place in both the General Election and local elections to Birmingham City Council, and was broadcast three hours after polling stations had opened in the UK. We noted the Licensee’s good compliance history and that it had introduced additional training as a result of this broadcast. However we considered this was a clear breach of Rule 6.4.

### **Breach of Rule 6.4**

## In Breach

### News

*ARY News, 7 May 2015, 11:10 and 14:05*

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#### Introduction

ARY News provides news and general entertainment programming, in Urdu and English, to the Pakistani community in the UK. The licence for ARY News is held by ARY Network Limited (“ARY” or “the Licensee”).

Ofcom received a complaint from a viewer that the coverage of the UK General Election on the channel while polls were open<sup>1</sup> “could be influencing people”.

We viewed the material broadcast on ARY News while the polls were open and noted election reports were shown at 11:10 and 14:05. We therefore commissioned translations of these reports by an independent translator.

During the reports we noted discussion of:

- which candidates were most likely to win the parliamentary seat for Bradford West;
- the likelihood that a minority government would be formed after the election and the potential for a snap election to be called sometime afterwards;
- the importance of votes from minority communities; and
- one party dominating the vote in Scotland.

We also noted during both the 11:10 and 14:05 reports that a reporter stated the view of “analysts” or “various surveys” that a coalition government was the most likely outcome of the election.

Ofcom considered the material raised issues warranting investigation under Rule 6.4 of the Code:

“Discussion and analysis of election and referendum issues must finish when the poll opens. (This refers to the opening of actual polling stations. This rule does not apply to any poll conducted entirely by post).”

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

#### Response

The Licensee apologised and accepted that the broadcast at 11:10 “went beyond the limits permitted on polling day”.

The Licensee explained that after the 11:10 report was broadcast, measures were put “in place to suspend other election coverage because the [11.10] report went

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<sup>1</sup> On 7 May 2015, polling stations were open between 07:00 and 22:00.

beyond instructions to only comment on turnout once the polls were open". In relation to the 14:05 report, ARY said it had taken further internal measures as a result of what was broadcast.

The Licensee also said it would "undertake further detailed compliance training before planning any future election coverage".

### **Decision**

Under the Communications Act 2003, Ofcom has a statutory duty to ensure special impartiality requirements are observed, in particular during elections. Section 6 of the Code also reflects the specific requirements relating to broadcasters covering elections, as set out in the Representation of the People Act 1983 (as amended).

Rule 6.4 requires that discussion and analysis of election issues must finish when the polls open. These reports however were broadcast after the polls had opened and prior to the polls closing at 22:00. The purpose of this rule is to ensure that broadcast coverage on the day of an election does not directly affect voter's decisions.

As noted above, the reports broadcast at 11:10 and 14:05 on ARY News included discussion on various aspects of the General Election including the importance of votes from ethnic minorities and the potential makeup of the new government.

We noted that the Licensee said it would undertake further compliance training before broadcasting any future election coverage. However, as these reports were broadcast while polling stations were open, we considered they represented clear breaches of Rule 6.4.

### **Breaches of Rule 6.4**

## In Breach

### News

*Samaa, 7 May 2015, 14:30*

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#### Introduction

Samaa is a news and entertainment channel broadcasting in Urdu to the UK re-transmitting content from an associated service in Pakistan. The licence for Samaa is held by Up and Coming TV Limited (“the Licensee”).

Ofcom received a complaint about the broadcast of “biased” political coverage of the UK General Election that took place on 7 May 2015 while polls were open<sup>1</sup>.

We noted that on 7 May 2015 at 14:30 an election report was broadcast in Urdu on Samaa. We therefore commissioned an independent translation of this report. We noted the following statements in particular:

Female Presenter: *“A unique candidate standing in the elections in Britain...is George Galloway. He said that after winning the election he would demand justice for Muslims in Parliament”.*

Reporter: *“You may call him the one man army of British politics or you may call him the voice of Palestinians, or call him the guardian of minorities from abroad or you can call him the one man party of British politics. George Galloway is a very unique British politician and is a candidate for Bradford West. During polling day while talking to Samaa, George Galloway said that after winning the election he would carry on raising the voice of innocent Muslims”.*

George Galloway: [in English] *“So in the General Election as a whole, it looks like a hung parliament. My voice might be the decisive one; my vote might be the decisive vote. And if I put Ed Miliband into Downing Street he has to deliver for Bradford and for that matter, for justice for Muslims all over the world”.*

Later in the broadcast, a reporter said:

*“And at this time the overseas Pakistani community of ours, what we have seen is that the present local council of Luton has a Labour majority, and on the national level Labour already has two seats. If we look at it from this angle, the people’s inclination is towards Labour”.*

Ofcom considered the material raised issues warranting investigation under Rule 6.4 of the Code:

“Discussion and analysis of election and referendum issues must finish when the poll opens. (This refers to the opening of actual polling stations. This rule does not apply to any poll conducted entirely by post).”

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<sup>1</sup> On 7 May 2015, polling stations were open between 07:00 and 22:00.

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

### **Response**

The Licensee said that it “fell short in editing the footage as [the] live news bulletin was coming from Pakistan” and accepted that the “footage should not have gone on air unedited in the UK”.

The Licensee said the “lack of Ofcom and UK regulation understanding is the key for this footage being broadcast as the transmission is from Pakistan” and the election regulations in Pakistan are “completely different”.

As a result of the broadcast, the Licensee said it had: suspended the playout operator; taken the political analyst “off the panel”; sent all its broadcast journalists on “extensive compliance training”; and, relieved the assistant editor of his duties.

### **Decision**

Under the Communications Act 2003, Ofcom has a statutory duty to ensure special impartiality requirements are observed, in particular during elections. Section Six of the Code also reflects the specific requirements relating to broadcasters covering elections, as laid out in the Representation of the People Act 1983 (as amended).

Rule 6.4 requires that discussion and analysis of election issues must finish when the polls open. This programme however was broadcast after the polls had opened and prior to the polls closing at 22:00. The purpose of this rule is to ensure that broadcast coverage on the day of an election does not directly affect voter’s decisions.

As noted above, the report included discussion of various election issues (in particular George Galloway’s candidacy for the Bradford West parliamentary seat) and was broadcast while polling stations were open. Although we noted the actions taken by the Licensee as a result of the broadcast, this was a clear breach of Rule 6.4.

### **Breach of Rule 6.4**

## In Breach

### News

*Dunya News, 7 May 2015, 17:30*

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#### Introduction

Dunya News is a rolling news and current affairs channel that broadcasts in Urdu. The licence for the service is held by Dunya News Limited (“Dunya” or “the Licensee”).

Ofcom received a complaint about the broadcast of “politically driven” coverage of the UK General Election that took place on 7 May 2015 while polling stations were open<sup>1</sup>.

We noted at 17:30 an election report was broadcast in Urdu and therefore commissioned a translation by an independent translator. We noted the report included brief discussion of:

- the efforts made by the Labour Party to win back seats in the Bradford East and Bradford West parliamentary constituencies;
- the likelihood of George Galloway, the incumbent in the Bradford West parliamentary constituency, retaining his seat;
- the likelihood of the Labour Party forming a coalition government with the Scottish National Party; and
- the electoral prospects of Yasmin Qureshi, the incumbent in the parliamentary seat of Bolton South East.

The report also included references to the results of “*a latest survey*” or “*various surveys*” indicating that the Labour or the Conservative Party “*will have only a one or two point lead*” and would *not* “*be able to gain a clear majority*”.

Ofcom considered the material raised issues warranting investigation under Rule 6.4 of the Code:

“Discussion and analysis of election and referendum issues must finish when the poll opens. (This refers to the opening of actual polling stations. This rule does not apply to any poll conducted entirely by post).”

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

#### Response

The Licensee said that it accepted that the report did not comply with Rule 6.4 and apologised for this mistake.

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<sup>1</sup> On 7 May 2015, polling stations were open between 07:00 and 22:00.

Dunya told Ofcom that the report in question was “broadcast only once whilst the polls were open”. However, the Licensee acknowledged that the report “fell short of the Code’s requirements on election reporting”.

The Licensee said it had held “detailed discussions with the Head of Programmes to investigate why the report was produced without verifying the specific election reporting rules”. As a result of these discussions, and to avoid a recurrence of the issue, the Licensee said that it had introduced a “strict” procedure that “no election coverage can be broadcast without prior review and approval from [its] Managing Director”. The Licensee also said that “the Production team will be subject to specific election reporting training by an external consultant”.

## **Decision**

Under the Communications Act 2003, Ofcom has a statutory duty to ensure special impartiality requirements are observed, in particular during elections. Section Six of the Code also reflects the specific requirements relating to broadcasters covering elections, as set out in the Representation of the People Act 1983 (as amended).

Rule 6.4 requires that discussion and analysis of election issues must finish when the polls open. This programme however was broadcast after the polls had opened and prior to the polls closing at 22:00. The purpose of this rule is to ensure that broadcast coverage on the day of an election does not directly affect voter’s decisions.

As noted above, the report broadcast at 17:30 on Dunya News included discussion on various aspects of the General Election including the prospects of various parliamentary candidates retaining their seats and the potential makeup of the new government.

In reaching our Preliminary View, we took into account that the Licensee acknowledged its mistake and had taken various steps to improve its compliance in this area. However, as the report was broadcast while polling stations were open, the material above represented a clear breach of Rule 6.4.

## **Breach of Rule 6.4**

## Resolved

### **Off Their Rockers: Blue Badge Special (trailer)**

*ITV, 30 May to 1 June 2015, various times pre-watershed*

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#### **Introduction**

*Off Their Rockers: Blue Badge Special* was a comedy ‘hidden camera’ sketch programme that featured disabled actors. A trailer for the episode of the programme due to be broadcast on 1 June 2015 at 21:30 was shown five times<sup>1</sup> on ITV before the watershed between 30 May and 1 June 2015.

Ofcom received a complaint from a viewer who considered the trailer was “irresponsible” and “inappropriate” as it contained dangerous behaviour that children may “possibly try to imitate”.

The 20 second trailer showed a hidden camera sketch that took place in a launderette. During the sketch, a member of staff hears knocking from inside a tumble dryer, goes to investigate, finds a woman inside and releases her. The woman then tells the staff member that she had initially climbed into the dryer to “warm up”.

Ofcom considered this material raised issues warranting investigation under Rule 1.13 of the Code, which states:

“Dangerous behaviour, or the portrayal of dangerous behaviour, that is likely to be easily imitable by children in a manner that is harmful:

- must not be featured in programmes made primarily for children unless there is strong editorial justification;
- must not be broadcast before the watershed (in the case of television) or when children are particularly likely to be listening (in the case of radio), unless there is editorial justification.”

We therefore requested comments from ITV Broadcasting Limited (“ITV”), who compiled the trailer on behalf of the ITV Network, as to how this material complied with this rule.

#### **Response**

ITV said the compliance advisor who cleared the trailer “considered that the location of the sketch and the genre of programme being trailed were significant”. ITV pointed to the fact that the sketch “was clearly taking place in a commercial launderette, not a domestic environment, where children would generally not be playing unattended”. ITV added that “it would in fact be impossible for anyone to climb into the cylinder of a commercial machine of this sort, close and lock the door, and then turn on the machine”.

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<sup>1</sup> The trailer was shown at 18:31 and 18:45 on 30 May 2015, 18:41 on 31 May 2015 and 16:39 and 20:28 on 1 June 2015.

ITV said that for these reasons it had taken the view that “the scene did not portray behaviour that was easily imitable by children, or in a manner that was harmful to children”. It “therefore considered that the promo could be scheduled pre-watershed, although it should be noted that none of the slots were within or adjacent to programmes aimed at children or of particular interest to children”.

However, ITV said that it appreciated “the concerns of the single complainant to Ofcom in this case” as well as those of a further complainant who contacted the broadcaster directly. ITV said it had therefore “reviewed internally the decision to broadcast this particular sketch”.

It accepted that the trailer might “cause concern for some parents who believed that younger children could conceivably attempt to imitate the purported actions of the person in this sketch in the very different setting of a domestic washing machine at home”. ITV told Ofcom it had therefore “decided to omit the sketch from the pre-watershed version of the programme broadcast on 21 June” and neither it nor the trailer would “be shown pre-watershed in the future”.

In these circumstances, ITV said that although it considered the broadcast of the trailer “did not constitute a breach of the Code” in its view the “complaint might be treated as appropriately resolved”.

## 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 1.13 of the Code states:

“Dangerous behaviour, or the portrayal of dangerous behaviour, that is likely to be easily imitable by children in a manner that is harmful...must not be broadcast before the watershed...unless there is editorial justification”.

Ofcom noted that this trailer included a scene that took place in a launderette in which a woman was shown as trapped in, and then being released from, a tumble-dryer. Ofcom’s guidance on Section One of the Code<sup>2</sup> highlights particular areas of concern in relation to dangerous behaviour that may be imitated by children. These include:

“any portrayal of household items, such as micro-waves and tumble-dryers, which can cause harm if misused”.

It was Ofcom’s view that young children might potentially try and mimic the behaviour of the woman shown in the trailer. We considered this risk was increased by the incident being presented as humorous, and the fact that no warning was given. Further, given that the material was shown as part of a programme trailer, there was little in the way of editorial justification for the broadcast of the potentially dangerous behaviour.

We noted the various factors that ITV said it had considered when it originally cleared the trailer for broadcast before the watershed, in particular that the sketch took place

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

in a non-domestic setting and that the scenario was surreal. However, in Ofcom's view, the fact that the sketch took place in a commercial launderette was unlikely to mitigate materially the risk of young children attempting to mimic similar behaviour at home.

We also noted ITV's comments that it would be "impossible for anyone to climb in to the cylinder of a commercial machine of this sort, close and lock the door, and then turn on the machine". We accepted that this was the case. However, in Ofcom's view, the most likely risk of injury in a case where a child might climb into a tumble-dryer would result from the possibility of the machine being turned on by a third party, unaware that the child had climbed inside. Ofcom noted a small number of high-profile cases in the UK in which this chain of events had occurred, resulting in children sustaining fatal injuries.

While Ofcom was concerned about the inclusion of this potentially dangerous behaviour in a pre-watershed trailer, we also recognised that ITV accepted that the trailer might cause concern to parents of younger children. We also noted that ITV removed the sketch from the pre-watershed repeat of the programme broadcast on 21 June 2015 and will not show the sketch pre-watershed in the future. In light of these factors, Ofcom considered the matter resolved.

## **Resolved**

## **Funded Factual Programmes**

### **Managing risks to editorial independence and ensuring viewer confidence**

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Factual content on television is particularly valued by viewers. News, current affairs and documentaries play an important role in informing audiences and helping to increase our understanding of the world.

For factual programming to continue to fulfil this role, viewers must remain confident broadcasters are not subject to undue influence. This is particularly important when content is either acquired from, or provided by, third parties with separate commercial interests.

Many broadcasters show commercially funded content. Often this funding is crucial to ensure that factual programming, which might not otherwise be made or widely seen, is available to a range of audiences.

However, certain kinds of funding models can also present risks to editorial independence. These are heightened when factual content expressing a particular viewpoint or position is funded by, or acquired from, third parties. Part of the purpose of the Ofcom Broadcasting Code (“the Code”) is to ensure viewers are able to feel confident broadcasters have not been subject to undue influence, either to tell a certain story or take a certain viewpoint when doing so.

It is therefore essential that broadcasters: understand how such content is funded; are transparent with viewers about sponsorship arrangements; and, retain editorial control over the material they show.

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In 2011, we began a far-reaching project focusing on the funding of factual programmes by third parties likely to have a vested interest in the content of those programmes. This followed media reports in 2010 which alleged that details of a business’s involvement in the funding of a factual documentary had not been revealed to viewers.

This was different from a normal investigation in that it covered programmes broadcast in over 200 countries, by three TV news channels. It involved the assessment of over 1,000 programmes followed by the detailed examination of hundreds of hours of funded content shown between 2009 and 2011. It also necessitated the forensic analysis of contractual arrangements and other associated documents.

Our findings in these cases are set out below. Given the potential compliance issues raised, our focus was less on capturing individual breaches of the Code than on identifying the circumstances in which editorial independence and due impartiality were most likely to come under pressure.

Although the investigation identified a number of practices which took place in the period under review that were at odds with the Code, we did not find evidence that the way programmes were funded compromised the broadcasters’ editorial independence.

Nevertheless, it is clear from this work that complex funding arrangements involving third-party funders carry inherent risk to independence and editorial integrity. The broadcasters in these cases have already taken numerous steps to improve transparency and oversight. We will apply our findings from this case and will work closely with broadcasters to develop best practice guidelines to ensure viewers can continue to be confident in the independence of factual programming.

Our approach will cover the full range of potential risks associated with funding arrangements for factual programming, and ways in which broadcasters can ensure they maintain and can demonstrate editorial control in these circumstances.

We will also examine the relevant parts of the Code to assess whether changes are required to make clear what is and is not acceptable – with a focus on three core issues:

- ***Ensuring editorial independence***

Editorial content must be distinct from advertising. Programmes must not be funded, created or distorted in order to become a vehicle for featuring a third party's interests or activities. This is a fundamental principle of European and UK broadcasting regulation.

Broadcasters need to think carefully about the steps they take to assess any programme funding arrangements that may exist with third parties and/or production companies. In particular, where programmes are acquired at minimal or no cost to the broadcaster, it is especially important that the broadcaster establishes funding arrangements and the extent to which funders' interests may be represented within the content.

- ***Sponsorship***

The funding of a programme by a third party generally amounts to sponsorship and attracts strict rules with two objectives: to let the audience know that an external interest has contributed money for the production or screening of the programme, and to preserve editorial integrity.

Sponsors' interests cannot be promoted in the content of the sponsored programme. This would amount to advertising. In addition, the long-standing prohibition on the sponsorship of news and current affairs programmes reflects the importance and sensitivity of such programming.

Broadcasters must make a thorough and detailed assessment when any doubt arises about whether the prohibition applies. This is the case whether a programme sponsor is a public or private business, or an individual. There is no reason to distinguish between commercial, non-commercial or governmental funders when applying the sponsorship rules.

- ***Due impartiality***

Broadcasters must ensure that due impartiality is maintained. Information contained in factual programming on politically controversial and public policy matters can shape the attitudes and opinions that people adopt and the political and other choices they make.

The audience should be made aware of key factors – such as the personal interests of contributors and presenters – that could affect their perception as to whether due impartiality has been maintained.

It is important, therefore, that broadcasters not only take adequate steps to ensure they are aware of any potential conflicts of interest but also provide such information to the audience where appropriate.

### **Next steps**

Ofcom is meeting with the broadcasters whose practices we have examined in these findings to discuss the specific compliance issues raised.

We are also arranging an industry-wide meeting of TV broadcasters that transmit factual programming with a focus on news, current affairs and documentaries. This will be to gather views and input for Ofcom's development of best practice guidelines in this area and help us to determine if parts of the Code need to be updated. If we decide that changes to the Code are needed, Ofcom will issue a public consultation.

## **Assessment of programmes produced by FactBased Communications and other funded content**

*BBC World News, CNBC and CNN International*

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Following allegations about a programme broadcast on BBC World News (“BBCWN”) in 2009, the BBC Trust began investigations into the funding arrangements of a range of programming on BBCWN.<sup>1</sup>

Both to avoid duplication and to enable the BBC Trust’s investigation to inform the scope of our own enquiries, Ofcom decided to wait for the BBC Trust to report before deciding to start our own review.

In August 2011, however, *The Independent* newspaper featured a story alleging the Malaysian Government had paid FactBased Communications (“FBC”) – an independent production and communications company – almost £12 million over two years to promote Malaysia in factual and current affairs programming broadcast on news-based TV services<sup>2</sup>.

Ofcom subsequently received a complaint and copies of what appeared to be FBC marketing or pitch documents, although it was not possible to verify these. Many of these documents appeared to suggest FBC had promised to feature positive messages for its clients in editorial content.

The complainant also raised concerns about programmes broadcast on CNN International (“CNNi”) presented by John Defterios at the same time as he was the President of FBC.

Correspondence between Ofcom and BBCWN and CNBC indicated that these broadcasters had each acquired programming from FBC at a low or nominal cost. Further, in the case of CNBC, the broadcaster had been paid by FBC to transmit its content.

In light of this information, along with the complaints that we had received, and following the conclusion of the BBC Trust’s investigation into programming on BBCWN, Ofcom opened its own investigation. This covered the funding arrangements of programmes dating back to 2009 transmitted by BBCWN, CNBC and CNNi under such arrangements.

Our findings are set out over the following pages.

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<sup>1</sup> The BBC Trust’s report ‘*Funding arrangements and sponsorship of documentary and feature programmes on BBC World News (a BBC Commercial service)*’, can be found at: [http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc\\_bulletins/2011/world\\_news.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2011/world_news.pdf)

<sup>2</sup> <http://www.independent.co.uk/news/media/tv-radio/special-investigation-tv-company-takes-millions-from-malaysian-government-to-make-documentaries-for-bbc-about-malaysia-2338813.html>

## **FBC-produced programming**

*BBC World News, various dates between 14 February 2009 and 9 July 2011*

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### **Introduction**

BBC World News (“BBCWN”) is a 24-hour international news and information channel. It is broadcast in English in more than 200 countries and territories across the world. The service is not formally available in the UK.

BBCWN is not supported by the licence fee but is owned by BBC Global News Limited, a commercial subsidiary of the BBC, and is funded through advertising and subscription. It is therefore required to hold an Ofcom licence, which is held by BBC Global News Limited.

Following allegations about a BBCWN programme, the BBC Trust began investigations into the funding arrangements of a range of programming on BBCWN. Both to avoid duplication and to enable the BBC Trust’s investigation to inform the scope of our own enquiries, Ofcom decided to wait for the conclusion of the BBC Trust’s investigation before commencing its own. The BBC Trust reported its findings in November 2011<sup>1</sup>.

In August 2011, however, *The Independent* newspaper featured a story alleging the Malaysian Government had paid FactBased Communications (“FBC”) – an independent production and communications company – almost £12 million over two years to promote Malaysia in factual and current affairs programming broadcast on news-based TV services.<sup>2</sup>

Ofcom subsequently received a complaint including a number of documents which appeared to suggest FBC had promised to feature positive messages for its clients in editorial content transmitted by several broadcasters, including BBCWN.

### **Ofcom’s investigation**

In the first instance Ofcom asked BBCWN to identify programmes it had broadcast that had been acquired at no or nominal cost. Ofcom subsequently sought information and comment generally on the circumstances of such programmes’ acquisition, including contractual details, and recordings of certain of the programmes identified.

BBCWN’s Television Licensable Content Service (TLCS) licence requires it to retain recordings of its broadcast output for 60 days. In this case the retention period had lapsed by the time Ofcom received the complaint. Having examined the contractual arrangements, Ofcom asked BBCWN to provide a number of off-air recordings, where available.

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<sup>1</sup> The BBC Trust’s report ‘*Funding arrangements and sponsorship of documentary and feature programmes on BBC World News (a BBC Commercial service)*’, can be found at: [http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc\\_bulletins/2011/world\\_news.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2011/world_news.pdf)

<sup>2</sup> <http://www.independent.co.uk/news/media/tv-radio/special-investigation-tv-company-takes-millions-from-malaysian-government-to-make-documentaries-for-bbc-about-malaysia-2338813.html>

BBCWN supplied recordings of all the programmes requested. Ofcom considered a number of these programmes to raise issues under the Code and requested further detailed comment on them from BBCWN.

Some of the programmes acquired for a nominal sum were financed by FBC; others were funded by bodies not connected to FBC. The 'non-FBC' cases are reported on in a separate Finding in this issue of the Broadcast Bulletin.

### **The programmes**

BBCWN provided transmission, content and production details of 186 programmes transmitted between 7 February 2009 and 3 September 2011 that had been supplied to it at no cost or for a nominal sum and that had not carried sponsor credits.

Of these programmes Ofcom sought recordings of 75 programmes. All of these programmes were carefully examined and researched. Of these 75 programmes, a number raised issues warranting investigation under the present and previous editions of the Code. Of these programmes, those produced by FBC were:

1. *Develop or Die?* – Series 1, Episode 2, 14 February 2009
2. *Develop or Die?* – Series 2, Episode 1, 15 May 2010
3. *Develop or Die?* – Series 2, Episode 2, 22 May 2010
4. *Develop or Die?* – Series 3, Episode 5, 4 June 2011
5. *One Square Mile – Sarawak*, 12 February 2011
6. *One Square Mile – Kuala Lumpur*, 9 July 2011
7. *Third Eye – Egypt*, 12 March 2011
8. *Third Eye – Asian Food*, 2 July 2011

Each of the programmes was approximately 30 minutes long. All were supplied to BBCWN at no or nominal cost (generally a nominal £1 for the purposes of consideration for the formation of contracts).

None of the programmes listed above carried sponsorship credits.

Other than the two editions of *One Square Mile*, all of the programmes were documentaries, most of them current affairs.

#### *Develop or Die?*

BBCWN broadcast three series of *Develop or Die?* The series discussed and analysed the pressures and policy conflicts that arise from the developing world's desire to industrialise and pursue economic progress, particularly in respect of the environmental and humanitarian problems that development throws up.

#### *Develop or Die? – Series 1, Episode 2*

The first half of this programme examined the Malaysian palm oil industry and the considerable controversy that surrounds it. The programme opened with a statement from the presenter, Zeinab Badawi:

*“Sustainable development has become the mantra for the 21<sup>st</sup> century. In this series, Develop or Die?, we’ll be exploring how some in the developing world are beginning to believe that sustainable development is being used increasingly as a convenient argument for the richer world to protect their global economic dominance.”*

The report then described the enormous size and importance of the palm oil industry to Malaysia, and more generally, including an interview with a smallholder palm oil grower who was supportive of the industry and the benefits it has brought his family.

The controversial environmental impacts of the palm oil industry were referred to, and counter-views included. The pro-industry views included contributions from senior figures in large palm oil companies (United Plantations and Sime Darby, the latter being Malaysia’s largest producer of palm oil).

The first half of the programme concluded with statements from an industry spokesman arguing for balance, an environmental journalist who said that the identification of the developed world with environmental interests and the developing world with economic development is a “misnomer” and the senior Sime Darby official described the need to look after Mother Earth.

Ofcom noted that Sime Darby has confirmed that it retained FBC “...to implement and manage a strategic brand and communications strategy for Sime Darby...” between 2007 and 2008<sup>3</sup>.

The final voice-over comment in the programme was:

*“For many nations in the developing world the pressure is often biased towards development rather than sustainability. And now that their economies are more likely to fuel global growth in the next few years they are more than ever questioning why they should be punished by western imposed standards.”*

#### *Develop or Die? – Series 2, Episode 1*

The first half of this programme examined the subject of Islamic finance, focusing on the World Islamic Economic Forum (WIEF) and the practice of Sharia banking. Various Malaysian politicians – Najib Razak, Abdullah Badawi and Musa Hitam<sup>4</sup> – featured in the context of the WIEF and Islamic finance globally.

The second half reported from Malaysia’s INCEIF Islamic finance university and featured stories of INCEIF’s work and its benefits for the students interviewed. At the start of the second half of the programme Malaysia’s position in the world of Islamic finance was referred to:

*“Malaysia is positioning itself to be one of the big players in Islamic finance. The central bank has set up an organisation [INCEIF] training people up to PhD level as at present the industry is desperately short of specialists.”*

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<sup>3</sup> See:  
[http://www.simedarby.com/Sime\\_Darby%27s\\_Response\\_to\\_Sarawak\\_Report%27s\\_Article.a\\_spx](http://www.simedarby.com/Sime_Darby%27s_Response_to_Sarawak_Report%27s_Article.a_spx)

<sup>4</sup> Musa Hitam was Chairman of Sime Darby between 2007 and 2012 and formerly Deputy Prime Minister of Malaysia.

And later:

*“Malaysia aspires to cement its position as a global hub for Islamic finance. It’s already a world leader in issuing what’s known as sukuk, roughly, Islamic bonds – a big draw for Gulf and western money.”*

Some brief analysis and critical comment from two finance specialists was included.

In the final few minutes of the programme the subject of Halal food production was covered. In this section Malaysia’s plans for growth in this sector were commented on.

Mr Hitam was shown towards the end of the programme receiving an award for services to humanity. Ofcom noted that Musa Hitam had been the Chairman of Sime Darby Bhd since 2007.

### *Develop or Die? – Series 2, Episode 2*

This programme examined the disparity in wealth between certain Muslim nations and initiatives being taken by better-off nations to assist the poorer.

The first comment in this programme contained a reference to Malaysia:

*“One fifth of the population of the planet is Muslim. Many live in the oil rich Gulf states or in successful developing economies such as Malaysia and Indonesia.”*

Reference was then made to the WIEF; its meeting was illustrated with shots of Kuala Lumpur and an interview with Musa Hitam.

Discussion of the need to encourage Muslim private sector activity followed, moving on to *“an example of a business in one of the better off Muslim nations [Malaysia], assisting one of the poorer countries”*: a palm oil smallholders’ scheme. The programme did not make clear which the poorer country was in this section as all the footage was of Malaysia; the footage of the supportive smallholder from series 1, episode 2 (above) was used.

However, the programme then turned to Malaysia’s assistance in palm oil production in Sierra Leone. Testimonials from Sierra Leonean palm oil workers about the help they received from Malaysia were included, as was a voice-over reference to a \$2m grant from Malaysia. The smallholders’ scheme in Malaysia was said to be the aim as it has *“been so successful in reducing poverty”*.

The second part of this programme covered Bangladesh, looking at appropriate finance and business tools. The WIEF was heavily featured, including comment from Musa Hitam.

The end of the programme briefly addressed inter-Muslim nation educational and training schemes. This was illustrated by a young Nigerian woman on an internship at a firm in Kuala Lumpur. The WIEF’s apparently enlightened attitude to women was also briefly commented on by two Malaysian commentators, Musa Hitam (as Chairman of the WIEF) and Ahmad Fauzi Abdul Razak (as General Secretary of the WIEF).

### Develop or Die? – Series 3, Episode 5

This programme examined the role of education in development with a strong emphasis on the place of women in the Muslim world. The first half of the programme looked at Bangladesh, the second at Malaysia.

The second part of this programme began with this voice-over:

*“Malaysia, in contrast [to Bangladesh] is a model for other developing countries. It has sustained high economic growth, built first class infrastructure, largely eradicated poverty, and attained high literacy rates. And unlike in Bangladesh, and many other Muslim countries, just as many Malaysian girls as boys complete secondary school.”*

There was then coverage of Malaysian female education, with statements from a student and a technology academic.

Malaysian government efforts to boost advanced education were commented on:

*“At the higher level Malaysia’s government is offering more scholarships to encourage people to do doctoral research, as well as incentives to universities to boost their output of patents and research papers.”*

The programme included comment on the tension between teaching in English and in Malay. Other weaknesses in Malaysian technical education were also discussed: the need for Malaysian science students to think freely and criticism of Malaysian scientific education as not being ‘hands-on’ enough. However, coverage of Malaysia’s Talent Corporation was then positive, saying that it had had “some success” at attracting talent back to the country and from other countries.

### One Square Mile

These two episodes of *One Square Mile* were essentially travel programmes, one examining Malaysia’s capital city, Kuala Lumpur, the other the Malaysian state of Sarawak.

### One Square Mile – Sarawak

This programme was in large part a travelogue. The programme explained that a passport is required to enter Sarawak, even for Malaysian citizens, and that special permits are required to live or work there. These rules were said to have been established by Sarawak itself before agreeing to join the Malaysian federation in 1936, six years after Malaysian independence.

The Iban<sup>5</sup> were the primary focus of the programme: their (disappearing) tattoo culture, subsistence farming, the longhouse tradition and so on.

The importance of tourism was stressed but its downside pointed out: tourism encourages some youngsters to pursue the tourist dollar instead of being educated. Conversely, a supportive comment about tourism from an Iban woman was included.

The programme closed with the following comment from the presenter:

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<sup>5</sup> The Iban are a native people of the state of Sarawak within Borneo. The welfare of the Iban and their society is affected by deforestation and industrialisation.

*“For the past 40 years the Malaysian government has practised an affirmative action policy aimed at raising the living standards of indigenous groups, including the ethnic Malays of the peninsular and the native people here in Sarawak. The policy gives them a host of special rights and privileges in areas such as education, housing, business. Despite all those measures the native peoples here are still among the poorest Malaysians, although the federal government is vowing to raise living standards in Sarawak, bringing development to the Ibans without destroying their unique longhouse way of life. It’s going to be a difficult and delicate task...”*

### One Square Mile – Kuala Lumpur

This programme was again essentially a travelogue. References were made throughout to the varied built environment of Kuala Lumpur. The various quarters that house different nationalities and groups also made up much of the programme.

Two, more social, subjects were also canvassed: the role and place of women in the city, and the legal system. In respect of the former there was some emphasis on Malaysia’s modernity and liberalism. The programme explained that women usually do wear a headscarf, but it is “*in no way*” obligatory to do so. A Malaysian Indian journalist explained that Malaysia differs from India – the dowry system is different, girls are not seen as a burden in Malaysia and education is considered important for them.

The programme also covered Sharia courts, saying that these cover only family matters and have no jurisdiction over non-Muslims.

The programme also included comment on middle class life-styles in the city, observing that full-time maids and nannies from neighbouring countries, generally the Philippines, are readily affordable.

### Third Eye

*Third Eye* was a serious factual series, the title referring to third-party experts who offered commentary on the subjects covered.

### Third Eye – Egypt

This programme examined Egypt in the aftermath of the fall of the Mubarak regime. The ‘third eye’ expert commentators were Emma Bonino, Eugene Rogan and Leslie H. Gelb.

Covering the social, democratic and economic challenges facing Egypt, the programme focused on the Muslim Brotherhood – but not on any other Egyptian political movements or parties. One of the expert commentators, Leslie H. Gelb, was shown saying: “*the Muslim Brotherhood frankly still scares me...*”.

In the course of the coverage of the Muslim Brotherhood, footage of Yusuf al-Qaradawi was shown giving an anti-semitic speech; he was later said to have adopted a “*measured*” tone on return to Egypt. The funding of the Muslim Brotherhood was then discussed:

Voice-over:

*“The Muslim Brotherhood has built an extensive international network funded from countries outside Egypt such as Saudi Arabia, and including the Virginia-based International Institute of Islamic Thought, which has been investigated by a number of US government agencies for alleged involvement in the financing of terror groups. The think tank was co-founded by the Malaysian politician Anwar Ibrahim [pictured sitting next to Yusuf al-Qaradawi and then, separately, the pair shaking hands] who supported the Muslim Brotherhood. Yet the Muslim Brotherhood claims that its vision of Egypt today is anything but extreme...”*

Since August 2008 Anwar Ibrahim has been the leader of the Malaysian opposition.

An interview with a Muslim Brotherhood spokesman followed. This and a prior sequence featuring the spokesman provided an opportunity for the group to put its side of the story.

### Third Eye – Asian Food

This programme examined Asia’s growing need for food – as viewed by consumers and producers – by concentrating on the staples of rice and cooking oil. Much of the programme focused on palm oil production in Malaysia.

The experts featured in this programme were: Peter Hazell (Imperial College, London); Abdolreza Abbassian (Food and Agricultural Organisation, UN); Jeffery Sachs (Earth Institute, Columbia University).

The programme raised the subject of small farmers’ place as food producers. The advantages of developing economies encouraging small farmers were explained by Hazell and Abbassian. The programme then turned to Malaysian palm oil production. The voice over said:

*“The growing trade in palm oil with India and China is also providing much needed income to poor farmers in Malaysia. Rural living standards are rising; it’s also given jobs to poor people who once owned no land. Like Abdul Mutalib Arshad. He works four hectares of oil palm with help from the Federal Land Development Authority [FELDA]. FELDA assists small farms that grow cash crops.”*

Arshad:

*“Life used to be very difficult. But when we came here to the settlement, with the help of FELDA, life became easier. I can now pay to educate my children. The price of palm oil is high and there is lots of money coming in.”*

Voice-over:

*“There are now more than 200,000 smallholders dependent on the sale of palm oil across the country.”*

Jeffrey Sachs:

*“The way that Malaysia for example developed palm oil with smallholders who were working in larger areas and often with government leadership – something called FELDA, which developed a lot of the land area – has been exemplary in*

*showing how you can simply have a large state that is managed for the interests of large wealth but actually for the interests of the individual farm families.”*

The programme moved on to talk about rising demand for food and food production in Asia. The programme said that stocks in Asian food companies “*from Mumbai to Kuala Lumpur are now hotly traded*”. A market analyst said that population growth is driving a rise in demand for palm oil.

In this respect the voice-over stated:

*“Once an efficient centre for rubber, Malaysia has increasingly over the years turned to oil palm grown on land reserved for agriculture. The industry employs more than half a million people. The country is now one of the world’s biggest exporters, producing 40% of global supply and is reaping the economic benefits of higher demand from Asia.”*

Lee Oi Hian, CEO, Kuala Lumpur Kepong (a large palm oil producer):

*“It’s the second biggest employer in Malaysia itself, and it’s got a huge multiplier effect on the whole industry because the value added by the palm oil industry to the country is extremely huge.”*

Further comment, and interviews with plantation managers, told how palm oil is the major driver of prosperity, how immensely profitable it is and how it is paying well and attracting young talent.

The programme briefly raised the question of environmental concerns with the risks of deforestation, threatening the habitat of rare species like the orang-utan. It then moved to Jeffery Sachs who gave his view that the responsible parts of the industry are producing palm oil sustainably. The commentary said that even if “*some elements*” in the industry have not taken account of environmental concerns, they will be forced to by peer pressure and the marketplace – this was illustrated with shots of posters for the Roundtable for Sustainable Palm and an interview with that organisation’s Secretary General.

## **Code issues**

We were concerned principally to establish the facts concerning the source and nature of funding provided by FBC for the programmes listed.

Programme sponsorship is subject to rules that prevent the sponsorship of current affairs programmes, limit the exposure of sponsors in sponsored programmes (prior to 2011 the rules operated essentially to ban sponsor presence in programmes altogether) and require the clear identification of sponsors through sponsorship credits.

More generally, we examined the extent of the editorial control and responsibility that BBCWN had exercised when it accepted, complied and transmitted the FBC-produced programmes. The Code requires that licensees maintain independent editorial control over the programmes they transmit.

## Sponsorship

Section Nine of the Code sets out various requirements that are applicable to sponsored programmes. The definition of a sponsored programme and sponsor in each of the applicable versions of the Code are as follows:

September and December 2010 versions of the Code:

“A sponsored programme, which includes an advertiser-funded programme, is a programme that has had some or all of its costs met by a sponsor with a view to promoting its own or another’s name, trademark, activities, services, products or any other direct or indirect interest.”

“A sponsor is any public or private undertaking (other than the broadcaster or programme producer) who is sponsoring the programme, programming or channel in question with a view to promoting their or another’s name, trademark, image, activities, services, products or any other direct or indirect interest. This meaning extends to those who are otherwise supplying or funding the programme of channel.”

February 2011 version of the Code:

“Sponsored programming (which may include a programme, channel, programme segment or block of programmes) is programming that has had some or all of its costs met by a sponsor. It includes advertiser-funded programmes.”

“Meaning of ‘sponsor’:

Any public or private undertaking or individual (other than a broadcaster or programme producer) who is funding the programming with a view to promoting its products, services, trademarks and/or its activities.”

Ofcom considered whether the FBC-produced programmes listed above met the definition of sponsored programmes.

## Editorial independence

The relevant rule in September 2010 and December 2010 editions of the Code was as follows:

Rule 10.1: “Broadcasters must maintain the independence of editorial control over programme content.”

The relevant, re-numbered rule in the February 2011 edition of the Code was:

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

## **The evidence**

### Malaysian money

Ofcom noted the following information which linked FBC to the Government of Malaysia and/or its agencies:

- i) A statement made by a Minister in the Malaysian Parliament on 2 November 2011<sup>6</sup> that referred to the Government of Malaysia paying FBC €19.6 million for three years' service to promote it from 2007. Ofcom commissioned an independent translation of this from Malay and noted, in particular, that the Minister said:
- "...the government has received service from the consultant of FBC Media United Kingdom in providing a consulting service, advice and in taking care of the communication campaign since 2007. The one-year contract has been extended twice and ended in 2010. The contract value for the three years is 19.6 million Euros. FBC Media has been using various approaches in executing the communication planning. Amongst others, helping in Malaysia's involvement in important international forums, helping in building good relationships with influential newspapers and providing broad coverage about Malaysia's interests in international media. FBC Media's communication planning supports the efforts of government leaders, ministries, agencies, visits, and their overseas missions. As we have known, apart from appropriate foundation and programmes, communication strategy also plays an important role in our efforts in increasing our country's profile as an interesting destination, for investment, and tourism"; and
  - "Since we started using FBC to improve our government's image, we have seen the progress in the aspect of acceptance by Western countries' leaders of the leadership of Our Most Honourable Prime Minister".
- ii) Lobbying disclosure documents filed with the Office of the Clerk, US House of Representatives which showed that in 2008 FBC paid a US public affairs company \$70,000 to lobby to "raise awareness of the importance of policies in Malaysia that are pro-business and pro-investment as well as the significance of reform and anti-terrorism efforts in that country".
- iii) A photograph of material that appeared to be from the Government of Malaysia's budgetary records, recording (in Malay) a payment of RM28,350,000<sup>7</sup> made in 2009 by the Government of Malaysia to FBC Media (UK) Limited for a Global Strategic Communications campaign.
- iv) Copies of documents which appeared to be FBC marketing or pitch documents, in the form of Microsoft PowerPoint presentations that contained broadcasters' logos and included, for example:
- a 2010 "Brand Positioning Campaign for Sarawak" that included proposed positive messaging strategies in named television documentaries;
  - a 2010 "Strategic Communications and National Branding Campaign for 1MDB<sup>8</sup>, KLIFD<sup>9</sup> & Malaysia" that proposed positive messaging of Malaysia in specific programmes;

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<sup>6</sup> Ofcom accessed this information during its investigation:  
<http://www.parlimen.gov.my/files/hindex/pdf/DR-02112011.pdf#page=10&zoom=70&search>

<sup>7</sup> Equivalent to £5.2m in 2015 exchange rates.

<sup>8</sup> 1MDB (1Malaysia Development Berhad) is a strategic development company wholly owned by the Government of Malaysia. Source: <http://www.1mdb.com.my/about-us/what-we-do>

- a 2011 “Documentary Production Proposal” to the Malaysian Palm Oil Council for “placement in [a] prime time slot on a pan-regional channel such as [channels named]”;
  - a 2004 “Media Services – Selected Case Studies” document, detailing the services FBC had provided for sixteen clients, including Tourism Malaysia, Alliance for the New Humanity, European Commission and International Chamber of Commerce and Arab Business Council, noting specific stories or programmes reaching “over 300 million homes each week in over 100 countries”;
- v) A copy of a letter (2011) from Alan Friedman (FBC Chairman and Founder of FBC Media) to the Chief Minister of Sarawak, Malaysia, outlining potential positive messaging in broadcast editorial.
- vi) A copy of what appeared to be a budget breakdown for an “International Strategic Communications Campaign” by FBC for the Malaysian state, Sarawak (February 2011 to January 2012), involving cost breakdowns for “in-depth TV News Reports” and “Half-hour Production and Long-form Documentaries” on specific channels.

The information at i) and ii) above is a matter of public record.

Ofcom was not able to verify the authenticity of the documents detailed at iii) to vi) above. However they appeared to support the publicly available evidence that the Government of Malaysia had paid FBC to promote the country in international media.

Ofcom therefore provided this information to BBCWN and sought its response to it in respect of the programmes’ funding and the Licensee’s general compliance and editorial responsibilities.

#### BBCWN’s Producer Declarations

BBCWN used forms called Producer Declarations (“PDs”) to seek information from supplying producers that were designed to establish the presence of a third party programme funder and, if applicable, that funder’s connections to the subject of the programme it had paid for. PDs were therefore a potentially important part of BBCWN’s compliance process.

Until March 2010 the funding of programmes was discussed with the independent production companies orally. However, after concerns about the funding arrangements of some BBCWN programming, BBCWN introduced the Producer Declaration form.

PDs were two-page forms that contained a number of questions that included asking whether third party funding had been accepted, the source of any such funding, and whether any connections existed between the funder(s) and the subject matter of the programme.

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<sup>9</sup> Kuala Lumpur International Financial District – a project of 1MDB that is aimed at strengthening the country's position in the financial services sector. Source: <http://www.1mdb.com.my/news-coverage/klifd-to-take-off-early-2012>

Below the questions was a 'statement of truth' for the producer to sign: "I confirm that the above is complete and accurate to the best of my knowledge". On the second page were spaces for "Additional BBCWN editorial comments", and finally a space for a BBC signature below the statement, "signed off by BBC Global News".

In respect of the PDs returned by FBC we noted that none disclosed any information at all (other than in one PD in which there was a brief description of the format of a debate – this programme is not in the list given above), the spaces for answers being either blank or containing "no" or "n/a". None was signed by BBCWN and none was dated.

### **BBCWN's submissions**

#### Malaysian money: programme funding

BBCWN told us that it was simply not aware of the relationship between the Malaysian Government and other Malaysian interests and FBC, despite its enquiring of FBC several times about its financial relationships with its clients. It said further:

"Whilst we have not been able to establish categorically that the FBC-produced programmes were not funded by these third party interests, we do not believe the evidence establishes that these programmes were sponsored as defined by the Code. Nevertheless, we accept that FBC was not an appropriate producer of these programmes, and that this led to the potential for an undermining of our editorial independence."

BBCWN said that FBC had represented to it that the funding had been provided by FBC as a production company, on a deficit funding model: FBC would recoup its expenditure through syndicating the programme (or content from the programme) to third parties through its established distribution clients such as airlines — its initial exposure on BBC World News would increase its marketability because of the BBC's reputation.

#### Producer Declarations

BBCWN's position was that the value of the PDs was in focusing the minds of independent producers. Further, it said that PDs were part of the contracting process and must be understood in that context: the PDs were not stand-alone documents but were part of the general contracting process. This process included the contracts themselves which had always explicitly required that the producers could not accept benefits from a third party or funding with a view to endorsing or promoting its services or in a way that could give rise to doubts about the objectivity or impartiality of the programme, the Licensee said.

In the specific cases of FBC productions BBCWN accepted that its processes "...may not have been sufficient to uncover the true origin of the funding..."; but BBCWN emphasised that in these cases it believed it had understood the funding model – explained above – and judged that it was an unproblematic one.

As to the absence of BBCWN signatures, the Licensee said that this was because the PDs formed part of a contract which both parties signed and that "the producers alone had to sign the declarations to confirm that the information supplied was complete and accurate. As this obligation was unilateral, a single signature was sufficient." BBCWN offered no view on why a space for a BBCWN countersignature was used on the form.

### Independent editorial control

In respect of the maintenance of editorial control, BBCWN commented:

“We now know that FBC had a PR relationship with Malaysian clients and as such we fully accept that it was not an appropriate producer of the programmes it produced for BBCWN and which are now under investigation by Ofcom. We acknowledge that a conflict of interest existed here, in breach of the BBC’s Editorial Guidelines, and that this relationship could have undermined our editorial independence. However despite undertaking due diligence and making appropriate enquiries of FBC prior to entering into a contractual relationship, we were not aware of this relationship when the content was broadcast. We sought to maintain independent editorial control over the content of each programme, through our usual editorial and compliance procedures. We therefore accept that this lack of knowledge may have given rise to the potential for BBCWN’s independence of editorial control over the content to be undermined.”

The Licensee also supplied extensive comment on its compliance procedures and on the origins of, and arrangements adopted for, the various FBC-produced series.

### Action taken by BBCWN

BBCWN emphasised the steps it had taken once the potential for inappropriate programme funding had been raised with it. It said the issues had been the subject of extensive internal investigation and an investigation by the BBC Trust. BBCWN had accepted the Trust’s findings in full.

BBCWN told us that as result of the investigations and subsequent published finding, it had taken a number of actions to ensure these issues never arose again. These included no longer commissioning or acquiring programmes which are sponsored by non-commercial organisations; and not commissioning or acquiring programming at nominal cost from independent production companies for first broadcast on BBC World News. All programmes are commissioned or acquired on a transparent commercial basis, BBCWN told us. The Licensee said further that tighter approval procedures and strengthened contracts had also been introduced.

BBCWN also confirmed that an on-air statement and apology had been broadcast a number of times. This included the following:

*“In the case of eight other programmes, all of which featured Malaysia, we found that the production company which made the programmes appeared to have a financial relationship with the Malaysian Government. This meant there was a potential conflict of interest, though the BBC was not aware of it when the programmes were broadcast.*

*None of the programmes breached the BBC guidelines on impartiality and none of the BBC’s news bulletins was affected.”*

## **Conclusion**

### Sponsorship

Ofcom concluded that the evidence available was not sufficient to establish that the funding provided to FBC by Malaysian interests had been specifically for the purpose of funding the programmes. In Ofcom’s view, the evidence did show that money had

been paid by Malaysian interests to FBC. However it did not demonstrate that the money had been used to fund programme production, as opposed to non-television public relations and lobbying activity.

In this respect we noted and agreed with the BBC Trust's conclusion<sup>10</sup> on the matter of potential programme sponsorship by Malaysian interests when it reported:

“However, the Committee considered that it had no evidence before it to indicate that money paid by the Malaysian Government to FBC Media (UK) Ltd was used directly to fund programmes transmitted on BBC World News. Therefore the Committee did not consider itself able to conclude that the apparent relationship between the Malaysian Government and FBC Media (UK) Ltd would amount to programme sponsorship. Therefore the relevant Sponsorship Guidelines did not apply.”

### Editorial independence

Ofcom considered that the steps taken by BBCWN prior to the production or transmission of the programming to require certain contractual undertakings from FBC (and all other producers) and to comply the programmes before transmission did not suggest that the Licensee had breached its obligation to maintain independent editorial control. Most importantly, we were aware of no evidence that BBCWN had actually known about actual or potential influence by FBC's clients and closed its mind to the consequences of that influence. As such, we have found no evidence to record a breach of the Code on this issue.

However, Ofcom noted BBCWN's admission that, in hindsight, FBC was not an appropriate producer of the programmes investigated and that there had been a risk to BBCWN's editorial independence by what it described as “the lack of knowledge” available to it at the time the programmes were broadcast.

Ofcom acknowledges that BBCWN was potentially misled by FBC in its pre-production and pre-transmission checks. However, broadcasters must always seek to apply the utmost rigour in investigating and documenting the relationship between producers and the interests featured in their programming. That third party interests might exploit their role in programming made available to a broadcaster at no charge may not have been inevitable, but its obvious possibility in this case should have been a strong indicator that better care was required.

It is essential that broadcasters take steps to ensure that content is not used as a vehicle to promote the interests of a third party, especially in current affairs content. In circumstances where broadcasters have acquired programming, they should be able to demonstrate that they have taken adequate steps to obtain all information necessary for them to make appropriate independent editorial decisions. For example, they will need to ascertain how such programmes have been funded to assess whether a funding arrangement has influenced the editorial in a way that would call into question the programme's editorial independence. We welcome the steps that BBCWN has since taken in this regard to strengthen its compliance procedures, as detailed above, and will invite BBCWN to attend a meeting with Ofcom to discuss further possible improvements.

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<sup>10</sup> The Trust's report is available at:

[http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc\\_bulletins/2011/world\\_news.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2011/world_news.pdf)

Broadcasters should note that, in light of this and related cases, Ofcom intends to work with broadcasters to develop best practice guidelines to help them maintain compliance with these crucially important aspects of the Code. As part of that process, we will examine the relevant provisions in the Code and assess whether changes are required to ensure that viewer confidence in the independence of factual programming is maintained.

In the interim, broadcasters are advised to review any relevant programme acquisition arrangements to ensure that they can satisfy themselves – and Ofcom – that the manner in which content has been funded does not call into question their own editorial independence.

## **Sponsored programmes**

*BBC World News, various dates between 23 October 2009 and 4 June 2011*

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### **Introduction**

BBC World News (“BBCWN”) is a 24-hour international news and information channel. It is broadcast in English in more than 200 countries and territories across the world. The service is not formally available in the UK.

BBCWN is not supported by the licence fee but is owned by BBC Global News Limited, a commercial subsidiary of the BBC, and is funded through advertising and subscription. It is therefore required to hold an Ofcom licence, which is held by BBC Global News Limited.

Following allegations about a BBCWN programme, the BBC Trust began investigations into the funding arrangements of a range of programming on BBCWN. Both to avoid duplication and to enable the BBC Trust’s investigation to inform the scope of our own enquiries, Ofcom decided to wait for the conclusion of the BBC Trust’s investigation before commencing its own. The BBC Trust reported its findings in November 2011<sup>1</sup>.

Following receipt of a complaint and the conclusion of the BBC Trust’s investigation, Ofcom began an investigation into free and nominal cost programming (generally a nominal £1 for the purposes of contracting) not presented as sponsored which had been broadcast by BBCWN from October 2009. The complainant provided Ofcom with a number of documents to support this complaint.

### **Ofcom’s investigation**

BBCWN told us that, since February 2010, all of BBCWN’s feature programming has been broadcast at weekends. It explained that during an average weekend, it broadcast about 15 different programmes and estimated that approximately 10% of its feature programming broadcast before 4 June 2011 had comprised programming supplied to it for free or at nominal cost.

In the first instance Ofcom asked BBCWN to identify programmes it had broadcast that had been acquired at no or nominal cost. Ofcom subsequently sought information and comment generally on the circumstances of such programmes’ acquisition, including contractual details, and recordings of a number of the programmes identified.

BBCWN supplied recordings of all the programmes requested. Ofcom considered a number of these programmes raised issues under the Code and requested further detailed comment on them from BBCWN.

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<sup>1</sup> The BBC Trust’s report ‘*Funding arrangements and sponsorship of documentary and feature programmes on BBC World News (a BBC Commercial service)*’, can be found at: [http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc\\_bulletins/2011/world\\_news.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2011/world_news.pdf)

## The programmes

BBCWN provided transmission, content and production details of 186 programmes transmitted between 7 February 2009 and 3 September 2011 that had been supplied to it at no cost or for a nominal sum and that had not carried sponsorship credits.

Of these programmes Ofcom sought recordings of 75 programmes. All of these programmes were carefully examined and researched. Of these 75 programmes, a number raised issues warranting investigation under the present and previous editions of the Code. This Finding reports on the following programmes:

1. *Taking the Credit*, 23 October 2009
2. *Earth Report – Burning Bush*, 28 October 2009
3. *Earth Report – REDD Alert*, 4 November 2009
4. *Kill or Cure – Bittersweet*, 12 January 2010
5. *Architects on the Frontline – Episode 1*, 20 November 2010
6. *Architects on the Frontline – Episode 2*, 27 November 2010
7. *Architects on the Frontline – Episode 3*, 4 December 2010
8. *Earth Reporters – Deep Blue*, 5 March 2011
9. *Stealing the Past*, 26 March 2011
10. *Nature Inc – ‘Conservation from Chaos’*, 9 April 2011
11. *Nature Inc – Hard Rain 1*, 16 April 2011
12. *Nature Inc – Hard Rain 2*, 23 April 2011
13. *Earth Reporters – Beating Plague*, 21 May 2011
14. *Nature Inc – 21 Gigatonne Timebomb*, 4 June 2011

Each of the programmes was approximately 30 minutes in duration. All were funded by not-for-profit organisations operating largely in the areas of developing world issues and environmental concerns.

## Code issues

Each of the 14 programmes listed above raised one or more of the following issues:

- due impartiality;
- sponsorship of current affairs programmes;
- references to the sponsor in programmes; and
- identification of sponsorship.

## Background to relevant Code rules

This Finding refers to the 2008, 2009, 2010 and 2011 editions of the Code.

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content that it considers are best calculated to secure a number of

objectives, including that “the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”.

### Due impartiality

Section 320 of the Communications Act 2003 requires, among other things:

- 320(1)(b) “the preservation, in the case of every television programme service, teletext service, national radio service and national digital sound programme service, of due impartiality, on the part of the person providing the service, as respects all of those matters;”
- 320(2) “Those matters are—  
(a) matters of political or industrial controversy; and  
(b) matters relating to current public policy.”

These requirements are reflected in Rule 5.5 of the 2008, 2009, 2010 and 2011 editions of the Code:

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

Ofcom sought comments in respect of Rule 5.5 on various programmes reported on in this Decision. However, given that Rule 5.5 requires due impartiality to be achieved within a programme or over a series of programmes taken as a whole – i.e. that the rule’s requirement is capable of being fulfilled over a period through editorially linked programmes elsewhere in its schedule – and that much time had elapsed since the material was broadcast, we considered it would not be practical or proportionate to ask the Licensee to demonstrate how it had achieved due impartiality across its programmes taken as a whole at the times the interviews were broadcast.

We were, however, concerned that in light of the nature of the other issues under investigation, which are also reported on in this Bulletin in respect of BBCWN programming, it remained possible that there may have been issues with the Licensee’s compliance with Rule 5.5 in some instances.

### Sponsorship of current affairs programmes

Article 10(4) of the Audiovisual Media Services Directive (“AVMS Directive”) states<sup>2</sup>:

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

The requirement was reflected in Rule 9.1 of the 2008, 2009 and 2010 editions of the Code, which stated, among other things:

- “The following may not be sponsored:  
[...]  
• News and current affairs programmes on television.

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<sup>2</sup> Prior to implementation of the AVMS Directive, an essentially similar provision applied in the ‘Television Without Frontiers’ Directive (“TVWF Directive”) (at Article 17(4)).

“Meaning of “current affairs programme(s)”:

A current affairs programme is one that contains explanation and analysis of current events and issues, including material dealing with political or industrial controversy or with current public policy”.

The requirement was subsequently reflected in Rule 9.15 of the 2011 edition of the Code, which stated:

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

“Meaning of “current affairs programme”:

See meaning under Rule 9.12”.

[from Rule 9.12:]

“Meaning of “current affairs programme”:

A current affairs programme is one that contains explanation and/or analysis of current events and issues, including material dealing with political or industrial controversy or with current public policy”.

Where Ofcom has reached a decision that a broadcast was a sponsored current affairs programme, in breach of Rules 9.1 or 9.15 of the various editions of the Code, we have not gone on to consider it under Rules 9.5, 9.6, 9.7, 9.19 or 9.20, as applicable (see below), as the material in question should not have been sponsored.

#### References to the sponsor in programmes

Article 10(1) of the AVMS Directive states, among other things<sup>3</sup>:

“Audiovisual media services or programmes that are sponsored shall meet the following requirements:

[...]

(b) they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services”.

The requirement was reflected in Rule 9.5 of the 2008, 2009 and 2010 editions of the Code, which stated:

Rule 9.5 “There must be no promotional reference to the sponsor, its name, trademark, image, activities, services or products or to any of its other direct or indirect interests. There must be no promotional generic references. Non-promotional references are permitted only where they are editorially justified and incidental”.

The 2011 edition of the Code contains no equivalent rule.

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<sup>3</sup> Prior to implementation of the AVMS Directive, an essentially similar provision applied in the TVWF Directive (at Article 17(1)(c)).

Identification of sponsorship

Article 17 of the ‘Television Without Frontiers’ Directive (“TVWF Directive”) – now superseded by the AVMS Directive – stated at Article 17(1)(b):

“[sponsored programmes] must be clearly identified as such by the name and/or logo of the sponsor at the beginning and/or the end of the programmes;”

Article 10(1)(c) of the AVMS Directive states:

“viewers shall be clearly informed of the existence of a sponsorship agreement. Sponsored programmes shall be clearly identified as such by the name, logo and/or any other symbol of the sponsor such as a reference to its product(s) or service(s) or a distinctive sign thereof in an appropriate way for programmes at the beginning, during and/or at the end of the programmes.”

The TVWF and AVMS requirements were reflected in Rules 9.6 and 9.7 of the 2008, 2009 and 2010 editions of the Code:

Rule 9.6 “Sponsorship must be clearly identified as such by reference to the name and/or logo of the sponsor. For programmes, credits must be broadcast at the beginning and/or end of the programme.”

Rule 9.7 “The relationship between the sponsor and the sponsored channel or programme must be transparent.”

The AVMS Directive requirement was reflected in Rules 9.19 and 9.20 of the 2011 edition of the Code:

Rule 9.19 “Sponsorship must be clearly identified by means of sponsorship credits. These must make clear:

- a) the identity of the sponsor by reference to its name or trade mark; and
- b) the association between the sponsor and the sponsored content.”

Rule 9.20 “For sponsored programmes, credits must be broadcast at the beginning and/or during and/or end of the programme.”

“Note:

Credits may also be broadcast entering and/or leaving a commercial break during the sponsored programme.

For other sponsored content (e.g. channels) sponsorship credits should be broadcast at appropriate points during the schedule to ensure audiences understand that the content is sponsored”

**Response – general comments**

Ofcom initially asked BBCWN to explain in full its practice of accepting free or nominal cost programming and broadcasting this without sponsorship credits.

BBCWN told us that the practice of accepting and transmitting free and low cost programming (which ceased in June 2011) was long-standing. It said there was a small set of producers who specialised in raising production funds from not-for-profit organisations such as non-governmental organisations (NGOs) and UN agencies.

This model of production and broadcast had existed since the launch of BBCWN (as World Service Television) in 1991.

BBCWN said it would normally have been involved in the production process, approving programme outlines and scripts: “in effect BBCWN ‘exec produced’ these programmes”.

The Code’s definition of a sponsor makes no distinction between commercial and non-commercial sponsor interests<sup>4</sup>. BBCWN, however, believed that not-for-profit bodies such as United Nations agencies could fund programmes without engaging the sponsorship rules.

It believed that if the content of the programme could not be considered promotional of the funder and its activities or interests, the funder should not be categorised as a sponsor.

BBCWN said it believed that subjects of general public interest such as health, education, social welfare etc. could not be considered to be proprietorial interests of a funder provided that the particular activities of the funder were not promoted.

The Licensee confirmed that all of the programmes were funded, at least in part, by non-commercial, not-for profit organisations, such as charitable foundations and non-aligned international bodies such as UN agencies.

BBCWN said that in relation to each programme Ofcom had raised with it, it accepted that the funding arrangement and the content of the programme led to the programme meeting Ofcom’s definition of sponsorship, and the sponsorship provisions of Section Nine of the Code were therefore engaged.

BBCWN accepted in retrospect that the organisations were not suitable funders for these programmes, but said that the decision to broadcast them was taken because of a genuine misinterpretation of the Code, resulting from a misunderstanding of the circumstances in which a programme funder becomes a sponsor. Although BBCWN admitted the programmes breached the Code, it emphasised that the decision to broadcast was not a deliberate or reckless act, and there had been no intention to breach the Code or to gain any commercial advantage.

BBCWN stated further:

“Although we were not of the view that the programmes met the definition of sponsorship at the time of the transmission, we did ensure that the relationship between the funder of the programme and its content was clear by including a statement in each programme’s end credits in all but 2 programmes. Therefore, although not strictly in adherence to the requirement for “sponsorship” to be identified by the use of credits separated by temporal or spatial means, we believe – importantly – that we complied with the principle behind the rules, i.e. to ensure funding arrangements are transparent and therefore viewers were never misled.”

The reference in question amounted to the inclusion of “thanks to” messages in the closing credits of funded programmes.

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<sup>4</sup> This has been the case in all editions of the Broadcasting Code.

BBCWN stated that the issues highlighted by Ofcom's investigation had been the subject of an internal investigation and an investigation by the BBC Trust. BBCWN said that it had taken extensive steps to strengthen its understanding of the Code and its procedures to ensure compliance as a result. These included:

- revising its procedures for the compliance of externally commissioned programmes (including "tightening" its supplier list and introducing a new committee to scrutinise compliance issues and ensure appropriate due diligence);
- re-drafting relevant sections of the *Advertising and Sponsorship Guidelines for BBC Commercial Services* concerning funding, sponsorship and potential conflict of interests;
- drafting of a new Chapter to the BBC Editorial Guidelines concerning external relationships and funding for BBC World Service Group services; and
- providing further training for staff.

BBCWN considered that there had been "swift recognition [by it] of the issues these programmes [had] raised". It stated that, following an investigation and the report from the BBC Trust, it had "accepted the findings in full", and transmitted on-air statements of apology.

## 1. *Taking the Credit*, 23 October 2009

### Introduction

*Taking the Credit* was acquired by BBCWN at low or nominal cost. It was produced by an independent producer and funded by a third party. The programme explored the issue of carbon trading and focused on a project in N'hambita, Mozambique. The programme was transmitted in the run up to the Copenhagen climate change summit which took place in December 2009.

In view of the content and nature of this programme, and the fact that it was funded by a third party, we considered the programme to raise questions warranting investigation under Rule 9.1 of the October 2008 edition of the Code.

### Response

BBCWN told us that *Taking the Credit* was a BBCWN acquisition. It said further that the programme concerned the voluntary sector for carbon offsetting and centred on a carbon sequestration project in Mozambique. The programme was funded by a third party and BBCWN accepted that the funding arrangement met the definition of sponsorship. The programme was timed to air in the run up to the Copenhagen climate change summit, which took place in December 2009, the Licensee said.

BBCWN said that in relation to Rule 9.1, which prohibited the sponsorship of current affairs programmes, it accepted that this programme was current affairs, because at the time of the programme's broadcast the issue of carbon trading was to be discussed at the Copenhagen Summit. The programme also discussed and debated the merits of carbon trading (as opposed to the scientific background to it), the Licensee said. BBCWN told us that the programme should therefore not have been sponsored.

## Decision

BBCWN recognised in its submissions that *Taking the Credit* was a current affairs programme. In Ofcom's view it was clearly a current affairs programme.

Therefore, Rule 9.1's prohibition of the sponsorship of current affairs programming was breached.

## Breach of Rule 9.1 (October 2008 Code)

### 2. *Earth Report – Burning Bush*, 28 October 2009

#### Introduction

This programme was funded by the UN Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries ("UN REDD Programme" or "REDD").

REDD is a UN scheme that seeks to combat deforestation in the developing world. The central policy measure employed within the REDD scheme is the payment of money by developed countries to poorer ones as an incentive to reduce deforestation<sup>5</sup>.

This programme reported from Borneo on forest burning and the greenhouse effect this produces. The first half of the programme explored the nature and extent of the damage caused to tropical forests and peat land through burning.

The second half of the programme contained explicit exposition of REDD, its advantages and the prospects for its adoption at the Copenhagen Summit. The Summit took place between 7 and 18 December 2009. *Earth Report – Burning Bush* was therefore transmitted in the approach to the summit.

The second half of the programme included the following:

VO: *"A new scheme named REDD may provide these funds to reduce deforestation. REDD, or Reducing Emissions from Deforestation and Forest Degradation in Developing Countries, could be part of an international agreement in Copenhagen to reduce greenhouse gases. It would replace the Kyoto Protocol when it expires in 2012. Richer countries would pay poorer to keep their forests, and the carbon they store, standing."*

*"If it goes ahead, the REDD proposal could bring as much as \$3bn into Indonesia. It would support projects preventing forest loss, like Alue's and Suwido's. In May Indonesia became the first nation to issue a legal framework for REDD."*

This last comment was followed by interviewees stressing how forest protection is economically beneficial as well as an environmental imperative.

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<sup>5</sup> See <http://www.un-redd.org/AboutUN-REDDProgramme/tabid/102613/Default.aspx>

In view of its content, most notably the considerable emphasis on global warming and the assistance that the REDD Programme may play in combating it, we considered that the programme raised issues warranting investigation under Rule 9.1 of the October 2008 edition of the Code.

Comments under this rule were sought from BBCWN.

## Response

This rule prohibited the sponsorship of current affairs (and news) programmes.

BBCWN accepted that as a result of the funding arrangement and the editorial content of this programme, the programme was sponsored by UN REDD.

The Licensee said further that it had considered carefully the meaning of “current affairs” programme:

“A current affairs programme is one that contains explanation and analysis of current events and issues, including material dealing with political or industrial controversy or with current public policy.”

BBCWN explained that *Earth Report* is an environmental series that travelled across the world reporting on important environmental issues and their impact on the globe. This programme, BBCWN said, was divided into two parts. The first part was scientific and environmental in nature – following an agronomist and his research into peat forest conservation. BBCWN also said that this part of the programme put the issue into a historical context with a look at the ‘mega rice project’ back in the mid-90s. As to the second part, BBCWN said:

“The second part of the programme started with a Borneo native, Alue Dohong, who has set up a forest restoration project. The report follows him back to the Matangi River. Within the second part of this programme there are some parts that outline more policy-orientated issues dealing, at times, with Indonesian government policies and the impact on climate change. It also briefly references the Copenhagen summit and the Kyoto protocol. The majority of the programme tells an environmental story through the eyes of Suwido Limin and Alue Dohong”.

BBCWN initially said that although the programme did deal with issues around global warming, in BBCWN’s view, this did not in itself result in the programme being defined as current affairs. In this respect, it said further:

“Many programmes deal with global warming as an issue, without falling within the definition of current affairs. For example, the recent BBC wildlife film *The Polar Bear Family and Me* repeatedly makes references to ice melt, but it is clearly not a current affairs programme”.

As to global warming, BBCWN said:

“In 2009, as now, there was broad international consensus (both scientific and governmental) that global warming exists and that it is linked to carbon dioxide emissions. In regulatory terms this has consequences for both current affairs and impartiality (see below). In this programme global warming is not dealt with largely as a political or international governmental matter. It is examined very much from a scientific angle (e.g. the consequences of burning peat and its effect on carbon dioxide emissions) and the battle for saving the environment is seen at

a very human level (e.g. through Limin and Dohong). Dealing with a programme that accepts, as its basic premise, that global warming and its effects exist does not mean that the programme becomes current affairs. You also suggest that the role that the REDD Programme played in this episode may also mean that it was current affairs. We do not believe this is the case. The REDD Programme is in fact, only referred to twice in the programme...”

BBCWN quoted from the programme:

*“A new scheme named REDD, may provide these funds to reduce deforestation. Red, or Reducing Emissions from Deforestation and forest degradation in developing countries, could be part of an international agreement in Copenhagen, to reduce greenhouse gasses. It would replace the Kyoto protocol when it expires in 2012. Richer countries will pay poorer to keep their forests, and the carbon they store standing”.*

And:

*“If it goes ahead, the REDD proposal could bring as much as 3 billion dollars into Indonesia. It would support projects preventing forest loss like Alue’s and Suwido’s. In May, Indonesia became the first nation to issue a legal framework for REDD”.*

The Licensee told us that that the first of these references to REDD was purely factual, “...putting into context the work that Limin and Dohong do.” BBCWN said, however, that the second mention did reference how much revenue REDD could bring into Indonesia. However, it said, “...on any reasonable interpretation we do not consider that these two references to the REDD project can result in the whole programme being defined as current affairs.”

More generally in respect of the classification of programme as current affairs, BBCWN’s initial view was that:

“Overall, [it did] not believe that a programme which, in small part, covers some current affairs issues is de facto a current affairs programme. For instance, ITV’s *This Morning* may carry an interview with the Prime Minister, which would certainly be viewed as strong current affairs. However, that does not mean that *This Morning* is a current affairs programme. There are many other programmes, which may briefly touch on current affairs issues but which Ofcom has concluded are not current affairs. We appreciate that this will always be a matter of judgement and balance – but in this specific case, given the above [it did] not consider that this edition of *Earth Report* [was] a current affairs programme.”

However, following receipt of Ofcom’s Preliminary View, which found the programme to meet the definition of “current affairs”, BBCWN accepted that the programme’s theme and purpose was to “examine the issue of deforestation and peat burning in Indonesia, explain the reasons for it, and to analyse the possible solution by way of the adoption of the REDD policy which was to be discussed at the Copenhagen Climate Change Conference, which was just six weeks away at the time of transmission of the programme.” It therefore accepted that it was a current affairs programme.

## **Decision**

As is set out above, current affairs programming is defined, in all editions of the Code, in part as “...one that contains explanation and/or analysis of current events

and issues...” In Ofcom’s view the programme did contain such explanation of a current issue, namely deforestation and global warming. Further, it covered matters of policy, including, as BBCWN accepted, Indonesian government policies, and the REDD Programme.

Considered as a whole the programme was not in our view mostly a science or nature documentary. The subject of global warming was dominant; the activities shown and discussed in the programme were all related to that subject, and, crucially, the presence of policy discussion meant that in Ofcom’s view the programme did meet the Code’s definition of a current affairs programme.

Ofcom accepts that some programmes can have current affairs segments without such parts making the whole programme classifiable as current affairs. Magazine programmes – as BBCWN itself argued – are examples. Similarly, BBCWN’s example of a wildlife programme that merely mentions global warming illustrates the possibility of a generally accepted (though not uncontested) environmental subject being featured in a programme in a way that does not alter the character of the programme such that it becomes current affairs.

*Earth Report – Burning Bush*, however, was neither a magazine programme nor a documentary essentially given over to a different genre such as wildlife or science. It was a single documentary whose focus was the damage done by deforestation, the consequences of this and a suggested policy to tackle it.

In our view, therefore, *Earth Report – Burning Bush* was a current affairs programme and should not have been sponsored.

BBCWN acknowledged that its understanding of the funding/sponsorship position had been incorrect and that this programme was sponsored. Ofcom therefore concluded that Rule 9.1 was breached.

### **Breach of Rule 9.1 (October 2008 Code)**

#### **3. *Earth Report – REDD Alert*, 4 November 2009**

##### **Introduction**

This programme was funded by the UN Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (“UN REDD Programme” or “REDD”).

The observations made about REDD in the report on *Earth Report – Burning Bush*, immediately above, apply.

This programme reported from the Democratic Republic of the Congo on deforestation and the REDD project.

After about one-and-a-half minutes of the programme, following comment on the environmental harm caused by deforestation in the Congo, the following was said in voice-over:

VO: *“Now under a programme known as REDD rich corporations and governments would pay for developing countries to keep forests like this to store carbon. REDD could perhaps change the life of Mbuti pygmy leader*

*Apaya Saly and villagers living deep in the heart of the Congo rainforest. And it could prove an important new incentive in the campaign to save the country's endangered gorillas.*

*Under the REDD programme trees left standing must earn more than those cut down. Globally the UN estimates that revenue from REDD could reach \$30bn a year. But will REDD work? Already very different schemes in the Democratic Republic of the Congo are exploring the possibilities."*

An interviewee, Patrick Mehlman of Conservation International, was shown visiting an area of the Congo that had already benefited from a REDD project. Mehlman was described as *"coming to discuss the new opportunities of saving forests through REDD."*

The programme then said that *"the REDD project could bring new money to the region"*. Mehlman was shown bringing the *"good news"* about a REDD funder. The meaning and mechanics of the REDD scheme, including the local project Mehlman visited, were explained at some length.

Two issues were briefly raised: villagers' unhappiness at the loss of firewood, and the prospect that the investment brought in by a successful scheme might attract more people to the area. The first was left hanging; the second was immediately responded to by another person featured, Pierre Kakule, Co-ordinator, Tayna Reserve.

The second half of the programme focused on the Mbuti pygmies and their opposition to schemes that exclude people from the forest. Belmond Tchoumba, a Forests Monitor, explained to the Mbuti how their welfare and way of life would be preserved under the REDD Programme. Mr Tchoumba was shown telling the Mbuti that REDD *"is very, very important."* Mr Tchoumba went on to talk about how community ownership of the forest should allow the Mbuti to use the forest and receive financial benefits from REDD.

Mr Tchoumba did strike a note of caution: he said that communities like the Mbuti need support from government and NGOs if REDD was to be successful.

The programme closed with this:

VO: *"REDD could transform this country. But it will only work if the forest really is protected and monitored and local people share the benefits. Even in a remote and often lawless area like the eastern Congo the multi-billion dollar REDD project could be part of a new international agreement in Copenhagen to reduce greenhouse gases. It could bring dramatic changes. But it won't be easy."*

The Copenhagen Summit took place between 7 and 18 December 2009. *Earth Report – REDD Alert* was therefore transmitted in the approach to the summit.

In view of its content, most notably the considerable emphasis on global warming and the assistance that the REDD Programme may play in combating it, we considered that the programme raised issues warranting investigation under Rule 9.1 of the October 2008 edition of the Code.

Comments under this rule were sought from BBCWN.

## Response

BBCWN summarised the programme and explained its general editorial purpose thus:

“This programme focussed on the REDD Programme as a new scheme aimed at helping to preserve forests. It reported from the Democratic Republic of the Congo and explained how the REDD Programme would work, encouraging countries rich in tropical forests to preserve them and offer them financial incentives to do so. The programme explored the REDD Programme and specifically asked the question “Will REDD work?”.

BBCWN said further in relation to the editorial approach of the programme that, “...the REDD Programme was an important environmental intervention aimed at reducing deforestation and thereby helping limit global warming.” Such subject matter fitted editorially with a series like *Earth Report* and it was important that this series covered it, the Licensee said.

BBCWN accepted that as a result of the funding arrangement and the editorial content of this programme, the programme was sponsored by the REDD Programme.

Rule 9.1 of the October 2008 edition of the Code prohibited the sponsorship of current affairs (and news) programmes. BBCWN accepted that there were a number of elements in this programme that would be characterised as current affairs and as a result the programme was therefore unsuitable for sponsorship.

## Decision

BBCWN recognised in its submissions that *Earth Report – REDD Alert* was a current affairs programme. In Ofcom’s view it was clearly a current affairs programme.

BBCWN acknowledged that its understanding of the funding/sponsorship position had been incorrect and that this programme was sponsored.

Therefore, Rule 9.1’s prohibition of the sponsorship of current affairs programming was breached.

## Breach of Rule 9.1 (October 2008 Code)

### 4. *Kill or Cure – Bittersweet*, 12 January 2010

#### Introduction

This programme was funded by the International Diabetes Federation (IDF)<sup>6</sup>.

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<sup>6</sup> The IDF describes itself so: “The International Diabetes Federation (IDF) is an umbrella organization of over 200 national diabetes associations in over 160 countries. It represents the interests of the growing number of people with diabetes and those at risk. The Federation has been leading the global diabetes community since 1950.” See <http://www.idf.org/who-we-are>

This programme reported on the incidence of diabetes in Kenya and India. It examined the harm and human cost of this disease. In Ofcom's view the interests of the programme's funder and subject matter were closely aligned.

In particular, we noted that Professor Jean Claude Mbanya, President of the International Diabetes Federation was interviewed, that IDF figures were used to illustrate points about the prevalence of diabetes among the poor and the young and that World Diabetes Day, an initiative of IDF, was featured.

In view of the content and nature of this programme, and of the funder, we considered the programme raised issues warranting investigation under Rules 9.5, 9.6 and 9.7 of the December 2009 edition of the Code.

Comments under these rules were sought from BBCWN.

### **Response**

The Licensee accepted that as a result of the funding arrangement and the editorial content of this programme, the programme was sponsored by the International Diabetes Foundation.

In relation to Rule 9.5, which prohibited promotional references to the sponsor, the Licensee accepted that once IDF was classed as a sponsor then it was likely that any programme dealing with the issue of diabetes, such as this, was likely to result in promotion of its direct or indirect interests.

As to Rule 9.6 regarding the identification of sponsorship, BBCWN said that at the time of transmission it considered IDF a funder, not a sponsor. However, in line with BBC standard practice, and for transparency reasons, IDF was identified as the funder by means of a "with thanks to" credit in the end credits. Since the funding arrangement at the time was not considered to be sponsorship, BBCWN said, it did not make reference to a "sponsorship" arrangement in this credit, broadcast at the end of the programme.

Finally in respect of this programme, BBCWN said:

"Given that BBCWN wished to be transparent about the funding arrangement with IDF, the only reason reference to sponsorship was not made at the time was because the relationship was mistakenly considered to be one of funding and not sponsorship.

In relation to Rule 9.7 which requires the relationship between the sponsor and the sponsored programme to be transparent, the credit at the end of the programme was transparent with respect to the funding relationships that existed."

### **Decision**

As is made clear above, Ofcom considered all of the reported programmes funded by not-for-profit organisations to be sponsored programmes.

#### Rule 9.5 of the December 2009 edition of the Code

This rule prevented the promotion of a sponsor's name, trademark, image, activities, services or products. It also prohibited promotional generic references.

In Ofcom's view the generality of this programme breached this rule. The funder's (sponsor's) interests were the subject of the programme. The fact that the interests are humanitarian and highly laudable did not prevent that rule from applying or in this case the rule having been breached.

However, we noted that in addition to the breach of this general principle there was an instance of straightforward promotion of an initiative of the funder: World Diabetes Day. This did not receive a great deal of coverage; it was not dwelt on. But in Ofcom's view, it was an activity that the IDF would wish to publicise.

We concluded that Rule 9.5 was breached.

#### Rules 9.6 and 9.7 of the December 2009 edition of the Code

These rules required that the sponsorship of a programme be made clear by reference in sponsorship credits to the identity of the sponsor and that the relationship between the sponsor and the sponsored programme be transparent.

We noted BBCWN's view that the use of a "thanks to..." message at the end of this programme promoted transparency. We also noted that BBCWN explained that sponsorship credits were not shown because it mistakenly believed at the time of broadcast that the funding arrangements in place did not meet the definition of sponsorship.

In Ofcom's view acknowledgements of the type referred to above are generally used to thank people or organisations that have helped in the production, often by allowing access to locations, premises or staff, or by offering advice. As such, the "thanks to" message did not serve to make clear the role of the organisation in sponsoring the programme. As a result, we concluded that these rules were breached.

#### **Breaches of Rules 9.5, 9.6 and 9.7 (December 2009 Code)**

**5, 6, 7 *Architects on the Frontline*** – Episodes 1, 2 and 3, 20 and 27 November 2010, and 4 November 2010

#### **Introduction**

These programmes were funded by the Aga Khan Foundation. The Foundation describes itself in these terms:

"Private, not-for-profit, non-denominational, development agency. Part of the Aga Khan Development Network (AKDN), a group of eight institutions working in health, education, culture and rural and economic development."<sup>7</sup>

These three programmes covered the Aga Khan Award for Architecture and the various projects competing for it. These were innovative, environmentally sensitive or socially or culturally beneficial building projects.

The programmes contained positive references to the award, for example, "*the award is widely recognised as the most prestigious in its field*", "[the projects featured are]

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<sup>7</sup> See [http://www.akdn.org/akf\\_facts.asp](http://www.akdn.org/akf_facts.asp)

*all competing for the richest prize in architecture*”, and reference to the prize of \$500,000, in each programme.

In view of the content and nature of this programme, and of the funder, we considered the programme raised issues warranting investigation under Rules 9.5, 9.6 and 9.7 of the September 2010 edition of the Code.

## **Response**

BBCWN said that it accepted that as a result of the funding arrangement and the editorial content of this programme, the programme was sponsored by the Aga Khan Foundation.

Generally, the Licensee said, while the programme used the Aga Khan Award as a ‘peg’ for specifically looking at the shortlisted projects, it was actually about architecture and its relationship with the environment. The programme further explored the purpose of these buildings, we were told, and what they added to the lives and culture of those that use them – from education to healthcare. According to BBCWN, the purpose of the series was therefore not to promote the Aga Khan Foundation but to explore these architectural projects.

### Rule 9.5 of the September 2010 edition of the Code

This rule prevented the promotion of a sponsor’s name, trademark, image, activities, services or products. It also prohibited promotional generic references.

BBCWN said: “...we accept that once the Aga Khan Foundation is viewed as a sponsor of these episodes then there is the possibility that reference to the Aga Khan Award or the Aga Khan within them could result in the interpretation that there has been a promotion.”

### Rules 9.6 and 9.7 of the September 2010 edition of the Code

These rules required that the sponsorship of a programme be made clear by reference in sponsorship credits to the identity of the sponsor and that the relationship between the sponsor and the sponsored programme be transparent.

BBCWN told us: “...at the time of transmission BBCWN considered The Aga Khan Foundation as a funder, so The Aga Khan Foundation was identified as the funder in the end credits.” However, BBCWN explained that because of its mistaken belief that the funding arrangement did not amount to sponsorship, no sponsorship credits were broadcast.

## **Decision**

### Rule 9.5 of the September 2010 edition of the Code

In Ofcom’s view each of the programmes contained clear promotional references to the sponsor.

We concluded that Rule 9.5 was breached by all three programmes.

### Rules 9.6 and 9.7 of the September 2010 edition of the Code

These rules required that the sponsorship of a programme be made clear by reference in sponsorship credits to the identity of the sponsor and that the relationship between the sponsor and the sponsored programme be transparent.

As is noted above, Ofcom did not consider “thanks to”-type end credits sufficient to comply with the rules on the identification of sponsored programming.

We concluded that Rules 9.6 and 9.7 were breached.

### **Breaches of Rules 9.5, 9.6 and 9.7 (September 2010 Code)**

#### **8. *Earth Reporters – Deep Blue*, 5 March 2011**

##### **Introduction**

This programme was funded by the United Nations Educational, Scientific and Cultural Organisation (UNESCO), the United Nations Environment Programme (UNEP), and was an Open University co-production.

This programme followed the work of an Australian oceanographer who is involved in Argo, a project to release thousands of remote ‘robot’ floats into the oceans to measure temperature, salinity etc.

Ofcom noted that Argo appears to be a direct interest of UNESCO<sup>8</sup>. In view of the content and nature of this programme, and of the funder, we considered the programme to raise questions warranting investigation under Rules 9.19, and 9.20 of the February 2011 edition of the Code.

Comments under these rules were sought from BBCWN.

##### **Response**

The Licensee said it considered UNESCO and UNEP to be programme funders. Further it said that, in line with BBC standard practice, and for transparency reasons, they were identified as funders in the end credits. However, BBCWN explained that because of its mistaken belief that the funding arrangement did not amount to sponsorship, no sponsorship credits were broadcast.

##### **Decision**

As is noted above, Ofcom did not consider “thanks to”-type end credits sufficient to comply with the rules on the identification of sponsored programming.

The programme was sponsored by UNESCO and UNEP but this was not made clear to the audience by means of sponsorship credits, as required by Rules 9.19 and 9.20 of the February 2011 edition of the Code. These rules were therefore breached.

### **Breaches of Rules 9.19 and 9.20 (February 2011 Code)**

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<sup>8</sup> From [http://portal.unesco.org/science/en/ev.php-URL\\_ID=5996&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/science/en/ev.php-URL_ID=5996&URL_DO=DO_TOPIC&URL_SECTION=201.html): “Argo is a key component of the Global Ocean Observing System (GOOS) sponsored by UNESCO’s Intergovernmental Oceanographic Commission.”

## **9. *Stealing the Past*, 26 March 2011**

### **Introduction**

This programme was funded by the United Nations Educational, Scientific and Cultural Organization (UNESCO).

This programme covered the theft of and traffic in antiquities. Reports were filmed in Italy, Colombia and the UK looking at the efforts of police, auction houses etc. to tackle the problem.

The programme also included visual and audio references to UNESCO. For example, at one point the voice-over referred to the 40th anniversary of the UN's convention on the prevention of the illicit import and export of cultural property, and the staging of a meeting in Paris.

Interviews were conducted with Irina Bokova, Director General of UNESCO.

*Stealing the Past* dealt with crime, measures being taken to combat crime, international co-operation, and the importance of cultural heritage. Given these characteristics, we considered that the content of this programme may have met the Code's definition of a current affairs programme. We therefore considered the programme raised issues warranting investigation under Rule 9.15 of the February 2011 edition of the Code.

### **Response**

BBCWN acknowledged that UNESCO funded the programme and accepted that as a result of the funding arrangement and the editorial content of this programme, the programme was sponsored by the UNESCO.

The Licensee said it accepted that the programme would be viewed as current affairs under the Code's definition, given the editorial of the programme concerning crime, measures to tackle crime, and international co-ordination etc.

### **Decision**

BBCWN recognised in its submissions that *Stealing the Past* was a current affairs programme.

BBCWN acknowledged that its understanding of the funding/sponsorship position had been incorrect and that this programme was sponsored.

Therefore, Rule 9.15's prohibition of the sponsorship of current affairs programming was breached.

### **Breach of Rule 9.15 (February 2011 Code)**

## 10. *Nature Inc – ‘Conservation from Chaos’*, 9 April 2011

### Introduction

This programme was funded by the United Nations Environment Programme (UNEP) and the United Nations Development Programme (UNDP).

The programme made reference to the UN Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (“UN REDD Programme” or “REDD”). As stated above, REDD is a UN scheme that seeks to combat deforestation in the developing world. The central policy measure employed within the REDD scheme is the payment of money by developed countries to poorer ones as an incentive to reduce deforestation<sup>9</sup>.

The subject of this programme was the Democratic Republic of the Congo (“DRC”) and its emergence from years of chaos. Its focus was on the environmental challenges faced by the DRC, including deforestation resulting from war and poverty, and a range of projects designed to combat their impact.

At the start, the programme included comment from Hassan Partow, credited as “Post-Conflict Environmental Assessment Team”. Information available online<sup>10</sup> indicated that Mr Partow was a UNEP employee.

Hassan Partow commented in various places in the programme and towards the end the voice-over said, over the top of pictures of Mr Partow’s UNEP team, *“for the team charged to come up with a plan for revival it’s all about shaking off the widely held belief that nothing can improve.”*

The programme in fact drew more widely on the work of the United Nations agencies, albeit presented without explicit clarification of the links between the contributions and the UN agencies.

The following statistics were given in the programme:

Text:

*“DRC 72 million m<sup>3</sup> of wood annually – source: Food and Agriculture Organisation”* – FAO is a UN agency.

*“7 out of 10 people in DRC are undernourished – source World Food Programme”* – the World Food Programme is a UN agency.

Guy Debbanet of the World Heritage Centre was interviewed. The World Heritage Centre is a UN agency. Mr Debannet is employed by UNESCO.

At the end of the programme the following was said:

VO: *“But there are some fragile reasons for hope that the years of plunder can be ended. While slash and burn agriculture and deforestation for charcoal have put the forest into retreat, 60% of this huge country is still forest. And in a world that places a new economic value on storage of carbon dioxide and*

<sup>9</sup> See <http://www.un-redd.org/AboutUN-REDDProgramme/tabid/102613/Default.aspx>

<sup>10</sup> Available at: <http://www.unep.org/experts/default.asp?page=profiles&l=en&expertID=30>:

*climate stability the country is becoming eligible for finance to keep its forests standing and help give the country a new start.”*

*“A scheme to pay countries cash for preserving their forests could be the answer. It’s called Reducing Emissions from Deforestation and Forest Degradation. As the country with the largest forest after the Amazon, DRC stands to benefit.”*

Jose Endundo Bononge, Minister for Environment, DRC:

*“We will gain some billions, tens of billions even because the Congolese forests are the equivalent of four years of carbon dioxide emissions. Four or five years of gas emissions – this is extremely important.”*

In view of its content, most notably the emphasis on global warming and the assistance that the UN REDD Programme may play in combating it, we considered the programme raised issues warranting investigation under Rule 9.15 of the February 2011 edition of the Code.

Comments under this rule were sought from BBCWN.

## **Response**

BBCWN acknowledged that the programme was funded by UNEP and UNDP and so accepted that as a result of the funding arrangement and the editorial content of this programme, the programme was sponsored by these funders.

BBCWN said that it considered that this programme did not meet the definition of a current affairs programme. The Licensee said that the programme focused on sustainable development and the environment and how the country could rise “from the chaos”. It told us that the programme also looked at the work of the teams aimed at developing the economy on a sustainable basis.

BBCWN said further:

“Fundamentally this was a scientific and environmental documentary set in an historical context. We acknowledge there are some references in the programme that could be interpreted as touching on current affairs issues, but we do not believe that overall the programme should fall within the definition of current affairs...we do not believe that a programme, which touches on such issues, should automatically be defined as current affairs. Such an interpretation would not be in keeping with Ofcom’s previous decisions and could result in unnecessary restrictions. As always, when deciding on whether a programme is current affairs, the overall balance and focus of the documentary must be taken into account. We believe, that on this occasion, the focus of the documentary was scientific and environmental, and not policy orientated.

“It is clear that some of the main topics that the programme deals with are not what would traditionally be described as current affairs:

- history and consequences of years of war
- the use of charcoal
- the exploitation of charcoal
- gorilla population

- problems facing local factories
- associations of farmers”.

Importantly, we were told by the Licensee, these subjects are seen through the perspective of their effects on the environment as opposed to, for example, what government or policy makers could do about them. This BBCWN considered this to be one of the fundamental differentiating points between current affairs programmes and factual or scientific documentaries. Further, BBCWN said that the environmental concerns raised, in the programme, were ones where there is consensus that these are problematic.

BBCWN said further:

“At the very end of the programme, reference is made to the potential advantages of the REDD Programme for the Democratic Republic of Congo...we do not consider that this single reference turns the whole programme into a current affairs programme.”

### **Ofcom’s Preliminary View**

Ofcom’s Preliminary View was that this programme was in breach of Rule 9.15. In setting out our Preliminary View, Ofcom noted that current affairs programming is defined, in all editions of the Code, in part as “...one that contains explanation and/or analysis of current events and issues...” In Ofcom’s Preliminary View the programme did contain such explanation of a current issue, namely deforestation and global warming. In this respect, although we accepted that the programme contained much that could be viewed as recent history rather than current affairs, it also covered matters of policy, in the form of, as BBCWN accepted, the REDD Programme.

Our Preliminary View was that considered as a whole the programme was not better regarded as a history or nature documentary. The subject of global warming was dominant; the activities shown and discussed in the programme were all related to that subject, and although that would not necessarily have led to a classification of current affairs, the presence of policy discussion meant that in Ofcom’s Preliminary View the programme fell as current affairs.

We noted that *Conservation from Chaos* was a single documentary whose focus was the damage done by deforestation, through war and civil strife, the consequences of this and, briefly, a suggested policy to tackle it. Taken together, these elements were, in Ofcom’s Preliminary View, sufficient to mean that the programme – funded by UNEP and UNDP, and so accepted by BBCWN as having been sponsored by them – should be classified as current affairs.

### **Response to Ofcom’s Preliminary View**

In response to our Preliminary View, BBCWN again argued that *Conservation from Chaos* did not meet the definition of a current affairs programme. BBCWN emphasised that it considered the programme “covered a range of issues” with an emphasis on sustainable development, rather than global warming. It considered that “crucially, the element of policy discussion coupled with explanation of a current issue [had been] absent from this particular programme” which was instead focussed on “the efforts of local projects to try to help the DRC’s people revive their economy in a sustainable manner following conflict.”

BBCWN also reiterated its argument that the reference to the REDD initiative at the end of the programme “was not in any way significant..., but more of a ‘parting thought’...”. It stated that the programme’s reference to the potential for the DRC to “gain billions from the REDD programme... [was a] simple fact” and that *Conservation from Chaos* had contained “no discussion of whether such a scheme would actually benefit the DRC.” Finally, it argued that “the transmission of the programme did not coincide with any wider international discussion of the matters discussed, unlike other programmes which we have accepted met the definition of current affairs in part due to the timing of their transmission (e.g. close to the Copenhagen Climate Change Conference in December 2009).”

However, BBCWN said that its representations did not mean it believed the programme was compliant with the Code. BBCWN stated that it accepted the programme was sponsored by UNEP and UNDP and that it was therefore in breach of Rules 9.19 and 9.20 of the Code.

## **Decision**

### Rule 9.15 of the February 2011 edition of the Code

Rule 9.15 prohibited the sponsorship of current affairs (and news) programmes.

Current affairs programming is defined, in all editions of the Code, in part as “...one that contains explanation and/or analysis of current events and issues...”.

Ofcom noted BBCWN’s view that the programme’s transmission did not coincide with “any wider international discussion of the matters [featured in it]”. Our own research, however, indicated that the programme was transmitted shortly ahead of a Summit of Heads of State and Government of the Amazon, the Congo and the Borneo-Mekong Forest Basins, held in Brazzaville in June 2011. According to publicly available information, the Summit was focused on “the sustainable management of forest ecosystems”, with the aim to “ensure a greater contribution to global climate regulation, poverty eradication and economic development efforts” and to produce a “joint statement on tropical forests, climate and sustainable development ... which would feed into the seventeenth meeting of the parties to the United Nations Convention on Climate Change...and the Earth Summit 2012”<sup>11</sup>.

Having considered BBCWN’s representations and despite the proximity of this event to the programme’s broadcast, Ofcom accepted BBCWN’s view that the programme was essentially a documentary about the impact of deforestation on the DRC and a variety of sustainable development projects in the country. In particular, we noted that the programme contained much that could be viewed as recent history about the DRC rather than current affairs, and took account of the fact that the references to the UN REDD Programme featured in a relatively brief conclusion to the programme, rather than as the focus of it.

Taking all of these elements in to account, we concluded that, on balance, *Conservation from Chaos* did not constitute current affairs programming under the Code. As a result, we found the programme not in breach of Rule 9.15 of the Code.

### **Not in breach of Rule 9.15 (February 2011 Code).**

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<sup>11</sup> See UN press release at: [http://www.un.org/press/en/2011/110413\\_Djombo.doc.htm](http://www.un.org/press/en/2011/110413_Djombo.doc.htm)

### Rules 9.19 and 9.20 of the February 2011 edition of the Code

Rules 9.19 and 9.20 required sponsorship to be clearly identified by means of sponsorship credits which made clear the identity of the sponsor by reference to its name or trade mark and the association between the sponsor and the sponsored content.

As by BBCWN's own admission this was not done in this case, we have found the programme in breach of these rules.

### **Breaches of Rules 9.19 and 9.20 (February 2011 Code).**

#### **11. *Nature Inc – Hard Rain 1*, 16 April 2011**

##### **Introduction**

This programme was funded by the United Nations Development Programme (UNDP).

The first part of this programme examined the plight of the Pacific state of Kiribati and its vulnerability to sea level rise. As a low-lying nation of Pacific islands Kiribati is threatened by the sea and is taking various measures, including the Kiribati Adaptation Programme.

The Kiribati Adaptation Programme was part-funded by UNDP. The Director of the project, Kautuna Kaitara, was interviewed.

UNDP was also generally involved in Kiribati as was documented in material available online<sup>12</sup>.

These documents (as footnoted) clearly showed UNDP's financial involvement in Kiribati. UNDP's support was given in areas of activity in Kiribati that the programme covered, whether directly or indirectly.

Further, the programme's examination of Kiribati and its problems also included reference to help (or otherwise) provided by other countries and, more generally, comment on the need for the world to help. The programme therefore arguably stepped into matters of policy.

In view of its content, most notably the considerable emphasis on global warming and the matters of policy arguably present, we considered that the programme raised issues warranting investigation under Rule 9.15 of the February 2011 edition of the Code.

##### **Response**

BBCWN said that the programme was funded by UNDP, and that it accepted that as a result of the funding arrangement and the editorial content of this programme, the programme was sponsored by the UNDP.

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<sup>12</sup> See [http://www.undp.org/fj/index.php?option=com\\_content&task=view&id=85&Itemid=127](http://www.undp.org/fj/index.php?option=com_content&task=view&id=85&Itemid=127) and [http://www.un.org/en/development/desa/policy/cdp/ldc/profile/ia\\_kiribati.pdf](http://www.un.org/en/development/desa/policy/cdp/ldc/profile/ia_kiribati.pdf).

BBCWN said that in relation to Rule 9.15, which prohibits the sponsorship of current affairs programmes, it accepted that, on balance, this programme was a current affairs programme and should not have been sponsored.

### **Decision**

BBCWN recognised in its submissions that *Nature Inc – Hard Rain 1* was a current affairs programme.

BBCWN acknowledged that its understanding of the funding/sponsorship position had been incorrect and that this programme was sponsored.

Therefore, Rule 9.15's prohibition of the sponsorship of current affairs programming was breached.

### **Breach of Rule 9.15 (February 2011 Code)**

#### **12. *Nature Inc – Hard Rain 2*, 23 April 2011**

### **Introduction**

This programme was funded by the United Nations Development Programme (UNDP).

Beginning with a backdrop of the earth's natural forces, climate change and environmental degradation, this programme examined disaster measures and planning in Vietnam and the Philippines. The programme title graphics for *Nature Inc* contained prominent references to deforestation and climate change.

One of the principal figures in the first half of the programme was Joey Salceda, Governor of Albay, Philippines. Mr Salceda was responsible for the alleviation of poverty, including a food-for-work programme aimed at low income families, improvement of the environment and the protection of the population through disaster response plans. A successful operation of an evacuation plan was shown in the programme.

The Food for Work Programme (also called the Food for Assets Programme) was part-funded by UNDP. Further, UNDP is a donor to Albay's Disaster Response and Climate Change Adaptation programme<sup>13</sup>.

This documentation available at the link given in the footnote included above discloses that UNDP donated \$400,000 to the Governor's programme between 2009 and 2011.

In view of the content and nature of this programme, and of the funder, we considered the programme raised issues warranting investigation under Rules 9.19, and 9.20 of the February 2011 edition of the Code.

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<sup>13</sup> See pages 7 and 21 of the document 'Supporting documentation against 10-point check-list indicators' at <http://www.unisdr-apps.net/confluence/display/THAICITY/Sasakawa+Award+2011+-+Albay+Governor%2C+Joey+Sarte+Salceda>

## Response

BBCWN said that this second edition of *Nature Inc.* also looked at the Asian Pacific region, and in particular Vietnam and the Philippines. The Licensee told us that these areas are particularly vulnerable to the increase in the incidences of extreme weather events (for instance, sea level rises). BBCWN said further that the programme (the second of two) examined how these communities are adapting to these environmental and man-made disasters, and in particular, developing new ways of cultivating rice crop.

BBCWN acknowledged that the programme was funded by UNDP and accepted that as a result of the funding arrangement and the editorial content of this programme, the programme was sponsored by the UNDP.

Rules 9.19 and 9.20 of the February 2011 edition of the Code required that the sponsorship of a programme be made clear by reference in sponsorship credits to the identity of the sponsor and that the relationship between the sponsor and the sponsored programme be transparent.

Under these rules BBCWN told us that it had considered UNDP as a funder. It said that, in line with BBC standard practice, and for transparency reasons, UNDP was identified in the end credits. However, BBCWN explained that because of its mistaken belief that the funding arrangement did not amount to sponsorship, no sponsorship credits were broadcast.

## Decision

The programme was funded by UNDP. BBCWN accepted that the programme was sponsored.

As noted above, Ofcom did not consider “thanks to”-type end credits sufficient to comply with the requirements of Rules 9.19 and 9.20.

These rules were therefore breached.

## Breaches of Rules 9.19 and 9.20 (February 2011 Code)

### 13. *Earth Reporters – Beating Plague*, 21 May 2011

#### Introduction

This programme was funded by the United Nations Food and Agriculture Organization (UNFAO), the European Commission Humanitarian Aid and Civil Protection (ECHO), the United Nations Environment Programme (UNEP), and was an Open University co-production.

This programme looked at the eradication of rinderpest, a cattle disease that had done great harm in Africa in the past.

Interviewees included Dr Juan Lubroth, Chief Veterinary Officer, Animal Health, FAO and Dr Bouna Diop, Regional Manager, UNFAO Ectad Unit – Regional Animal Health Centre. The programme showed the headquarters of UNFAO in Rome.

The programme placed considerable weight on success being achieved through the co-ordination of global efforts.

There was in Ofcom's view a clear association between one of the funders of this programme and its subject matter, detail and presentation.

In view of the content and nature of this programme, and of the funder, we considered the programme raised issues warranting investigation under Rules 9.19, and 9.20 of the February 2011 edition of the Code.

### **Response**

BBCWN accepted that as a result of the funding arrangement and the editorial content of this programme, the programme was sponsored by the UN Food and Agriculture Organisation (UNFAO).

Rules 9.19 and 9.20 required that the sponsorship of a programme be made clear by reference in sponsorship credits to the identity of the sponsor and that the relationship between the sponsor and the sponsored programme be transparent.

BBCWN said that it had considered UNEP as a funder. It said that, in line with BBC standard practice, and for transparency reasons, they were identified in the end credits. However, BBCWN explained that because of its mistaken belief that the funding arrangement did not amount to sponsorship, no sponsorship credits were broadcast.

### **Decision**

The programme was funded by UNFAO, ECHO and UNEP. BBCWN accepted that the programme was sponsored.

As noted above, Ofcom did not consider "thanks to"-type end credits sufficient to comply with the requirements of Rules 9.19 and 9.20.

These rules were therefore breached.

### **Breaches of Rules 9.19 and 9.20 (February 2011 Code)**

#### **14. *Nature Inc – 21 Gigatonne Timebomb*, 4 June 2011**

##### **Introduction**

This programme was funded by OzonAction and the United Nations Environment Programme (UNEP). OzonAction is an initiative of the United Nations that seeks to assist compliance with the Montreal Protocol's aim to eliminate chemicals that harm the earth's protective ozone layer.

This programme examined the role of hydrofluorocarbons (HFCs) in global warming. Its thesis was that the harm done to atmospheric chemistry by refrigerants was a significant concern.

The IPCC was used as a source for statistics in the programme. Ofcom noted that IPCC is co-funded by UNEP<sup>14</sup>. A contributor, Rajendra Shende was described as “...the UN’s Rajendra Shende...” and credited as being from OzonAction.

The programme gave support to the use of hydrocarbons as refrigerants over HFCs. Ofcom noted that this was an IPCC policy<sup>15</sup>.

The overall editorial approach of the programme was essentially to expose the greenhouse effects of HFCs and argue for their replacement. The programme thus examined approvingly the Montreal Protocol and prospects for its amendment.

We considered that the programme raised issues warranting investigation under Rule 9.15 of the February 2011 edition of the Code.

## Response

BBCWN acknowledged that the programme was funded by UNEP (OzonAction) and it therefore accepted that as a result of the funding arrangement and the editorial content of this programme, the programme was sponsored by UNEP.

BBCWN said that it accepted that *Nature Inc – 21 Gigatonne Timebomb* was a current affairs programme and should not have been sponsored.

## Decision

BBCWN recognised in its submissions that *Nature Inc – 21 Gigatonne Timebomb* was a current affairs programme.

BBCWN acknowledged that its understanding of the funding/sponsorship position had been incorrect and that this programme was sponsored.

Therefore, Rule 9.15’s prohibition of the sponsorship of current affairs programming was breached.

## Breach of Rule 9.15 (February 2011 Code)

### Summary of Decisions

|                                                            |                                                                |
|------------------------------------------------------------|----------------------------------------------------------------|
| <b><i>Taking the Credit</i>, 23 October 2009</b>           | <b>Breach of Rule 9.1 (October 2008 Code)</b>                  |
| <b><i>Earth Report – Burning Bush</i>, 28 October 2009</b> | <b>Breach of Rule 9.1 (October 2008 Code)</b>                  |
| <b><i>Earth Report – REDD Alert</i>, 4 November 2009</b>   | <b>Breach of Rule 9.1 (October 2008 Code)</b>                  |
| <b><i>Kill or Cure – Bittersweet</i>, 12 January 2010</b>  | <b>Breaches of Rules 9.5, 9.6 and 9.7 (December 2009 Code)</b> |

<sup>14</sup> See ‘Funding and Financial Procedures of the IPCC’ at [http://www.ipcc.ch/organization/organization\\_procedures.shtml](http://www.ipcc.ch/organization/organization_procedures.shtml)

<sup>15</sup> See <http://www.unep.fr/ozonaction/information/mmcfiles/4284-e.pdf>

|                                                                                                               |                                                                                            |
|---------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|
| <b><i>Architects on the Frontline – Episodes 1, 2 and 3, 20 and 27 November 2010, and 4 November 2010</i></b> | <b>Breaches of Rules 9.5, 9.6 and 9.7 (September 2010 Code)</b>                            |
| <b><i>Earth Reporters – Deep Blue, 5 March 2011</i></b>                                                       | <b>Breaches of Rules 9.19 and 9.20 (February 2011 Code)</b>                                |
| <b><i>Stealing the Past, 26 March 2011</i></b>                                                                | <b>Breach of Rule 9.15 (February 2011 Code)</b>                                            |
| <b><i>Nature Inc – ‘Conservation from Chaos’, 9 April 2011</i></b>                                            | <b>Not in breach of Rule 9.15<br/>Breaches of Rules 9.19 and 9.20 (February 2011 Code)</b> |
| <b><i>Nature Inc – Hard Rain 1, 16 April 2011</i></b>                                                         | <b>Breach of Rule 9.15 (February 2011 Code)</b>                                            |
| <b><i>Nature Inc – Hard Rain 2, 23 April 2011</i></b>                                                         | <b>Breaches of Rules 9.19 and 9.20 (February 2011 Code)</b>                                |
| <b><i>Earth Reporters – Beating Plague, 21 May 2011</i></b>                                                   | <b>Breaches of Rules 9.19 and 9.20 (February 2011 Code)</b>                                |
| <b><i>Nature Inc – 21 Gigatonne Timebomb, 4 June 2011</i></b>                                                 | <b>Breach of Rule 9.15 (February 2011 Code)</b>                                            |

## World Business

CNBC, various dates between 17 December 2010 and 22 July 2011

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### Introduction

CNBC is a 24-hour business and financial news channel which broadcasts across Europe, the Middle East and Africa on cable and satellite platforms. On weekdays, CNBC's output consists of real-time coverage of financial markets and international business news. The channel's weekend programming consists of sports, travel and current affairs programming, as well as US entertainment programmes. At the time the programmes referred to in this Finding were broadcast the licence for CNBC was held by Business News (Europe) Partnership. The licence has since been transferred to CNBC (UK) Limited. The licensee is referred to in this Finding as "CNBC" or "the Licensee".

CNBC broadcast the *World Business* series between 2003 and 2011. The *World Business* series was a weekly global business and current affairs programme. Each episode usually contained four programme segments each approximately six minutes in duration. Three of the segments were usually of a business/current affairs nature<sup>1</sup> with the fourth concluding segment of a sporting nature.

The *World Business* series was produced by FactBased Communications ("FBC"). Between 2003 and 2007, CNBC paid FBC a nominal fee for the *World Business* series while FBC paid a larger fee to CNBC for the right to exploit the series<sup>2</sup>. Between 2008 and 2011 FBC paid CNBC an annual seven-figure (US Dollars) fee to broadcast the series.

In August 2011, *The Independent* newspaper featured a story alleging the Malaysian Government had paid FactBased Communications ("FBC") – an independent production and communications company – almost £12 million over two years to promote Malaysia in factual and current affairs programming broadcast on news-based TV services<sup>3</sup>.

Ofcom subsequently received a complaint including a number of documents which appeared to suggest FBC had promised to feature positive messages for its clients in editorial content transmitted by several broadcasters, including CNBC.

### Ofcom's investigation

In the first instance, Ofcom asked CNBC to provide details of any contractual arrangements between CNBC and FBC in relation to the *World Business* series.

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<sup>1</sup> The Code defines a current affairs programme as "one that contains explanation and/or analysis of current events and issues, including material dealing with political or industrial controversy or with current public policy".

<sup>2</sup> Between 2003 and 2007 FBC agreed to pay CNBC for the right to "exploit the Programmes (in whole or part) in other audiovisual media". For example, FBC paid for the right to license the programmes to other parties for broadcast on in-flight videos on airlines.

<sup>3</sup> <http://www.independent.co.uk/news/media/tv-radio/special-investigation-tv-company-takes-millions-from-malaysian-government-to-make-documentaries-for-bbc-about-malaysia-2338813.html>

Ofcom also asked CNBC for details of *World Business* programmes broadcast on CNBC since January 2009.

CNBC provided copies of the three contractual agreements it had entered into with FBC in relation to the *World Business* series covering the period between May 2003 and September 2011.

CNBC's Television Licensable Content Service (TLCS) licence requires it to retain recordings of its broadcast output for 60 days. In this case the retention period had lapsed by the time Ofcom received the complaint. Having examined the contractual arrangements, Ofcom asked CNBC to provide details and off-air recordings, where available, of episodes of *World Business* that had been broadcast since January 2009.

### **The programmes**

CNBC provided transmission dates of 133 episodes of *World Business* broadcast between 9 January 2009 and 22 July 2011 along with synopses of 128 of those episodes and recordings of 28 (which it had retained beyond Ofcom's required 60 day recording retention period), that were broadcast between 17 December 2010 and 22 July 2011.

Having examined the recordings which CNBC provided, Ofcom asked CNBC to provide its comments on how specific programmes complied with various Code rules. Details of CNBC's representations are set out below.

Ofcom viewed and assessed the 28 recordings provided by CNBC. In view of the amount of content involved and the fact that the information Ofcom held about the alleged funding mainly related to Malaysia, Ofcom decided that it would be proportionate to proceed with a formal investigation of the following selection of content which included references to Malaysia:

- *World Business* – 17 December 2010
- *World Business* – 31 December 2010
- *World Business* – 28 January 2011
- *World Business* – 4 March 2011
- *World Business* – 25 March 2011
- *World Business* – 15 July 2011
- *World Business* – 22 July 2011

#### 17 December 2010

A segment in this programme covered the Malaysian government's 'Talent Corporation' initiative to stem the outflow of talent to Singapore and other foreign countries, and to attract more foreign skilled workers to assist Malaysia in becoming a fully developed country by 2020.

The programme segment included an excerpt from a speech by Malaysia's Prime Minister, Najib Razak, in which he launched the 'Talent Corporation'. He explained that the success of the initiative would be measured by the number of Malaysians who could be encouraged back to Malaysia and the number which could be retained.

There was also an interview with a Malaysian student who had studied in the UK, but had returned to Malaysia after having been scouted by the Malaysian Securities Commission.

The programme segment included an interview with a representative from a Malaysian recruitment company, explaining how other countries offer scholarships to students to keep talent. This was followed by an interview with the publisher of 'The Expat Magazine' who had given input into the 'Talent Corporation' initiative. He explained that Malaysia was an appealing location for expats due to the low cost of living and the lifestyle.

The programme segment explained the steps the Malaysian government was taking to remove obstacles to foreign skilled workers, i.e. by issuing ten year passes for skilled foreigners, which also allowed them to switch jobs and for their spouses to work. It was reported that the government was also making it easier for Malaysians abroad who had given up their citizenship to return with their families.

### 31 December 2010

A programme segment in this episode covered the growing eco-tourism industry. It featured a bear sanctuary in Cambodia and an Orang-utan sanctuary called Matang Wildlife Centre in the State of Sarawak in Malaysia. The programme segment explained that Sarawak's Forestry Authority works with a private company called Way Out Experiences to run the rehabilitation and volunteer programmes.

### 28 January 2011

This entire episode of *World Business* examined the World Economic Forum (WEF) in Davos. The programme was presented by Eckart Sager. Eckart Sager was the Executive Vice President/Head of Production at FBC from 2007 to 2011<sup>4</sup>, and listed in the programme credits as the Managing Editor. The theme of the programme reflected that of the WEF, i.e. that emerging markets are driving global growth while the Eurozone is struggling, in contrast to Asia, where trade ties are being built as well as infrastructure.

The programme also included an interview between Eckart Sager and Alan Friedman. Alan Friedman was the Chairman and founder of FBC Media<sup>5</sup> and listed in the programme credits as Executive Editor. They discussed the three main developments since the last WEF: i) the success of Asia; ii) the Eurozone crisis; and iii) the effects of the post-Tunisian revolution particularly in Egypt. They also highlighted the increase in global trade inside Asia.

The programme contained a segment about Malaysia in which Eckart Sager ("ES") interviewed the Prime Minister of Malaysia, Najib Razak ("NR") about Malaysia's plans to achieve fully developed nation status by 2020 and to "*stay ahead*" of its neighbours. The interview included discussion of inward investments in Malaysia's infrastructure and the "*moderate*" nature of Islam, as follows:

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[http://web.archive.org/web/20110108183227/http://www.fbcmedia.com/sub\\_inner.php?pid=35&sid=0&level=2](http://web.archive.org/web/20110108183227/http://www.fbcmedia.com/sub_inner.php?pid=35&sid=0&level=2)

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[http://web.archive.org/web/20110322095756/http://www.fbcmedia.com/sub\\_inner.php?pid=36&sid=0&level=2](http://web.archive.org/web/20110322095756/http://www.fbcmedia.com/sub_inner.php?pid=36&sid=0&level=2)

NR: *“... First of all, Malaysia has a very sound track record in terms of how we practise Islam in this country. We practise Islam in a way to show that there is a very positive face of Islam, a very friendly face of Islam to the world. Islam is never associated with violence, extremism and terrorism in Malaysia, so the West can relate to Islam and using Malaysia as a model. So on top of that, being a very, very multi-racial, multi-religious, society we understand what it needs to manage a plural society and we’ve shown that being a Muslim country, it is also consonant with how we treat non-Muslims, the minorities in this country and that Islam is a religion that is inherently fair to the non-Muslims. At the same time it is fundamentally a moderate religion.”*

ES: *“Now one of the initiatives which is very dear to your heart is a movement of the moderates. Could you explain the concept and the reception you have received so far?”*

NR: *“... Being moderate is actually to do the right thing and that is what Islam is all about. And I stressed that the divide between us is not between whether you’re a Muslim or Christian, or whether you’re a Jew or whether you’re a Hindu or Buddhist or whatever it is, the divide is whether you are a moderate or an extremist. So if you are a moderate, inherent moderate, in other words you believe in basically the universal values, then the world would be a lot safer, more peaceful place.”*

#### 4 March 2011

A segment in this episode covered the Global Movement for Justice, Peace and Dignity conference held in Turkey. This included an excerpt from a speech by the Malaysian Prime Minister, Najib Razak, who said that Malaysia alongside Turkey could be a potential role model with its differing religions, ethnic groups and successful and growing economy.

The voiceover said:

*“The Malaysian model of moderation and multicultural inclusion was endorsed by Turkey which spoke of its own recent steps of opening up its society” and “The Prime Minister of Malaysia used the Istanbul conference to repeat his call for a global movement of the moderates first issued last September at the United Nations General Assembly”.*

The programme segment concluded with an excerpt of a contribution to the conference by the Prime Minister of Malaysia in which he stated that democracy must be accompanied by values, one of the most important being to reject violence.

#### 25 March 2011

A segment in this programme examined the management of natural resources in the State of Sarawak. The segment began by explaining that the local administration had *“come under fire”* from some environmentalists about its resource management practices. There was an interview with Alex Kaat, Advocacy Manager of Wetlands International in which he stated that there has been a *“rapid expansion of palm oil plantations and logging for timber. It’s an area that’s losing about ten per cent per year of its forests”*.

There were a number of references by the narrator and an interviewee, Abdul Taib Mahmud, the then Chief Minister of Sarawak, about Sarawak's appropriate management of its forests. In addition, both the narrator and Abdul Taib Mahmud stated that the palm oil and timber industries are important for the Malaysian economy, with income from palm oil and timber vital for raising living standards, improving roads in rural areas and trying to ensure children in remote areas get an education.

15 July 2011

A segment in this episode covered the World Islamic Economic Forum (WIEF) held in Kazakhstan<sup>6</sup>. It explained that the main themes discussed at the WIEF were the Arab Spring and economic underperformance in the Muslim world, as highlighted in the keynote address by Najib Razak ("NR"), Prime Minister of Malaysia.

The programme segment included an excerpt from a speech by Musa Hitam ("MH"), Chairman and Founder of the WIEF<sup>7</sup>:

*"Today we witness a seismic shift in the demographics of global economics. A resurrection of not only increased trade connections between different regions such as South East Asia, the Middle East, Africa and Central Asia, but a coming together of its peoples and with it a greater understanding of cultures and various traditions."*

The negative perception of Islam was raised and Navshir Jaffer of the Muslim Council of Great Britain stated that the media had a role to play in showcasing examples of the global Muslim community. This was followed by a focus on Malaysia, described as a moderate Muslim democracy:

V/O: *"Examples like the moderate Muslim democracies in Indonesia, Turkey and Malaysia; stable, successful and rapidly approaching developed status without abandoning the central principles of their faith, especially tolerance and moderation."*

NR: *"I think the concept of the global movement of the moderates as a key value is cardinal to ensuring that countries in the Muslim world will develop on the basis of social justice."*

MH: *"To us Islam means something constructive and Muslims are the ones who are prepared to contribute to the overall positive development. And if you don't agree and want to raise political issues or even religious issues, please go somewhere else."*

22 July 2011

A segment in this programme examined hydro-electric power in Sarawak, Malaysia. It began with the Executive Director of the International Hydropower Association stating that businesses which used renewable energy were perceived as responsible.

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<sup>6</sup> Ofcom noted that in some of the documents which appeared to be FBC marketing presentations, the WIEF was listed as an 'Event Partner' of FBC.

<sup>7</sup> Musa Hitam was also the Chairman of Sime Darby and former Deputy Prime Minister of Malaysia.

He referred to large multinationals that have relocated to enjoy the benefits of hydro-power such as Google, Apple, Microsoft and BMW.

The programme segment then referred briefly to the controversial Three Gorges Dam in China which has been called an “*environmental catastrophe due to the forced relocation of 1.3 million people, along with concerns ranging from massive erosion to earth tremors.*” This was followed by Camilla Toulmin of the International Institute for Environment and Development stating that hydro-power is a good option: “*if you can find yourself a source where the damage is not going to be too great.*”

The programme stated that Sarawak Corridor of Renewable Energy (SCORE) is one such place:

*“And companies from Japan, China, Australia and the Middle East are relocating to one of those sources of hydro-power, generated in the jungles of the Malaysian State of Sarawak, sandwiched between Brunei and Indonesia. The Malaysian Government recently signed an agreement to allow its largest State of Sarawak to purchase the power from the massive Bakun Dam. Operational from August this year, it will eventually provide 20,000 megawatts of clean, cheap energy to fuel power-hungry new industries and attract investment estimated at 70 to 80 billion US Dollars over the next two decades. Already 8 and a half billion dollars has been committed including 4 billion dollars from Abu Dhabi’s Mubadala [Development Company] to build a smelter creating 10,000 jobs.”*

This was followed by the then Chief Minister of Sarawak, Abdul Taib Mahmud, the Chief Executive of Rio Tinto Alcan, and the CEOs of Sarawak Energy Berhad and Press Metal Berhad talking about the benefits of this investment for Malaysia, energy companies and the environment.

The programme briefly referred to the fact that ten thousand people were relocated when their tribal land was flooded during the construction of the Bakun Dam.

Ofcom noted that at the end of the closing credits for each of the programmes detailed above, the following text appeared: “*Copyright FBC Media (UK) Ltd 2011. This programme was produced by FBC Media (UK) Ltd which is solely responsible for its content.*”

### **Code Issues**

Ofcom considered the programmes raised issues warranting investigation under the following areas of the Code:

- Due impartiality
- Sponsorship
- Editorial independence

The programmes under investigation were transmitted over a period covered by three editions of the Code that came into force in September 2010, December 2010 and February 2011.

Preserving impartiality – Rule 5.5<sup>8</sup>

Rule 5.5 states:

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

The preservation of due impartiality does not require a broadcaster to include every argument on a particular subject or to provide, in each case, a directly opposing argument to the one presented in the programme. Whether or not due impartiality has been preserved is dependent on a range of factors such as: the nature of the programme; the programme’s presentation of its argument; the transparency of its agenda; the audience it is aimed at, and what the audience’s expectations are. It may also be possible to maintain due impartiality by means of editorially linked programmes that make up a series.

In this case, Ofcom considered that a number of the episodes of *World Business* described above dealt with matters of political controversy and/or matters relating to current public policy and were therefore subject to the requirements of Section Five of the Code.

For example, the episode of *World Business* broadcast on 28 January 2011 contained a segment about Malaysia in which Eckart Sager interviewed the Prime Minister of Malaysia, Najib Razak, about Malaysia’s plans to achieve fully developed nation status by 2020 and to “*stay ahead*” of its neighbours. The interview included discussion of inward investment in Malaysia’s infrastructure. Mr Razak also put forward his views on how his administration was striving to develop Malaysia as an example of a “*moderate*” Islamic society. Ofcom considered that this episode dealt with a matter of political controversy, because around the time the programme was broadcast, Ofcom understands that there was debate both within and outside Malaysia concerning the extent to which the Malaysian Government was seeking to promote moderate Islam within Malaysia, and its policies and actions to achieve this aim<sup>9</sup>. Ofcom noted that Eckart Sager did not challenge Najib Razak’s views on this matter.

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<sup>8</sup> This rule is the same in each applicable version of the Code.

<sup>9</sup> See for example: <http://www.bbc.co.uk/news/world-radio-and-tv-14649841> and also the US Government’s Bureau of Democracy, Human Rights and Labor International Religious Freedom Report for 2011 (<http://www.state.gov/j/drl/rls/irf/2011religiousfreedom/index.htm?dliid=192641#wrapper>) which stated: “There were reports of abuse of religious freedoms. Through various means, the [Malaysian] government promoted Sunni Islam above other religions and other forms of Islam...The [Malaysian] government placed or maintained restrictions on some religious customs and sought to enforce certain religious precepts...The [Malaysian] government maintained a ban on sects that it considered “deviant” interpretations of Islam, maintaining that deviant views endangered national security and could divide the Muslim community”. In particular this report stated that: “On January 24 [2011], an opposition Sabah Progressive Party (SAPP) figure publicly stated that the government cannot arbitrarily move to enforce anti-apostasy laws in Sabah. He was responding to a December 2010 official media report that the Sabah Islamic Affairs Department (JHEAINS) planned to enforce the apostasy law beginning in 2011”.

Ofcom also noted that the programme broadcast on 25 March 2011 dealt with deforestation and palm oil plantations in Sarawak, Malaysia's largest state, and the programme broadcast on 22 July 2011 examined hydro-electric power in Sarawak. Ofcom noted that there has been significant controversy<sup>10</sup> about the environmental and human impact of such initiatives in Sarawak.

However, Ofcom took account of the relative brevity of the material under consideration, which was presented as short items during magazine-style programming. In such circumstances, it may be appropriate for a broadcaster to seek to preserve due impartiality through editorially linked programmes elsewhere in its schedule. We also took into account the time elapsed since the material was broadcast (meaning that the Licensee was not required to have retained recordings of its content from that period). As such, we considered it would not be practical or proportionate to expect the Licensee to demonstrate how it had achieved due impartiality – insofar as it was required to – across its programmes taken as a whole at the times the programmes were broadcast. Nevertheless Ofcom was concerned that, in light of the nature of this case, it remained possible that there may have been issues with the Licensee's compliance with Rule 5.5 in the case of some of these broadcasts.

*Personal interest of a reporter or presenter – Rule 5.8<sup>11</sup>*

Rule 5.8 states:

“Any personal interest of a reporter or presenter, which would call into question the due impartiality of the programme, must be made clear to the audience”.

The episode of *World Business* broadcast on 28 January 2011 raised concerns in relation to Rule 5.8 of the Code.

As detailed above, Ofcom considered that an interview between Eckart Sager and the Prime Minister of Malaysia, Najib Razak, dealt with a matter of political controversy and therefore Section Five of the Code was engaged.

Eckart Sager was the Executive Vice President/Head of Production at FBC from 2007 to 2011 (i.e. at the time of the broadcast), and was listed in the programme's end credits as the Managing Editor.

Ofcom also noted the following information which linked FBC to the Government of Malaysia and/or its agencies:

- i) A statement made by a Minister in the Malaysian Parliament on 2 November 2011<sup>12</sup> that referred to the Government of Malaysia paying FBC €19.6 million for three years' service to promote it from 2007. Ofcom commissioned an independent translation of this from Malay and noted, in particular, that the Minister said:

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<sup>10</sup> See for example <http://news.bbc.co.uk/1/hi/world/asia-pacific/1195112.stm> and <http://www.bbc.co.uk/news/science-environment-12397427>

<sup>11</sup> This rule is the same in each applicable version of the Code.

<sup>12</sup> Ofcom accessed this information during its investigation: <http://www.parlimen.gov.my/files/hindex/pdf/DR-02112011.pdf#page=10&zoom=70&search>

- "...the government has received service from the consultant of FBC Media United Kingdom in providing a consulting service, advice and in taking care of the communication campaign since 2007. The one-year contract has been extended twice and ended in 2010. The contract value for the three years is 19.6 million Euros. FBC Media has been using various approaches in executing the communication planning. Amongst others, helping in Malaysia's involvement in important international forums, helping in building good relationships with influential newspapers and providing broad coverage about Malaysia's interests in international media. FBC Media's communication planning supports the efforts of government leaders, ministries, agencies, visits, and their overseas missions. As we have known, apart from appropriate foundation and programmes, communication strategy also plays an important role in our efforts in increasing our country's profile as an interesting destination, for investment, and tourism"; and
  - "Since we started using FBC to improve our government's image, we have seen the progress in the aspect of acceptance by Western countries' leaders of the leadership of Our Most Honourable Prime Minister".
- ii) Lobbying disclosure documents filed with the Office of the Clerk, US House of Representatives which showed that in 2008 FBC paid a US public affairs company \$70,000 to lobby to "raise awareness of the importance of policies in Malaysia that are pro-business and pro-investment as well as the significance of reform and anti-terrorism efforts in that country".
- iii) The contractual agreements between CNBC and FBC for the *World Business* series covering 4 January 2008 to 31 December 2010 and 29 March 2011 to 30 September 2011, which referred to "Key Advertisers" identified as "IRDA (Iskandar Regional Development Authority), a Special Economic Zone in Malaysia<sup>13</sup> and Sime Darby, the Malaysian Conglomerate<sup>14</sup>. In addition, the latter Agreement also listed the Government of Malaysia as an "approved advertiser". CNBC explained that the Key Advertisers "were reserved to FBC because FBC had ongoing commercial relationships with them for the placing of advertising and FBC wished to restrict a direct approach to such clients by CNBC's advertising sales team".
- iv) A photograph of material that appeared to be from the Government of Malaysia's budgetary records, recording (in Malay) a payment of

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<sup>13</sup> "IRDA is a [Malaysian] Federal statutory body established under the Iskandar Regional Development Authority Act 2007. The primary objective of IRDA is to realise the vision of developing Iskandar into a strong and sustainable metropolis of international standing". "Iskandar is the new southern development corridor in [the Malaysian state of] Johor that has been identified as one of catalyst developments to spur the growth of the Malaysian economy". <http://www.iskandarmalaysia.com.my/faqs>

<sup>14</sup> "Sime Darby is a key player in the Malaysian economy as well as a diversified multinational, with businesses in key growth sectors namely, plantations, property, motors, industrial equipment, energy & utilities and healthcare, with operations in more than 20 countries". "Sime Darby Plantation. The world's largest producer of certified sustainable palm oil." [http://www.simedarby.com/Corporate\\_Structure\\_and\\_Information.aspx](http://www.simedarby.com/Corporate_Structure_and_Information.aspx)

RM28,350,000<sup>15</sup> made in 2009 by the Government of Malaysia to FBC Media (UK) Limited for a Global Strategic Communications campaign.

- v) Copies of documents which appeared to be FBC marketing or pitch documents, in the form of Microsoft PowerPoint presentations that contained broadcasters' logos and included, for example:
- a 2010 "Brand Positioning Campaign for Sarawak" that included proposed positive messaging strategies in named television documentaries;
  - a 2010 "Strategic Communications and National Branding Campaign for 1MDB<sup>16</sup>, KLIFD<sup>17</sup> & Malaysia" that proposed positive messaging of Malaysia in specific programmes;
  - a 2011 "Documentary Production Proposal" to the Malaysian Palm Oil Council for "placement in [a] prime time slot on a pan-regional channel such as [channels named]"; and
  - a 2004 "Media Services – Selected Case Studies" document, detailing the services FBC had provided for sixteen clients, including Tourism Malaysia, Alliance for the New Humanity, European Commission and International Chamber of Commerce and Arab Business Council, noting specific stories or programmes reaching "over 300 million homes each week in over 100 countries".
- vi) A copy of a letter (2011) from Alan Friedman (FBC Chairman and Founder of FBC Media) to the Chief Minister of Sarawak, Malaysia, outlining potential positive messaging in broadcast editorial.
- vii) A copy of what appeared to be a budget breakdown for an "International Strategic Communications Campaign" by FBC for the Malaysian state, Sarawak (February 2011 to January 2012), involving cost breakdowns for "in-depth TV News Reports" and "Half-hour Production and Long-form Documentaries" on specific channels.

The information at i) and ii) above is a matter of public record.

Ofcom was not able to verify the authenticity of the documents detailed at iv) to vii) above. However they appeared to support the publicly available evidence that the Government of Malaysia had paid FBC to promote the country in international media.

Ofcom noted that Eckart Sager (the Executive Vice President/Head of Production at FBC from 2007 to 2011, and listed in the programme credits as the Managing Editor), appeared in the 28 January 2011 episode as a presenter and reporter. During the programme Mr Sager also interviewed Najib Razak, the Prime Minister of Malaysia. The programme did not explain to the audience that Mr Sager was the Executive

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<sup>15</sup> Equivalent to approximately £5.2m in current exchange rates.

<sup>16</sup> 1MDB (1Malaysia Development Berhad) is a strategic development company wholly owned by the Government of Malaysia. Source: <http://www.1mdb.com.my/about-us/what-we-do>

<sup>17</sup> Kuala Lumpur International Financial District – a project of 1MDB that is aimed at strengthening the country's position in the financial services sector. Source: <http://www.1mdb.com.my/news-coverage/klifd-to-take-off-early-2012>

Vice President/Head of Production at FBC, and that FBC had a commercial relationship with Malaysia.

On the basis of the information available to Ofcom relating to FBC's commercial arrangements with the Government of Malaysia and its interests, and Eckart Sager's status as a senior employee of FBC, Ofcom considered that the episode warranted investigation under Rule 5.8 of the Code which states that: "Any personal interest of a reporter or presenter, which would call into question the due impartiality of the programme, must be made clear to the audience."

Ofcom therefore provided this information to CNBC and asked for its comments on how the programme complied with Rule 5.8 of the Code.

#### CNBC's representations – Rule 5.8

CNBC said that it had "entered into its dealings with FBC in good faith relying on the established reputation of the journalists associated with *World Business* and FBC's contractual representations as to the compliance of its programming with the Code as well as verbal assurances". The Licensee said that at the time of the commencement of contractual relations with FBC for *World Business* in 2003 (and on the occasion of each further agreement) "those heading up FBC were well-respected and experienced journalists".

CNBC said that it was not aware of any personal interest on Mr Sager's part that would call into question his integrity. CNBC said that Mr Sager was the Vice President of FBC and given the seniority of the interviewee it was unsurprising that the interview was conducted by a senior, experienced figure within FBC. CNBC submitted that Mr Sager is neither a shareholder nor a director of the FBC Group.

The Licensee also noted that Ofcom's published guidance to Section Five of the Code states, "If the broadcaster could not have reasonably known of such an interest [i.e. a personal interest of a presenter or reporter that would call into question his or her integrity], then Ofcom would take that into account in the event of a case or complaint"<sup>18</sup>.

CNBC asked Ofcom to take into account whether it could reasonably have known of many pieces of information that Ofcom identified as collectively pointing to a personal interest of Mr Sager arising from FBC's relationship with the Malaysian Government. In particular, CNBC noted that Ofcom had commissioned a translation of a statement made in the Malaysian Parliament in order to detect a short passage that referred to payments for promotional services made by the Government of Malaysia to FBC. CNBC also noted that Ofcom referred to lobbying disclosure documents filed with the Office of the Clerk of the US House of Representatives. Finally, CNBC noted that points iv) to vii) detailed above rely on internal FBC documents which cannot be verified.

#### Decision – Rule 5.8

Ofcom considered that CNBC's argument that Mr Sager was neither a shareholder nor a director of the FBC Group was irrelevant. Mr Sager was the Executive Vice President of FBC at the time the programme was broadcast – a senior employee who

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<sup>18</sup> Guidance Notes to Section Five of the Code:  
<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section5.pdf>

was paid by FBC and therefore who would have had a clear personal interest in the success of the FBC company.

Ofcom considered that the information set out above demonstrated that FBC had a commercial relationship with the Malaysian Government and its agencies between 2007 and 2010 (based on the statement made in the Malaysian Parliament cited above) and from March until September 2011 (based on the reference to the Malaysian Government and its agencies in the contractual arrangement between FBC and CNBC that covered this period cited above). Further, other documents (see iv) and vii) above), although they could not be verified, appeared to suggest that a commercial arrangement between the Malaysian Government and FBC between February 2011 and January 2012, or that FBC may have been seeking further commercial arrangements with the Malaysian Government at that time.

On this basis, Ofcom considered that, at the time that this programme was produced and broadcast, FBC had a commercial interest in creating programming which was about Malaysia and which conveyed positive messages about Malaysia.

In the circumstances, Ofcom considered that Mr Sager therefore had a personal interest in creating programming about Malaysia and which conveyed positive messages about Malaysia, and the existence of such a personal interest and the fact that, during the programme he interviewed the President of Malaysia about a matter of current public policy, called into question the due impartiality of the programme.

Ofcom acknowledged that some of the information it had identified may have been difficult for CNBC to access when complying the programme. Nevertheless, paragraph 1.46 of Ofcom's published Guidance on Section Five of the Code states: "Ofcom would expect that, when dealing with matters covered by special impartiality requirements, broadcasters have put in place procedures so that reporters and presenters are at least aware of this rule [Rule 5.8] and have an opportunity to make a declaration to the broadcaster". Ofcom was therefore particularly concerned that CNBC did not appear to have had any procedure in place to assess potential conflicts of interest arising from presenters' and reporters' personal interests, and to ensure compliance with Rule 5.8.

As Mr Sager's interest was not made clear to the audience, **Ofcom's decision is that *World Business* broadcast on 28 January 2011 breached Rule 5.8 of the Code.**

In view of the nature of the channel, providing business and current affairs programming, much of which will be subject to Section Five of the Code, it is especially important that the Licensee ensures that no such conflicts could call into question the due impartiality of its programming.

We intend to hold a meeting with the Licensee to discuss potential improvements to its procedures in this area, designed to ensure not only that it is aware of any potential conflicts of interest in its broadcast content, but also that it makes the audience of aware of any factors that could impact their perception as to whether due impartiality has been maintained.

### **Sponsorship – Section Nine of the Code**

Section Nine of the Code sets out various requirements which are applicable to sponsored programmes. The definition of a sponsored programme and sponsor in each of the applicable versions of the Code as are follows:

September and December 2010 versions of the Code:

“A sponsored programme, which includes an advertiser-funded programme, is a programme that has had some or all of its costs met by a sponsor with a view to promoting its own or another’s name, trademark, activities, services, products or any other direct or indirect interest.”

“A sponsor is any public or private undertaking (other than the broadcaster or programme producer) who is sponsoring the programme, programming or channel in question with a view to promoting their or another’s name, trademark, image, activities, services, products or any other direct or indirect interest. This meaning extends to those who are otherwise supplying or funding the programme of channel.”

February 2011 version of the Code:

“Sponsored programming (which may include a programme, channel, programme segment or block of programmes) is programming that has had some or all of its costs met by a sponsor. It includes advertiser-funded programmes.”

“Meaning of ‘sponsor’:

Any public or private undertaking or individual (other than a broadcaster or programme producer) who is funding the programming with a view to promoting its products, services, trademarks and/or its activities.”

Ofcom considered whether the *World Business* series met the definition of sponsored programmes.

#### CNBC’s representations – sponsorship

The Licensee stated that the information which Ofcom had provided to it “does not establish that the Programme Segments which Ofcom had identified, were sponsored”.

#### Conclusion – sponsorship

There was no evidence available to Ofcom which demonstrated or specified what services FBC agreed to provide its clients in return for payment, or that specifically evidenced payment for the production of *World Business* series or the episodes that Ofcom viewed.

In the absence of any specific evidence, there were insufficient grounds to apply the sponsorship rules to the programmes under investigation<sup>19</sup>.

#### **Editorial independence**

The relevant rule in the September 2010 and December 2010 editions of the Code was as follows:

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<sup>19</sup> Although between 2008 and 2011 FBC paid CNBC a fee to broadcast *World Business* these payments did not meet the Code’s definition of sponsorship. FBC was the programme producer and therefore did not meet the Code’s definition of a ‘sponsor’.

Rule 10.1: “Broadcasters must maintain the independence of editorial control over programme content.”<sup>20</sup>

The relevant rule in the February 2011 edition of the Code is as follows:

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

CNBC provided copies of the three contractual agreements it had entered into with FBC in relation to the *World Business* series covering the period May 2003 and September 2011.

The first contractual agreement between CNBC and FBC in relation to *World Business* commenced on 27 May 2003 and terminated on 31 December 2007 (“the First Agreement”). FBC agreed to bear all the costs of production of the series and CNBC agreed to pay FBC a nominal annual licence fee in consideration of the right to transmit the series. Further, FBC agreed to pay CNBC a guaranteed minimum six figure (Euro) sum per year in respect of the exploitation of the programmes<sup>21</sup>.

The First Agreement contained a number of contractual commitments from FBC to ensure that the programmes complied with regulatory requirements, that CNBC retained editorial oversight and control over them, that FBC could only introduce a sponsor with CNBC’s consent and that FBC must disclose any benefit that it derived from the programmes.

The second contract covered the period from 4 January 2008 to 31 December 2010 (“the Second Agreement”), while the third and final contract with FBC was entered into on 29 March 2011 and was terminated on 30 September 2011 (“the Third Agreement”).

As referred to above, in contrast to the First Agreement, under both the Second and Third Agreements FBC paid CNBC to broadcast the *World Business* series. For each year of each of the Second and Third Agreements, FBC paid CNBC a seven figure (US Dollars) transmission fee for the broadcast of 52 episodes of the programme. The Second Agreement referred to “approved advertisers” and the Third Agreement referred to “Key Advertisers” identified as “IRDA (Iskandar Regional Development Authority), a Special Economic Zone in Malaysia<sup>22</sup> and Sime Darby, the Malaysian Conglomerate”<sup>23</sup>. In addition, the Third Agreement also listed the Government of Malaysia as an “approved advertiser”.

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<sup>20</sup> The wording of the rule on editorial independence changed slightly in February 2011 and the rule was renumbered.

<sup>21</sup> Between 2003 and 2007 FBC agreed to pay CNBC for the right to “exploit the Programmes (in whole or part) in other audiovisual media”. For example, FBC paid for the right to license the programmes to other parties for broadcast on in-flight videos on airlines.

<sup>22</sup> “IRDA is a [Malaysian] Federal statutory body established under the Iskandar Regional Development Authority Act 2007. The primary objective of IRDA is to realise the vision of developing Iskandar into a strong and sustainable metropolis of international standing”. “Iskandar is the new southern development corridor in [the Malaysian state of] Johor that has been identified as one of catalyst developments to spur the growth of the Malaysian economy”. <http://www.iskandarmalaysia.com.my/faqs>

<sup>23</sup> “Sime Darby is a key player in the Malaysian economy as well as a diversified multinational, with businesses in key growth sectors namely, plantations, property, motors, industrial

In light of the large sums of money, paid by FBC to CNBC over several years, Ofcom had concerns that the independence of CNBC's editorial judgement in relation to the content provided by FBC may have been compromised.

#### CNBC's representations – editorial independence

CNBC said that it had "entered into its dealings with FBC in good faith, relying on the established reputation of the journalists associated with *World Business* and FBC's contractual representations as to the compliance of its programming with the Code as well as verbal assurances". The Licensee said that at the time of the commencement of contractual relations with FBC for *World Business* in 2003 (and on the occasion of each further agreement) "those heading up FBC were well-respected and experienced journalists".

CNBC stated that it "had in place all reasonable safeguards to ensure compliance with the Code". It explained that it had compliance processes and procedures in place throughout the course of its dealings with FBC, which included the pre-broadcast compliance viewing of each episode of *World Business* to ensure that the programmes complied with the relevant rules at the time of the broadcast.

The Licensee said that during the pre-broadcast compliance viewing, edits were made to the programmes to ensure that the material complied with the Code. However, CNBC informed Ofcom that at the time of the broadcast of the *World Business* series, it did not keep comprehensive records of all edits made to programming and therefore was not able to provide these details to Ofcom.

CNBC said that its compliance officer was aware that the Second and Third Agreements contained a list of advertisers and that some of those entities bought commercial airtime on CNBC (although not around the *World Business* programmes). The compliance officer (and CNBC) believed that a separation existed between FBC's television production and commercial arms, and that *World Business* was independently produced by FBC. Therefore, provided that the relevant programme segment stood up editorially and raised no undue prominence issues, the compliance officer had not considered that known advertisers should not be the subject of segments in *World Business*.

The Licensee said that during the period of the Second Agreement, all programmes provided to CNBC, irrespective of whether or not they were paid for, were subject to CNBC's Programme Acquisition Process as follows:

- i) Upcoming and current programming deals were discussed and reviewed at weekly programming meetings attended by the Vice President for News and Programming and a member of the legal team, amongst others.
- ii) The terms of any proposed programme were set out in a Deal Memo which was circulated to designated individuals within CNBC, including CNBC's legal team and compliance viewer.
- iii) All Deal Memos required mandatory approval by the Vice President for News and Programming. Subject to such approval, CNBC Legal Counsel would prepare relevant agreement.

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equipment, energy & utilities and healthcare, with operations in more than 20 countries".  
"Sime Darby Plantation. The world's largest producer of certified sustainable palm oil."  
[http://www.simedarby.com/Corporate\\_Structure\\_and\\_Information.aspx](http://www.simedarby.com/Corporate_Structure_and_Information.aspx)

- iv) Once concluded, the contract was circulated to CNBC's Programme Planning Manager, a member of CNBC's Sales Operations team and its Finance Department.

The Licensee said that an enhanced Programme Acquisition Process was followed during the course of the Third FBC Agreement which included a 'Know Your Client' check for paid programming.

CNBC submitted that when it became aware of concerns in respect of the *World Business* series (over a month before Ofcom first contacted it in relation to this matter), it took the following action:

- all further broadcasts of *World Business* were immediately suspended;
- an external law firm was employed to investigate FBC's conduct fully;
- CNBC's solicitors made detailed and extensive enquiries of FBC;
- a full internal review concerning FBC was undertaken by CNBC's solicitors; and
- CNBC worked with its solicitors to identify and implement enhanced compliance procedures to better identify programme risks as summarised immediately below.

CNBC explained that the revised Third Party Programme Acquisition Policy, which has been in place since 18 April 2012, states that "CNBC will not accept current affairs or news programming from a third party in return for a fee".

CNBC submitted that since May 2011 it had further improved its Programme Acquisition Process to include a Pre-Contract Questionnaire to be completed by the potential licensor. This questionnaire includes questions as to whether the relevant programme has been commissioned, the rationale for its production and whether the production has been funded, in whole or in part, by third party sponsorship. CNBC did not explain what had caused it to improve its procedures in this area at this time.

The Licensee stated that when its solicitors wrote to FBC's solicitors after the broadcast of *World Business* had been suspended, they received "unequivocal assurances to the effect that the *World Business* programme was not produced to promote any third party interest. This follows other assurances given in the course of CNBC's relationship with FBC". CNBC submitted that "if FBC has produced programming to promote the interests of a third party, it will have done so despite the fact that it represented and warranted in writing that it would not do so, and further assured CNBC that it had done no such thing". CNBC said that if it "had known of the statements that FBC was apparently making to third parties at the time...[it] would certainly have taken issue with FBC".

CNBC noted that in the BBC Trust's report on the issue<sup>24</sup>, with regards to the programming provided to BBC World News by FBC, the BBC Trust concluded that it could not be confident that there was no conflict of interest between FBC's

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[http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc\\_bulletins/2011/world\\_news.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2011/world_news.pdf)

commercial relationship with the Malaysian Government and the production of programming for BBC World News that related to the policies of the Malaysian Government. CNBC explained that to avoid such a conflict of interest it terminated the Third Agreement on 30 September 2011.

The Licensee also said that it was very concerned by the allegations that had been made, and by the position adopted by FBC's solicitors in their last letter to CNBC's solicitors in which "they suggested that FBC's commercial arm may well have sought to pitch 'numerous corporate and government leaders to news channels for interviews within editorial programming'". CNBC said that its solicitors wrote to FBC's solicitors concerning the suggestion of influence in this statement but received no response.

Having regard to the concerns identified, CNBC stated that it had ceased accepting current affairs programming that is "paid programming".

#### Ofcom's conclusion – editorial independence

Ofcom had no contemporaneous evidence as to whether CNBC exercised editorial control over the *World Business* programmes we investigated. We noted CNBC's representations that it did exercise editorial control over those programmes.

Further, Ofcom had no evidence that CNBC was influenced in its exercise of editorial control by the large sums of money it received from FBC to broadcast the *World Business* series. While CNBC was aware from its contracts with FBC that FBC had commercial relationships with the Government of Malaysia, its agencies and a Malaysian conglomerate, Ofcom found no evidence that CNBC was aware that the Malaysian Government, its agencies or Malaysian companies may have paid FBC to promote them in the programming broadcast on CNBC. As such, we have found no evidence to record a breach of the Code on this issue.

However, Ofcom noted that CNBC itself said that it found many of the FBC documents which Ofcom had provided to it "troubling" and that while the documents were "not known or reasonably available to CNBC at the time...they raise serious questions over FBC's conduct". We were also concerned that the information about FBC and its clients appeared to suggest that FBC was paid by its clients to promote them in programming including the *World Business* series.

It is essential that broadcasters take steps to ensure that content is not used as a vehicle to promote the interests of a third party, especially in current affairs content. In circumstances where broadcasters have acquired programming, they should be able to demonstrate that they have taken adequate steps to obtain all information necessary for them to make appropriate independent editorial decisions. For example, they will need to ascertain how such programmes have been funded to assess whether a funding arrangement has influenced the editorial in a way that would call into question the programme's editorial independence. We welcome the steps that CNBC has since taken in this regard to strengthen its compliance procedures, as detailed above, and will invite CNBC to attend a meeting with Ofcom to discuss further possible improvements.

Broadcasters should note that, in light of this and related cases, Ofcom intends to work with broadcasters to develop best practice guidelines to help them maintain compliance with these crucially important aspects of the Code. As part of that process, we will examine the relevant provisions in the Code and assess whether

changes are required to ensure that viewer confidence in the independence of factual programming is maintained.

In the interim, broadcasters are advised to review any relevant programme acquisition arrangements to ensure that they can satisfy themselves – and Ofcom – that the manner in which content has been funded does not call into question their own editorial independence.

## **Marketplace Middle East and Quest Means Business**

*CNN International, various dates between 6 March 2009 and 13 July 2011*

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### **Introduction**

CNN International (“CNNi”) is a news channel that also broadcasts current affairs and documentaries. The Licence for CNNi has been held by CNN Inc since 16 August 2012 but was held by Turner Broadcasting System Europe Limited at the time of the broadcasts.

*Marketplace Middle East* (“MME”) is a weekly programme broadcast on CNNi focusing on issues, developments and trends affecting the Middle East’s business climate. It is hosted by the CNNi anchor, John Defterios.

*Quest Means Business* is a weekday hour-long business programme focusing on major business stories. In July 2011, the programme featured Mr Defterios conducting an interview with the Prime Minister of Malaysia.

In August 2011, *The Independent* newspaper featured a story alleging the Malaysian Government had paid FactBased Communications (“FBC”) – an independent production and communications company – almost £12 million over two years to promote Malaysia in factual and current affairs programming broadcast on news-based TV services<sup>1</sup>.

Ofcom subsequently received a complaint that John Defterios presented programmes on CNNi that featured representatives, and/or the interests, of alleged clients of FBC during a period in which he had a professional relationship with FBC. The complainant provided Ofcom with a number of documents that suggested that FBC clients included, among others, the Governments of Malaysia and Egypt, and that Mr Defterios held a senior position in FBC.

### **Ofcom’s investigation**

Ofcom sought information from the Licensee about: Mr Defterios’ role at FBC; programmes he presented on CNNi that included references to alleged FBC clients (including the Governments of Malaysia and Egypt); and CNNi’s compliance procedures.

Having considered the information provided by the Licensee, Ofcom asked CNNi to provide recordings of the following content that referred to the interests of Malaysia and Egypt.

- *Marketplace Middle East*, 22 January 2010
- *Quest Means Business*, 13 July 2011
- *Marketplace Middle East*, 21 May 2010
- *Marketplace Middle East*, 6 March 2009
- *Marketplace Middle East*, 22 May 2009

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<sup>1</sup> <http://www.independent.co.uk/news/media/tv-radio/special-investigation-tv-company-takes-millions-from-malaysian-government-to-make-documentaries-for-bbc-about-malaysia-2338813.html>

CNNi's Television Licensable Content Service (TLCS) licence requires it to retain recordings of its broadcast output for 60 days. In this case the retention period had lapsed by the time Ofcom received the complaint. However, the Licensee was able to supply recordings of the programmes listed.

## **The programmes**

### Marketplace Middle East, 22 January 2010

In this episode of *MME*, John Deferios ("JD") interviewed the Malaysian Prime Minister, Najib Razak ("NR"), during the World Future Energy Summit taking place in Abu Dhabi (an event at which the Prime Minister was a keynote speaker).

Topics discussed included: a deal between the Malaysian Government and an Abu Dhabi company to construct Malaysia's first carbon neutral city; investment in energy production; and the Malaysian investment climate. The interview included the following discussion

JD: *I was looking back at your foreign direct investment numbers in the last few years and the GCC<sup>2</sup> has played a major role to date. Why are these sovereign funds and private investors looking East, in particular to the ASEAN<sup>3</sup> region today vis a vis three or four years ago?*

NR: *I think it is a dynamic region. It is a region that they can expect greater returns on investment. And also because we have established a stronger relationship with potential Middle East investors.*

JD: *Dubai World through its division Limitless had a couple of major investments in Malaysia. What is the Dubai fall out now as a result of what we've seen in the debt restructuring, in Dubai?*

NR: *Well there's not much of a fall out with Malaysia, except a couple of Malaysian companies embroiled in some sort of legal litigation, which we are trying to sort out based on arbitration.*

JD: *We've been tracking this East-East trade on our programme. Is it going back to the old silk and spice routes a half a millennium ago, where the cultural ties are there, and now it's the business opportunity that's presented itself, is it that simple?*

NR: *Well I think we cannot base our investment on sentiments or on emotional ties, but we have to be realistic and pragmatic. We must assure them that they will get good returns to their investment, and this we can do so.*

### Quest Means Business, 13 July 2011

This episode of *Quest Means Business* featured John Deferios interviewing the Malaysian Prime Minister about: the economic situation in Europe; the potential impact of US politics and debt on projected growth in Malaysia; and recent protests in Malaysia about electoral reform.

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<sup>2</sup> Ofcom understood GCC to refer to the Gulf Cooperation Council.

<sup>3</sup> ASEAN is the Association of Southeast Asian Nations.

Mr Defterios questioned the Prime Minister on the reasons for these protests and the Government's response to them.

Ofcom noted that the interview included the following discussion:

JD: *We've seen a [inaudible] movement in Malaysia this last week and some 20 thousand protestors, under the umbrella of electoral reforms, but what is this, is this a generational gap? Why such a high level of protest?*

NR: *Well John, it's basically politics. Because there is democracy in Malaysia, and we are committed towards electoral reform, and I've come to say that we are all for fair and clean election, and as you know, the last general election, you know, the ruling party lost five states, and we're deprived two thirds majority.*

JD: *So five of 13 states overall.*

NR: *Five of 13 states. And if not a fair clean election we wouldn't have lost five states. But we are committed to making better.*

JD: *Some would say you had 1,600 arrests of some 20,000 protestors, are you satisfied with the security response to that particular round of protest yourself?*

NR: *It was quite mild, because, although they were taken in, but they were released after eight hours and they were treated very well. There was no undue use of force, and, you know, the demonstrators were dispersed using minimum force.*

#### Marketplace Middle East, 21 May 2010

This episode of *MME* was hosted by a guest presenter and featured Mr Defterios interviewing the Governor of Bank Negara Malaysia – the Central Bank of Malaysia. The interview took place during the Sixth World Islamic Economic Forum in Kuala Lumpur.

The guest presenter gave the following introduction to the interview:

*“Malaysia is one of the key centres for Islamic Finance, nearly two thirds of the Sukuks<sup>4</sup> outstanding worldwide were issued by Malaysian companies, or the Malaysian Government. And Bank Nagara Malaysia, the Central Bank, hopes to boost interest in Islamic financial products further. John Defterios spoke to the Governor, Tan Sri Zeti Akhtar Aziz, about developing the Islamic brand.”*

During the interview the Governor, Tan Sri Zeti Akhtar Aziz (“ZAA”), discussed: Malaysia's importance to Islamic finance; how Malaysia managed the international financial crisis; how financial systems developing in the Middle East will facilitate trade and investment; and the future of the Eurozone. The interview included the following discussion:

JD: *Did the light go on, albeit slowly, that trade should be facilitated in the Muslim world, so to speak, many of the sovereign funds, for example, were looking at the West first, before they looked East for investment.*

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<sup>4</sup> Islamic Bonds

- ZAA: *That is true, because I felt that the fault, perhaps, lies with us, for not raising the awareness of what Asia, and countries like Malaysia have to offer.*
- JD: *After we have had two defaults in the Islamic finance space, is it time to get to a global standard where we are comparing like for like in terms of these products?*
- ZAA: *The key important aspect of it is meets all the Sharia requirements, and that is critical. And the second part is it needs to be very well documented. So, in our market, that is what... these the key aspects, the documentation that supports these transactions. And in our market we also have credit enhancement, and potential to undertake restructuring of debt.*
- JD: *It's almost like we are living in two different worlds right now. You have sluggish European growth or recovery, and a very different picture here in Asia. From your vantage point, can they keep the Eurozone together with the crisis that they are facing today?*
- ZAA: *What we experience the crises, I would say that we came together very quickly to put together a rescue package for Thailand. I remember flying to Tokyo and between Indonesia and us we led the package to be put together and that happened very quickly, and I believe being prompt is important because in these kind of situations deterioration happens very rapidly. And of course, the market now overreacts very often and then exaggerates the consequences of these developments. So between Asia and other parts of the world, even the IMF has forecast that going forward into 2014 that there will be increasingly growth disparity divergence between markets in general and Asia in particular with some of the advanced economies.*

Marketplace Middle East, 6 March 2009

The interviewee in this episode of *MME* was Suzanne Mubarak ("SM"), who was, at the time, the wife of the Egyptian President. Subjects discussed included: Egyptian policy on Gaza; the Gaza conflict; and current laws relating to human trafficking. In relation to Egypt's role in the Gaza conflict, the interview included the following discussion:

- JD: *As you know, your husband, President Mubarak has come under intense pressure for not being seen to be doing enough for the Palestinian people. That must be incredibly frustrating from your vantage point.*
- SM: *It's not fair. But when you [inaudible] when you see every day on your television, screens, you know, Gaza being bombed, children being killed, women being riddled, young men being... All you see is bodies and corpses scattered all over the place. You can't have, I don't think you can have any sympathy for any Government, even the Government of Egypt from Egyptians themselves. Because you always feel, I mean, even sitting at home, we feel we have to do more, what more can we do? How can we stop this massacre? Something has to be done. And this is why I think we had so much criticism at home, regardless of what Egypt was doing. But now I think people have come to realise that the role of Egypt from day one was a positive role, that Egypt was on the right path, and continues to be a stronghold in the area, and I think we are seeing more and more of this and more people acknowledge.*

Marketplace Middle East, 22 May 2009

This episode of *MME* featured an interview with Gamal Mubarak (“GM”), who at the time was the Assistant Secretary General of Egypt’s ruling party and the son of President Mubarak. The interview covered: the Egyptian macro-economic policy and related financial reforms; and the Middle East peace process.

Introducing the interview, John Defterios stated:

*“Egypt is one of the countries still moving forward, albeit more slowly, the country has had an average growth rate of seven percent for the past three years. In the first quarter of this year however, it dropped to just over four percent. Unemployment and poverty remain major issues, more than nine percent of Egypt’s population is still out of work. A fifth are struggling to survive on just over a dollar a day. One of the key Egyptian players is Gamal Mubarak, the son of the current president, he’s keen to encourage economic reforms in his country, and with the population of over 80 million, Mubarak acknowledges that, not everyone is seeing the benefits of those reforms”*

The interview then included the following discussion:

GM: *Last few years of reform, have seen a lot of the fruits of that reform trickling down to some sectors of society which, you know, have not benefited before. It is true, that not everybody has benefited in the same way. It is true, there has been some inequality in the distribution of wealth, but it’s better than having an equality in the distribution of misery. In the current challenges we have, and as a result of the reforms that we instituted, we have introduced some fiscal reforms over the past few years, that today, is giving us some fiscal room to move into additional government spending and investment. The bulk of that additional stimulus, if you want to call it in those terms, is mainly going to infrastructure, basically in the kind of services that directly impact the poor.*

JD: *If I read between the lines of what you are saying its almost geographical targeting to the poor so they know that the reform process can reach them. Is that correct?*

GM: *We are working with this on two levels, the sort of, the across the board investment in services or subsidies, but we have also moved in the past two years, on geographical targeting of villages, and even cities and small villages across the country, which are more in need, most in need.*

**Code issues**

Ofcom considered that each of the programmes detailed above dealt with matters of political controversy and/or matters relating to current public policy (e.g. economic policies and civil unrest), and was therefore subject to the requirements of Section Five of the Code.

Preserving impartiality – Rule 5.5<sup>5</sup>

Ofcom decided not to investigate whether the material complied with Rule 5.5, which requires that broadcasters preserve due impartiality on matters relating to political of

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<sup>5</sup> This rule is the same in each applicable version of the Code.

political or industry controversy and matters relating to current public policy. Rule 5.5 requires due impartiality to be achieved within a programme or over a series of programmes taken as a whole. Ofcom took account of the relative brevity of the interviews under consideration. In such circumstances, it may be appropriate for a broadcaster to seek to preserve due impartiality through editorially linked programmes elsewhere in its schedule. We also took account of the time elapsed since the material was broadcast (meaning that the Licensee was not required to have retained recordings of its content from that period). As such, we considered it would not be practical or proportionate to ask the Licensee to demonstrate how it had achieved due impartiality across its programmes taken as a whole at the times the interviews were broadcast.

*Personal interest of a reporter or presenter – Rule 5.8<sup>6</sup>*

Rule 5.8 of the Code states:

“Any personal interest of a reporter or presenter, which would call into question the due impartiality of the programme, must be made clear to the audience on air.”

Ofcom was aware that John Defterios was the President of FBC from 2007 to 2011. Ofcom also noted that FBC-produced content it had obtained as part of its investigation into the *World Business* series broadcast on CNBC indicated that Mr Defterios was involved in the production of FBC content during the period in which he appeared in the CNNi programmes under investigation (Mr Defterios was credited as the Managing Editor in a number of the CNBC programmes).

Ofcom was also aware of the following information that linked FBC to the Government of Malaysia and/or its agencies and to the Egyptian Government:

- i) A statement made by a Minister in the Malaysian Parliament on 2 November 2011<sup>7</sup> that referred to the Government of Malaysia paying FBC €19.6 million for three years' service to promote it from 2007. Ofcom commissioned an independent translation of this from Malay and noted, in particular, that the Minister said:
  - “...the government has received service from the consultant of FBC Media United Kingdom in providing a consulting service, advice and in taking care of the communication campaign since 2007. The one-year contract has been extended twice and ended in 2010. The contract value for the three years is 19.6 million Euros. FBC Media has been using various approaches in executing the communication planning. Amongst others, helping in Malaysia's involvement in important international forums, helping in building good relationships with influential newspapers and providing broad coverage about Malaysia's interests in international media. FBC Media's communication planning supports the efforts of government leaders, ministries, agencies, visits, and their overseas missions. As we have known, apart from appropriate foundation and programmes, communication strategy also plays an important role in our

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<sup>6</sup> This rule is the same in each applicable version of the Code.

<sup>7</sup> Ofcom accessed this information during its investigation:  
<http://www.parlimen.gov.my/files/hindex/pdf/DR-02112011.pdf#page=10&zoom=70&search>

efforts in increasing our country's profile as an interesting destination, for investment, and tourism"; and

- "Since we started using FBC to improve our government's image, we have seen the progress in the aspect of acceptance by Western countries' leaders of the leadership of Our Most Honourable Prime Minister".
- ii) Lobbying disclosure documents filed with the Office of the Clerk, US House of Representatives which showed that in 2008 FBC paid a US public affairs company \$70,000 to lobby to "raise awareness of the importance of policies in Malaysia that are pro-business and pro-investment as well as the significance of reform and anti-terrorism efforts in that country".
- iii) Information from an archive copy of FBC's website which: referred to the services offered by FBC Media, including a statement that "FBC Media Services has been developing television-based communications strategies for a wide range of high profile clients that include ... the governments of ... Egypt ..."; and which also provided information about John Defterios' role at the company.
- iv) A photograph of material that appeared to be from the Government of Malaysia's budgetary records, recording (in Malay) a payment of RM28,350,000<sup>8</sup> made in 2009 by the Government of Malaysia to FBC Media (UK) Limited for a Global Strategic Communications campaign.
- v) Copies of documents which appeared to be FBC marketing or pitch documents, in the form of Microsoft PowerPoint presentations that contained broadcasters' logos and included, for example:
  - an FBC branded document entitled "12-Month Strategic Communications Campaign for Sarawak & Score". One page of this document was titled "Our Track Record - Government of Malaysia" and included the statement: "Coverage has included a comprehensive range of broadcast vignettes, OpEd articles, positive press coverage, documentaries, television features and country profiles on Malaysia ...". Also included on this page was a screen shot from the *MME* episode broadcast on 22 January 2010 when Mr Defterios interviewed the Malaysian Prime Minister; and
  - an FBC document dated November 2010 entitled "Strategic Communications and National Branding Campaign for 1MDB<sup>9</sup>, KLIFD<sup>10</sup> & Malaysia" that stated that FBC had been instructed to provide 1MDB with a 12 month strategic communications and national branding proposal, the primary purpose of which was to "showcase the Kuala Lumpur International Financial District (KLIFD) and 1MDB, profile the Malaysian

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<sup>8</sup> Equivalent to approximately £5.2m in current exchange rates.

<sup>9</sup> 1MDB (1Malaysia Development Berhad), is a strategic development company wholly owned by the Government of Malaysia. Source: <http://www.1mdb.com.my/>.

<sup>10</sup> Kuala Lumpur International Financial District – a project of 1MDB that is aimed at strengthening the country's position in the financial services sector. Source: <http://www.1mdb.com.my/news-coverage/klifd-to-take-off-early-2012>

economy globally, boost FDI efforts and highlight the leadership of YAB Dato Sri Najib Razak”.

The information at i) and ii) above is a matter of public record.

The information at iii) is taken from the website fbcmedia.com, available as various site captures, taken on specific dates, through the Internet Archive service website, at: <http://archive.org/web/web.php> (the information was present on fbcmedia.com variously between at least 2 April 2004 and 19 July 2011, as archived on and between these dates).

Ofcom was not able to verify the authenticity of the documents detailed at iv) and v) above. However they appeared to support the publicly available evidence that the Government of Malaysia had paid FBC to promote the country in international media.

Ofcom considered the programmes warranted investigation under Rule 5.8 of the Code and therefore sought the Licensee’s formal comments on how the programmes complied with this rule.

As a party directly affected by this case, Ofcom provided Mr Defterios the opportunity to submit representations as part of its investigation, and also provided him with copies of the information it held relating to FBC.

## **Response**

During the course of the investigation, Ofcom received a number of submissions from the Licensee and also a submission on behalf of Mr Defterios.

In summary, the Licensee said that:

- CNNi had never transmitted any programmes produced or funded by FBC and never had an editorial relationship with FBC;
- it was aware of Mr Defterios’ relationship with FBC;
- it had procedures in place that required that each presenter sign a conflict of interests declaration form setting out any other employment or interests;
- Mr Defterios had not been asked by CNNi to complete a conflict of interest declaration form;
- there was no evidence that CNNi’s editorial standards were in any way compromised by Mr Defterios’ relationship with FBC;
- FBC was never involved in setting up, suggesting or in any other way involved in, interviews that were carried on CNNi;
- although Mr Defterios’ name may have been on the end titles of some FBC programmes, in all cases when on location for CNNi he only worked for CNNi programmes and with CNNi staff (or those contracted to work for CNNi);
- Mr Defterios made no programmes for FBC contemporaneously; and
- there were two occasions when Mr Defterios interviewed what appeared to have been a client of FBC, at a time when he had a relationship with FBC. While this was not intentional, the Licensee accepted that it would have been preferable for Mr Defterios not to have conducted those interviews or for an on-air declaration to have been made.

In summary, Mr Defterios' representations:

- contained an assurance that his role at FBC did not impact on his work at CNNi;
- noted his experience and reputation as a distinguished broadcast journalist;
- confirmed that CNNi did not provide him with a "conflict of interest" form;
- confirmed his professional circumstances between 2000-2011;
- explained that his FBC role was effectively as a "figurehead", and that he had little or no information or control over the marketing activities of the company; and
- stated that he was not aware of certain examples of what appeared to be FBC marketing or pitch documents until copies of these were provided to him by Ofcom.

The responses from the Licensee and Mr Defterios are set out in more detail below.

The Licensee said that it took the allegations extremely seriously and, "as a renowned and highly respected global news service, [it was] committed to impartiality, independence and integrity".

The Licensee considered "that for there to have been any Code breach resulting from the programmes presented by John Defterios it must be first established, based on the evidence available, that Mr Defterios' interest would have called into question the due impartiality of those programmes". The Licensee believed that "it stands to reason that only in those programmes in which there was a direct and indisputable connection between CNN International content and Mr Defterios' relationship with FBC's clients and where that connection would call into question the due impartiality of the programme, was this connection required to be made clear to the audience".

The Licensee therefore believed that in order to make an appropriate assessment of the programmes identified by Ofcom, it was necessary to understand: i) when Mr Defterios worked for CNNi; ii) when Mr Defterios worked or had an interest in FBC; and iii) who FBC's clients were and for what period.

#### John Defterios and CNNi

The Licensee stated that Mr Defterios was an established employee who had worked full-time and exclusively for CNNi from 1992 to 2000. He returned as a part-time presenter in 2007, when he began presenting *MME* in September 2007. The Licensee advised that between August 2007 and August 2010, Mr Defterios worked for the channel as a part-time independent contractor. In April 2011 Mr Defterios entered into an exclusive contract with CNNi. The Licensee also stated that there was no written contract between it and Mr Defterios between September 2010 and April 2011.

Mr Defterios' representations confirmed this information.

The Licensee confirmed that it was aware that Mr Defterios also worked for FBC while he was a freelance contributor to CNNi. It also submitted that Mr Defterios was "well aware of his obligations as a journalist, of CNN International's editorial standards and where conflicts might arise".

### John Defterios and FBC Media

In relation to Mr Defterios' involvement with FBC, the Licensee confirmed that Mr Defterios:

- was an employee of FBC Media with the title of VP of Web Content and TV Production from 2000;
- was the presenter of the FBC programme *World Business* from February 2000 to March 2007. He ceased to be the presenter when he took up his part-time role with CNNi, although he was "still provided a Managing Editor credit for the programme";
- became a director of the company and had the title of President from 2007;
- resigned as director and President in March 2011, when he became a full time CNN employee; and
- held a less than 1% shareholding in the company, which he divested in October 2011.

Mr Defterios' representations confirmed that he was Vice President of FBC from 2000 to 2007 and was the anchor and managing editor of the FBC programme, *World Business*. The representations continued that Mr Defterios stepped down as host of the *World Business* programme in 2007, when his employment at FBC became part-time only. Mr Defterios said that steps were taken at this time in anticipation of his position at CNNi to prevent any conflict of interest: this included Mr Defterios being removed from all work in the Middle East from the spring of 2007 (an email from FBC's former Acting Operations Director was provided in support of this statement).

The submission stated that Mr Defterios did not anchor any FBC production after March 2007. It included an email from a former video editor of FBC stating that Mr Defterios had no involvement with *World Business* or other FBC programmes between 2008 and 2011 but that FBC continued to exploit Mr Defterios' reputation even after March 2011: a fact of which Mr Defterios was not aware. The submission also noted that Mr Defterios did not perform work nor supervise work for FBC on behalf of Malaysia between 2009 and 2011. Therefore it was submitted that he was not aware of specific contracts generated in the country or the scope of the work entailed.

Mr Defterios' submission included background information about FBC. It stated that, prior to 2007, FBC was primarily a traditional production company that created factual programming. The representations detailed changes to the management structure of the company and the roles and responsibilities of various individuals. Through his representations, Mr Defterios asserted that he was not involved in FBC's day-to-day activities and that his influence was extremely limited despite what he described as his "grand title". Further, Mr Defterios stated that he did not propose or approve the language used in FBC's marketing documents.

Mr Defterios acknowledged that he was a member of the board of directors of FBC but stressed that his shareholding in FBC Media was minor (0.93%); that he never received any dividend; and that he divested the shareholding at the earliest opportunity after resignation.

Through his representations, Mr Defterios stressed that the preservation of his independence as a journalist and that of CNNi's was of paramount importance and that his role at FBC was effectively as a "figurehead". Mr Defterios said he had little or no information about, or control over, the marketing activities of the company. In

particular, “the power point evidence presented by Ofcom [was] the first time [he] has ever seen the misuse of the CNN trademark and screen grabs of the interviews he conducted for CNN to advance to the position of FBC”. Mr Deferios continued that, had he been aware of “what was to happen with his “President” status in FBC marketing material, he certainly would have never accepted the position.”

### FBC clients

In its initial responses to Ofcom, the Licensee advised that it had no knowledge of FBC’s clients. During the course of the investigation, the Licensee said that it had been informed by Mr Deferios that, as far as he could ascertain, the following were clients of FBC Media:

- 2003 Greece for the 2004 Olympics
- 2005 The Turkish Business Association
- 2005 The Egyptian Ministry of Finance
- 2005 to 2006 KTZ (Kazakhstan state railway)
- 2006 to 2011 The Egyptian General Authority for Investment (“GAFI”)<sup>11</sup>  
(CNNi stated that in 2009 GAFI was a client of FBC only “briefly”)
- 2008 to 2009 Malaysian Prime Minister’s Office
- 2010 Kazakhstan TV and Khabat TV2011
- 2011 1MBD contract (“most likely”)

The Licensee also advised that CNNi carried three advertising campaigns booked by FBC. These were for:

- Sime Darby, a Malaysian conglomerate<sup>12</sup>, broadcast 15 to 25 December 2007;
- Prime Minister’s Office of Malaysia, broadcast 24 to 30 January 2009; and
- Prime Minister’s Office of Malaysia, broadcast 7 to 18 September 2009.

The Licensee acknowledged that public documents indicated that money was paid by the Prime Minister’s Office of Malaysia to FBC. The Licensee said that it was unclear whether any relationship existed after 2009; however, it noted that what appeared to be an FBC-branded presentation provided to it by Ofcom claimed that FBC had “worked in the national interest of Malaysia for the last eight years”. The Licensee also referred to a quote a Malaysian Government spokesman made in a Malaysian newspaper that acknowledged a relationship between FBC and the Government of Malaysia.

The statement submitted on behalf of Mr Deferios noted his understanding of a contract between FBC and the Office of the Malaysian Prime Minister that ended in

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<sup>11</sup> GAFI’s website states that it is a “governmental authority” that operates “Under Auspices of the Egyptian Cabinet”, whose mission is “to enable and sustain Egypt’s Economic Growth through investment promotion, facilitation, efficient business services, and advocacy of investors’ friendly policies.” [http://www.comesaria.org/site/en/article.php?chaine=general-authority-for-investment-and-free-zones-gafi&id\\_article=108](http://www.comesaria.org/site/en/article.php?chaine=general-authority-for-investment-and-free-zones-gafi&id_article=108)

<sup>12</sup> “Sime Darby is a key player in the Malaysian economy as well as a diversified multinational, with businesses in key growth sectors namely, plantations, property, motors, industrial equipment, energy & utilities and healthcare, with operations in more than 20 countries”. [http://www.simedarby.com/Corporate\\_Information.aspx](http://www.simedarby.com/Corporate_Information.aspx)

December 2009. Further Mr Deferios understood that the 1MDB contract began in 2011, however he said that he had not seen any documentation in respect of this.

#### Compliance procedures – conflict of interest

The Licensee said that following Ofcom's initial contact on this issue, it had conducted a review of programmes presented by Mr Deferios, including discussing these programmes and interview subjects with Mr Deferios, to satisfy itself that there had been no undue prominence of views or opinions or any issues under Section Five. This included a review of transcripts of interviews. The Licensee said that its review had not identified any issues under Section Five of the Code.

The Licensee informed Ofcom that its internal procedures for the disclosure of conflicts of interest included each presenter signing a declaration form setting out any other employment or interests. This form was circulated to CNNi's standards and practices team so that any potential conflict of interest was identified. The Licensee said it "revisited this process" following Ofcom's initial contact to ensure the procedure "was being implemented correctly and confirmed that it was".

In response to a request from Ofcom for a copy of the conflict of interest declaration form completed by Mr Deferios, the Licensee acknowledged that "Mr Deferios was not asked to complete this form" when returning to the channel in 2007. It continued that Mr Deferios was returning having been a full time employee from 1992 to 2000 and was "well aware of [CNNi's] editorial standards by virtue of his previous eight year tenure".

The Licensee acknowledged that the fact Mr Deferios had not completed a conflict of interest declaration as a non-full time employee when he returned to the channel in 2007 had been a "shortcoming" in CNNi's process. The Licensee explained that this was due to "internal miscommunication", but that "no errors resulted and no content that [did] not comply with OFCOM regulation appeared on air as a consequence of this oversight." The Licensee continued that "Mr Deferios had almost a decade's worth of familiarity with CNNi's editorial practices and followed them on all programmes identified".

When asked by Ofcom how its initial statement that its conflict of interest procedures had been implemented correctly reconciled with its subsequent admission that Mr Deferios had not completed a conflict of interest declaration, the Licensee responded that it did not believe that the fact that Mr Deferios had not completed a declaration conflicted with its initial statement. The Licensee continued that when it revisited its conflict of interest procedure, it was "to establish whether it was *currently* being implemented correctly and [it] confirmed that it was."

The Licensee said that at the time of the initial enquiry, it was concerned to ensure that its procedures were in place and being followed. When asked expressly whether its procedures had been implemented correctly with regard to Mr Deferios, it said that on investigation it had discovered that this unfortunately had not been the case. The Licensee added that as Mr Deferios was now a full-time CNN employee, he was subject to an employment agreement with CNN and had an exclusive employment relationship with CNN. Therefore the Licensee said that the review of the current practice would not have picked up the internal error.

Mr Deferios confirmed that "he was not provided with a "conflicts of interest" form by CNNi in 2007 or at any other time" and that he was unaware that such a formal requirement was in place.

## The programmes

The Licensee explained that *MME* is a 15-minute weekly business show that covers the economic trends and business developments affecting the Middle East. Each week the show includes a *Face Time* segment that features an interview with one prominent individual from the business/finance community. The Licensee continued that the editorial direction of the programme has always been a collaborative CNNi team process, with much discussion and debate. However, the programme producer has ultimate responsibility for the programme's output and makes the final decision as to whether and how to cover a particular subject or to carry a particular interview.

The Licensee outlined its guest booking procedures. It explained that CNNi has a central booking team of editorial producers/planners who have direct responsibility for generating guests, ideas and content for regular newscasts, breaking news coverage and special theme weeks. Generally, a programme producer will request a guest by name or specialism or seek ideas for specific guest opportunities. The booking team will then procure the interviewee, conduct a pre-interview and confirm the booking to the programme producer. The producer will then share the booking with the programme presenter.

The Licensee continued that specialist shows, such as *MME*, often have a specific, consistent editorial/planning producer assigned to the programme. This person will work alongside the programme producer generating content/guest ideas and co-ordinating closely with the central booking team – thereby ensuring the network is always aware of who is being booked when. It is only in exceptional circumstances that there is a variance from this procedure.

### Marketplace Middle East, 22 January 2010 – interview with Malaysian Prime Minister

The Licensee noted that the Malaysian Prime Minister was a speaker at the World Energy Summit in Abu Dhabi at the end of January 2010. The Licensee continued that the summit is one of the most reputable international forums for discussion and debate on the development of renewable energy sources. One of the key headlines emerging from the summit was a US\$100m deal between Malaysia and an Abu Dhabi renewable energy company to co-operate on clean technology projects and explore building Malaysia's first carbon neutral city. The Licensee said that environmental coverage is an important strand of CNNi's programming and this was a newsworthy story from the summit on a subject matter that the channel had "shown a commitment to".

The Licensee explained that a freelance producer arranged the interview (as *MME*'s usual producer was out of the office). The interview was originally intended to be a "sit down" with another CNNi reporter in Abu Dhabi but, due to a change in the Prime Minister's schedule, the original reporter was no longer available to conduct the interview. Mr Defterios was therefore asked to conduct the interview because he was the presenter of *MME* and was available at two hours' notice. Consequently, the interview changed to a satellite interview with the Prime Minister in Abu Dhabi and Mr Defterios in London. The Licensee believed that it was clear from the events that unfolded that the decision to interview Mr Razak was made by CNNi's editorial staff.

Through his representations, Mr Defterios reiterated that he was called upon to conduct the interview at short notice and that it was conducted with "complete independence and with no input by FBC". Mr Defterios stated that he did not work (at FBC) on behalf of Malaysia from the time he was the host of *MME* and he had no specific knowledge of the FBC work in the country. However, in hindsight, with

knowledge of the wide scope for the potential for a conflict of interest, he would have flagged FBC's interest with Malaysia and would not have conducted the interview.

The representations also stressed that Mr Defterios "was extremely dismayed and was unaware" that a screen shot from this episode of *MME* appeared to have been used in a FBC marketing presentation and that he "never would have allowed this to happen."

*Quest Means Business*, 13 July 2011 – interview with Malaysian Prime Minister

The Licensee said that a distinction of CNNi's flagship hour-long business programme, *Quest Means Business*, was the timely interviews it secures with government and corporate leaders, bankers and financiers. When the anchor, Richard Quest, is away on assignment or leave, it is common practice for one of the network's recognised business experts to step in and host the show, working directly to the instruction and guidance of the established *Quest Means Business* team leadership – the Executive Editor and the Senior Producer.

On this occasion, the Malaysian Prime Minister was in London seeking to cement economic ties with Britain ahead of negotiations to try to put in place broader free trade agreements with the EU. As a leader of a nation exporting more than US\$30bn in goods to Europe, the Licensee believed that an interview with the Prime Minister on its key European prime time business show was clearly justified editorially.

The Licensee said that the interview was pitched to CNNi's central planning/guest booking desk in London via a PR agency that was co-ordinating Mr Razak's visit to the UK. A CNNi Senior Producer via a Planning Supervisor confirmed the interview and the process followed the established protocol for booking guests for *Quest Means Business*.

The Licensee reiterated that it was not clear from the official record whether the Malaysian Prime Minister's office was a client of FBC after 2009. However, the Licensee accepted that, on the balance of probabilities, it is likely that the relationship between FBC and Malaysia existed at the time of the interview, given the evidence it had seen in the public domain. Although Mr Defterios had stressed that "he never worked on FBC's Malaysian account and at the time of the *Quest Means Business* interview ... no longer held any position in FBC", the Licensee nevertheless accepted that if it had been aware of the information it currently had, in retrospect it would not have allowed Mr Defterios to conduct the two interviews with the Malaysian Prime Minister. This was because Mr Defterios was President of FBC at the time of the first interview and still held a financial interest in the company at the time of the second interview, albeit a very small one. The Licensee considered it important to note that Mr Defterios' interest in FBC in 2011 was insignificant, amounting to a value of £492.32. While the Licensee believed the interviews were nothing other than impartial, it acknowledged that some may believe that Mr Defterios' relationship with FBC could have given the perception of conflict. The Licensee concluded that it had an absolute commitment to independence, integrity and impartiality, and that it sought to maintain the highest editorial standards.

Through his representations Mr Defterios said he could "appreciate that the circumstantial evidence put together by Ofcom could wrongly suggest the possibility of an appearance of partiality in respect of the interview with the Malaysian Prime Minister". However, Mr Defterios emphasised that his role was one of interviewer rather than reporter or interviewee: he was not providing any editorial content or offering any analysis or interpretation and instead was "asking the same

straightforward questions that one would expect any skilled and experienced interviewer to ask for a programme such as *Marketplace Middle East*. The representations also noted that Mr Deferios had left FBC in March 2011 and “FBC had no role whatsoever with this interview”. However, “in retrospect [Mr Deferios] could have made CNN aware of his 0.93% shareholding before it was divested”.

*Marketplace Middle East*, 21 May 2010 – interview with the Governor of the Malaysian Central Bank

The Licensee explained that this programme was a report from the World Islamic Economic Forum (“WIEF”) in Kuala Lumpur. The 2010 conference gave *MME* an opportunity to report on a story the Licensee believed was of growing importance – the rise of Islamic finance. The Licensee said that in the aftermath of the global financial crisis, a significant trend in the global business community was the search for alternative areas of investment. The timing and agenda of the 2010 WIEF ensured this specific event was a great deal more newsworthy than in previous years and provided a source of editorial content highly relevant to *MME* as well as an enhancement to CNNi’s financial coverage in general.

The Licensee continued that Sukuks (or Islamic bonds) were becoming a booming fixed income market in 2010. In this market, Malaysia was the dominant player. In particular, sovereign wealth funds from the Gulf were looking to exploit growth opportunities in the Asian region. CNNi had been reporting on this story from its business hub in London and it had had prominent coverage in other news outlets (e.g. the New York Times).

The Licensee said that the content of this programme was researched and signed off by the programme’s production team and executed by Mr Deferios on location. The interview with the Bank Governor was booked directly with the Governor’s press office and taped by a freelance crew, which was booked through the forum’s host broadcaster.

The Licensee submitted that, as the Governor of Bank Negara Malaysia – the nation’s central bank – for more than a decade, the interviewee was uniquely positioned to discuss the repositioning of Malaysia and its Asian partners at the forefront of Islamic finance. With a report in the programme having explored how Islamic ties had the potential to unlock a global market of 1.5 billion Muslims, the interview, which focused on the financial structures underpinning this inter-regional growth, was, in the Licensee’s view, a timely, pertinent and significant editorial element of the programme. Given Malaysia’s dominance of the Islamic Bond market, the Licensee believed that the nation’s Central Bank Governor, who was already attending the summit, was the pre-eminent person to speak on the topic.

The Licensee said that it had been advised by Mr Deferios that Bank Negara Malaysia was not a client of FBC and noted that the Bank, as the Central Bank, is independent in statute. Further, FBC’s contract for the Malaysian Government campaign never covered any matters concerning the bank’s work.

The Licensee referred to the document which appeared to be an FBC marketing document entitled “Strategic Communications and National Branding Campaign 1MDB, KLIFD & Malaysia 2010-2011”, provided to it by Ofcom. It noted that, according to FBC, this campaign was to showcase 1MDB. Further, it said that the strategic communications campaign referred to was a proposal and not an implemented plan. Importantly, the Licensee noted that the date of the proposal was November 2010 – six months after Mr Deferios’ interview with the Bank Governor.

The Licensee advised that Mr Defterios believed that any contract between 1MBD and FBC did not start until 2011.

In view of the information set out above, the Licensee considered that the interview did not give rise to an issue of personal interest that would have called into question the impartiality of the programme. Further and importantly, on examination of the interview, the Licensee believed that due impartiality was preserved. The Licensee therefore considered that on any reasonable analysis the programme had not breached the Code.

In addition to setting out how the interview was organised, Mr Defterios' submission stated "if one were to take an independent view of the programme itself for editorial context, it has nothing to do with Malaysia but Gulf States looking for growth going East not West". It continued that FBC had no role in the interview nor did it perform any work, to Mr Defterios' knowledge, with the Central Bank in Malaysia.

Marketplace Middle East, 6 March 2009 (interview with Suzanne Mubarak)

The Licensee said that in the first week of March 2009, Bahrain hosted the 'Human Trafficking at the Crossroads' conference. This was a newsworthy event for *MME* to cover because the matter was one of global importance. Suzanne Mubarak was a keynote speaker at the conference because of her interest in the subject (through the Suzanne Mubarak Women's International Peace Movement).

The Licensee continued that given the recent announcement, at the time of the broadcast, of US\$4bn of humanitarian funds donated by Gulf states, the EU and the US to re-build Gaza and the US Secretary of State's commitment to a separate state of Palestine, it was appropriate from a news perspective to ask Suzanne Mubarak, being the wife of the then President of one of the major forces in the region, about her views on these newsworthy matters. The Licensee considered there to be a clear news 'peg' for the interview and its decision to conduct the interview was taken on news value alone. The Licensee said that the interview was therefore clearly relevant and editorially appropriate for *MME*.

The Licensee did not provide information about how the interview was arranged. However, Mr Defterios' representations added that the interview was set up directly by a freelance associate producer of *MME* and shot and edited by a CNNi cameraman.

The Licensee stated its belief that Suzanne Mubarak was not a client of FBC and that the evidence available did not indicate that Hosni Mubarak or his office were ever FBC clients. Further, the subject matter of the interview (human trafficking and the Israeli/Palestinian conflict) was not related to matters that would be of principal public relations relevance to FBC's Egyptian clients.

Marketplace Middle East, 22 May 2009 (interview with Gamal Mubarak)

The Licensee said that the decision to interview Gamal Mubarak was taken against the backdrop of speculation that the then President, Hosni Mubarak, was preparing his son for leadership of the Egypt. It said that, given the significance of Egypt in the Middle East, such developments were of critical importance.

The Licensee continued that, given the possibility of his future leadership, *MME* was keen to know Gamal Mubarak's views on the Israeli/Palestinian situation. It stated that the interview was decided on news value alone and was consistent with the

editorial remit of *MME*. The Licensee did not provide information about how the interview was arranged.

Mr Defterios' submission stated that the interview was conducted at the World Economic Forum regional meeting on the Middle East and North Africa. It was produced and shot by CNNi staff.

The Licensee said that while it appeared that the Egyptian Ministry of Finance was a client of FBC in 2005 and GAFI was a client at various times between 2006 and 2011, it believed that Gamal Mubarak was not a client of FBC. As stated above, the Licensee did not believe that the evidence indicated that Hosni Mubarak or his office were ever FBC clients. Again, the primary subject matter of this interview: the Israeli/Palestinian conflict was not related to the matters that would be of principal public relations relevance to FBC's Egyptian clients. The Licensee therefore "did not consider that there was a 'personal interest' of John Defterios that CNN International needed to make clear to the audience" in respect of this programme in order to comply with the Code.

Mr Defterios' representations echoed this position and reiterated that Mr Defterios was removed from working on FBC's GAFI account in the spring of 2007.

## **Decision**

Rule 5.8 requires that any personal interest of a reporter or presenter, which would call into question the due impartiality of a programme, must be made clear to the audience. It is important to note that the purpose of Rule 5.8 is to alert viewers to relationships that may be seen to undermine the impartiality of a programme: non-compliance with this rule does not necessarily mean that a broadcaster has failed to preserve due impartiality in its programmes.

As noted above, Ofcom considered that the content presented by Mr Defterios, as set out above, was subject to the requirements of Section Five of the Code as it dealt with matters of political or industrial controversy and/or matters relating to current public policy (of those countries discussed). Ofcom therefore went on to consider the implications of Mr Defterios' relationship with FBC on these programmes.

### The nature of Mr Defterios' relationship with FBC

Ofcom noted that Mr Defterios was a director and President of FBC until March 2011 and was listed as the Managing Editor in nine of the 28 *World Business* episodes (viewed as part of the CNBC investigation) broadcast between December 2010 and July 2011. Specifically, Mr Defterios received a Managing Editor credit in those programmes produced up until March 2011, the month in which he resigned as President and Director of FBC

Ofcom also noted both the Licensee's and Mr Defterios' explanations of Mr Defterios' relationship with FBC between 2000 and 2011. Specifically, that Mr Defterios had no involvement with *World Business* or other FBC programmes between 2008 and 2011. Further, according to Mr Defterios' representations, that his role at FBC was effectively as a "figurehead" and that FBC had continued to exploit Mr Defterios' reputation even after March 2011.

Regardless of Mr Defterios' relationship with *World Business* after 2008, Ofcom noted that it was established that he remained a director of FBC until March 2011 and a shareholder until October 2011.

### FBC's relationship with the Governments of Malaysia and Egypt

Ofcom considered that the information set out above demonstrated that FBC had a commercial relationship with the Malaysian Government and its agencies between 2007 and 2010 (based in the statement made in the Malaysian parliament – see i) above). Further, other documents (see iv) and v) above), although they could not be verified, appeared to suggest that the commercial arrangement between the Malaysian Government and FBC may have continued from February 2011 to January 2012, or that FBC may have been seeking further commercial arrangements with the Malaysian Government at that time.

Ofcom noted that both the Licensee and Mr Deferios accepted that the Government of Malaysia had been a client of FBC, and Mr Deferios' understanding that FBC entered into a commercial arrangement with 1MBD, a Malaysian interest, in 2011.

Ofcom also considered that there was archive evidence (see iii) above) that FBC had a commercial relationship with the Egyptian Government.

We also noted that the Licensee and Mr Deferios accepted that GAFI was a client of FBC's, with Mr Deferios noting that the relationship existed between 2006 and 2011.

Ofcom therefore considered whether it was necessary for CNNi to identify these relationships in the following programmes:

*Marketplace Middle East, 22 January 2010, Quest Means Business, 13 July 2011 and Marketplace Middle East, 21 May 2010.*

During *MME* broadcast in January 2010 Mr Deferios and the Malaysian Prime Minister discussed a deal between the Malaysian Government and an Abu Dhabi company to construct Malaysia's first carbon neutral city, as well as why Malaysia offered good investment opportunities.

During *Quest Means Business* Mr Deferios and the Malaysian Prime Minister discussed the economic situation in Europe, the potential impact of US politics and debt on projected growth in Malaysia; and recent protests in Malaysia about electoral reform. During *MME* broadcast in May 2010, Mr Deferios and the Governor of Bank Negara Malaysia discussed the current financial and investment climate in the region and Malaysia's importance to Islamic finance.

Both the Licensee and Mr Deferios accepted that, with hindsight, Mr Deferios should not have conducted the interviews with the Prime Minister of Malaysia, or that his relationship with FBC should have been made clear to viewers.

Ofcom agreed. FBC's relationship with the Government of Malaysia and Mr Deferios' relationship with FBC would have called into question the due impartiality of the interviews. As the Licensee did not make the audience aware of these relationships, **Ofcom's Decision is that the programmes were in breach of Rule 5.8 of the Code.**

In relation to Mr Deferios' interview with the Governor of Bank Negara Malaysia in May 2010, **Ofcom's Decision is that the interview was also in breach of Rule 5.8.** Ofcom noted from the bank's website<sup>13</sup> that it "is a statutory body wholly owned

<sup>13</sup> See [http://www.bnm.gov.my/index.php?ch=en\\_about&pg=en\\_intro&ac=641&lang=en](http://www.bnm.gov.my/index.php?ch=en_about&pg=en_intro&ac=641&lang=en)

by the Government of Malaysia” and that as “Malaysia's Central Bank, Bank Negara Malaysia promotes monetary stability and financial stability conducive to the sustainable growth of the Malaysian economy”. Given the Malaysian Government’s ownership of the bank and FBC’s relationship with the Government of Malaysia, Ofcom considered that the Licensee should have alerted viewers to Mr Defterios’ relationship with FBC and its links with the Malaysian Government.

Marketplace Middle East, 6 March 2009 (Interview with Suzanne Mubarak) and 22 May 2009 (interview with Gamal Mubarak)

Both the Licensee and Mr Defterios accepted that FBC’s clients included the Egyptian investment authority, GAFI. However, the Licensee disputed that this relationship meant that Rule 5.8 was engaged in these interviews. Specifically, the Licensee did not believe that the available evidence indicated that FBC clients included Gamal Mubarak or Hosni Mubarak (or the President’s office) or that the interviews were related to matters of particular public relations relevance to GAFI.

In our Preliminary View, however, Ofcom noted that, according to GAFI’s own website, the organisation was a government authority which operated “under the Auspices of the Egyptian Cabinet” with a role “to enable and sustain Egypt’s Economic Growth through investment promotion, facilitation, efficient business services, and advocacy of investors’ friendly policies”. We also noted, at the time of the interviews, both that Hosni Mubarak, Suzanne Mubarak’s husband and Gamal Mubarak’s father, was the President of Egypt and therefore the head of that country’s government and that Gamal Mubarak held an official position in that government as Deputy Secretary-General. As a result, our Preliminary View was that, although the interviews had not specifically been about investment opportunities in Egypt, they did provide both Suzanne Mubarak and Gamal Mubarak with a platform to discuss Egypt’s economic and political policies.

Consequently, Ofcom’s Preliminary View was that because: Mr Defterios was President of FBC; GAFI, an agency of the Egyptian government, was a client of FBC; and Suzanne Mubarak and Gamal Mubarak were representatives of the Egyptian Government, by failing to inform viewers of these relationships, both of the interviews breached Rule 5.8 of the Code.

In response to our Preliminary View, while reiterating its general disagreement, the Licensee emphasised that, although Mrs Mubarak was the wife of the President of Egypt, she was not a member of the country’s government. Consequently, given that the interview focussed on topics – reconstruction in Gaza, the Palestinian conflict and human trafficking – which were unrelated to GAFI’s function, it argued that any link between Mr Defterios (through FBC) and Suzanne Mubarak was “tenuous” and could not account to a breach of Rule 5.8 of the Code.

On balance, Ofcom accepted that there was adequate distance between Mrs Mubarak’s role in the interview (i.e. discussing human trafficking and the Gaza conflict) and FBC’s relationship with GAFI to avoid Mr Defterios’ relationship with FBC calling into question the impartiality of his approach. **Therefore, Ofcom concluded that this interview was not in breach of Rule 5.8 of the Code.**

However, while it was the case that Suzanne Mubarak did not hold an official post, Gamal Mubarak was a senior member of the Egyptian Government and, as the Licensee acknowledged, the subject of speculation that he was being groomed to become the country’s leader. We also noted that the interview referred to Gamal Mubarak as “*One of the key Egyptian players ... keen to encourage economic*

*reforms in his country*". Taking the above into account, as well as Mr Defterios' role as President of FBC; FBC's relationship with GAFI and GAFI's status as an agency of the Egyptian government, **Ofcom concluded that, by failing to inform viewers of these relationships, this interview was in breach of Rule 5.8 of the Code.**

### Compliance procedures

Paragraph 1.46 of Ofcom's published Guidance on Section Five of the Code states: "Ofcom would expect that, when dealing with matters covered by special impartiality requirements, broadcasters have put in place procedures so that reporters and presenters are at least aware of this rule [Rule 5.8] and have an opportunity to make a declaration to the broadcaster".

Turned submitted it did have a procedure in place for seeking information from its staff disclosing conflicts of interest, but that this procedure had not been followed in this case. Ofcom noted Mr Defterios' submission that he "was unaware that such a formal requirement was in place". The Licensee clearly failed to take adequate steps to identify potential conflicts of interest of one of its regular presenters and instead appeared to have relied solely on the experience and reputation of the presenter. Although the Licensee accepted that there were shortcomings in its procedures in that it did not ask Mr Defterios to complete an appropriate conflict of interest form, it did not consider this fact, in itself, resulted in a breach of the Code. However, in view of the nature of the channel, providing business and current affairs programming, much of which will be subject to Section Five of the Code, it is especially important that the Licensee ensures that there are no conflicts of interest that could call into question the due impartiality of its programming. It is therefore of particular concern to Ofcom that, while the Licensee had conflict of interest procedures, it had not followed these in all cases.

We intend to hold a meeting with the Licensee to discuss potential improvements to its procedures in this area, designed to ensure not only that it is aware of any potential conflicts of interest in its broadcast content, but also that it makes the audience of aware of any factors that could impact their perception as to whether due impartiality has been maintained.

### **Summary of Decisions:**

|                                                                                                                |                           |
|----------------------------------------------------------------------------------------------------------------|---------------------------|
| <b><i>Marketplace Middle East, 22 January 2010 (interview with Malaysian Prime Minister)</i></b>               | <b>Breach of Rule 5.8</b> |
| <b><i>Quest Means Business, 13 July 2011 (interview with Malaysian Prime Minister)</i></b>                     | <b>Breach of Rule 5.8</b> |
| <b><i>Marketplace Middle East, 21 May 2010 (interview with the Governor of the Malaysian Central Bank)</i></b> | <b>Breach of Rule 5.8</b> |
| <b><i>Marketplace Middle East, 22 May 2009 (interview with Gamal Mubarak)</i></b>                              | <b>Breach of Rule 5.8</b> |
| <b><i>Marketplace Middle East, 6 March 2009 (Interview with Suzanne Mubarak)</i></b>                           | <b>Not in breach</b>      |

## Sponsored programmes

*CNN International, various dates between 14 August 2009 and 4 August 2012*

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### Introduction

CNN International (“CNNi”) is a news channel that also broadcasts current affairs and documentaries. The Licence for CNNi has been held by CNN Inc since 16 August 2012 but was held by Turner Broadcasting System Europe Limited at the time of the broadcasts.

### Ofcom’s investigation

During Ofcom’s investigation concerning various licensees’ broadcast of material produced by FactBased Communications (“FBC”) as detailed in this Broadcast Bulletin, we sought information from the Licensee on content that had been funded by third parties and broadcast on CNNi<sup>1</sup>.

The Licensee’s Television Licensable Content Service (TLCS) licence requires it to retain recordings of its broadcast output for 60 days. In this case, the retention period had lapsed by the time Ofcom received the complaint concerning material produced by FBC. However, having approached the Licensee for information to assist us in our assessment of other content funded by third parties, it was able to provide recordings of material Ofcom requested, which it had retained beyond the 60 day recording retention period.

The recordings provided by the Licensee raised a number of issues concerning the broadcast of sponsored programming that warranted investigation under Section Nine of the Code.

### The programming

(Note: As an ongoing series of short programmes used to fill CNNi’s schedule, *Highlight CNN* never featured in programme listings. Generally, each broadcast comprised extracts from a longer programme previously scheduled for broadcast on the channel. Each *Highlight CNN* listed below was between 30 and 60 seconds in duration and displayed the title – i.e. “*Highlight CNN*” – throughout, as a graphic in the bottom right hand corner of the screen.)

1. Sponsorship of *Highlight CNN* (one programme broadcast at various times between 14 and 18 August 2009).
2. Sponsorship of *Highlight CNN* (four programmes broadcast at various times between 10 and 23 May 2010).
3. Sponsorship of *Highlight CNN* (six programmes broadcast at various times between 18 May 2011 and 30 March 2012).
4. Sponsorship of *Highlight CNN* (three programmes broadcast at various times between 6 and 22 June 2011).

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<sup>1</sup> See, in particular, the previous Finding (concerning CNNi) in this Bulletin.

5. Sponsorship of *Eye on Georgia* (one programme broadcast at various times between 2 and 5 July 2011).
6. Sponsorship of *Outlook Cambodia* (three programme segments broadcast at 18:00 on 26, 28 and 30 September 2011), and Sponsorship of *Highlight CNN* (one programme broadcast at various times on 27 September 2011).
7. Sponsorship of *Highlight CNN* (three programmes broadcast at various times between 17 July and 4 August 2012).

### **Code issues**

Each of the seven cases listed above raised one or both of the following issues:

- Sponsorship of current affairs programmes, and
- References to the sponsor in programmes.

### Background to relevant Code rules

This Finding refers to the 2008, 2009 and 2011 editions of the Code.

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

### Sponsorship of current affairs programmes

Article 1(k) of the Audiovisual Media Services Directive (“AVMS Directive”) states:

“‘Sponsorship’ means any contribution made by public or private undertakings or natural persons not engaged in providing audiovisual media services or in the production of audiovisual works, to the financing of audiovisual media services or programmes with a view to promoting their name, trade mark, image, activities or product.”

Article 10(4) of the AVMS Directive states:

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

The requirement was reflected in Rule 9.1 of the 2008 and 2009 editions of the Code, which stated, among other things:

“The following may not be sponsored:

[...]

- News and current affairs programmes on television.

“Meaning of “current affairs programme(s)”:

A current affairs programme is one that contains explanation and analysis of current events and issues, including material dealing with political or industrial controversy or with current public policy”.

The requirement was subsequently reflected in Rule 9.15 of the 2011 edition of the Code, which stated:

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

“Meaning of “current affairs programme”:  
See meaning under Rule 9.12”.

[from Rule 9.12:]

“Meaning of “current affairs programme”:  
A current affairs programme is one that contains explanation and/or analysis of current events and issues, including material dealing with political or industrial controversy or with current public policy”.

### References to the sponsor in programmes

Article 10(1) of the AVMS Directive states, among other things:

“Audiovisual media services or programmes that are sponsored shall meet the following requirements:

[...]

(b) they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services”.

The requirement was reflected in Rule 9.5 of the 2009 edition of the Code, which stated:

Rule 9.5 “There must be no promotional reference to the sponsor, its name, trademark, image, activities, services or products or to any of its other direct or indirect interests. There must be no promotional generic references. Non-promotional references are permitted only where they are editorially justified and incidental”.

Where Ofcom has reached a Preliminary View that a broadcast was a sponsored current affairs programme, in breach of Rule 9.1 of the Code, we have not gone on to consider it under Rule 9.5 of the Code, as the material in question should not have been sponsored.

### **Response – general comments**

The Licensee’s response concerning the relevant issue(s) and Code rule(s) in relation to specific *Highlight CNN* programmes investigated by Ofcom are detailed below. However, the Licensee made the following response concerning *Highlight CNN* more generally, describing the short broadcasts as “vignettes” (not as programmes), which Ofcom took into account in the relevant cases:

“Vignettes...are short (typically between 30 and 90 seconds) stand-alone pieces of editorial. They are either original...material that have been specifically produced as a vignette or alternatively material that is extracted from a pre-existing programme (for instance some clips from an interview) and then appear on a stand-alone basis. They appear frequently across the schedule, in editorial time but outside other scheduled programmes. These vignettes are sometimes

sponsored, where the content of them is sponsorable and CNN International considers that sponsorship is available and appropriate...

“...we have considered...each...vignette on its own merits and against our understanding of the requirements of the Code. However, we ask that you take into account the following when assessing each vignette’s compliance with the Code...vignettes are simply short pieces of stand-alone editorial material often transmitted in breaks (similar to the scheduling of trailers in editorial time). Nevertheless, they are held to the same high and robust editorial standards as all our editorial output. We require them to be impartial, objective and completely independent of external influence. They are...short-form pieces [that] stand alone on their own editorial merit.

“Our vignettes frequently, but not always, concern business matters and therefore often come from our business programmes. The aim has always been for them to focus on the more factual elements of a programme from which they are extracted. On our review of the vignettes extracted from programmes...we believe that some of these vignettes... contained more alternative views and explanations than would originally have been expected when the content was originally designated and approved for appropriate sponsorship. This resulted in what was meant to be straight forward factual reports edging potentially into areas more akin to current affairs. This was not an intentional shift in focus, but merely the result of our wish to provide vignettes which were rigorously impartial, objective and – importantly – editorially independent.

“By way of further background...vignettes are typically produced by the Associate Producer(s) who was assigned to the programme from which the relevant vignette originated. The Associate Producer, and the show’s producers with whom the Associate Producer works, are under strict instructions that vignettes must contain only ‘sponsorable’ material whenever there is a sponsor associated with the content of them. Vignettes are usually content that has already been broadcast, but alternatively may be taken from the rushes from the programme. The vignettes are normally broadcast at least a week after the originating programme is aired.”

In response to Ofcom’s Preliminary View, the Licensee noted that, in the course of the investigation, it had “reviewed more than 500 hours of programming going back to 2009 and provided copies of the content requested”. It also requested that Ofcom note submissions it had previously made during this investigation – namely, that the Licensee stated that it “takes its compliance obligation extremely seriously” and that its “reputation for impartiality, accuracy and integrity is one that it protects with great passion”. It believed that “there has been an absolute separation between the sponsor and the sponsored content” and that “it has not been possible for any sponsor to input or in any way influence [CNNi’s] editorial output at any time” or to have “influence over, or any input into, the content or scheduling of programmes at any time”.

Further, the Licensee reiterated its view that “Ofcom’s definition of current affairs emanates from a different period and parts of its meaning are ambiguous ... It is possible that the term ‘current events and issues’ could cover no end of possible matters that would fall well outside the scope of any reasonable interpretation of current affairs material”.

Finally, the Licensee expressed concern at the length of Ofcom’s investigation. It considered that it had “had to endure...uncertainty...for over three years” which it

believed had had “a chilling effect” that had “potentially [lost] the business substantial revenue”.

The following details each of the seven cases listed above:

**1. Sponsorship of *Highlight CNN* (material from *Face Time*, in *Marketplace Middle East*) – 14, 15, 17 and 18 August 2009, various times**

**Introduction**

*Marketplace Middle East* is a business programme concerning the economic trends and business developments that impact the region. It contains *Face Time*, which is a regular programme segment that features an interview with a prominent individual from the business/finance community.

*Highlight CNN* was a programme of approximately 30 seconds in duration, sponsored by Dubai International Finance Centre (“DIFC”), the Federal Financial Free Zone administered by the Government of Dubai. The programme comprised extracts from a *Face Time* interview with Abdul Aziz Al Ghurair, CEO of the UAE commercial bank, Mashreq. The interview was first broadcast in *Marketplace Middle East* on 14 August 2009.

During *Highlight CNN*, Abdul Aziz Al Ghurair was credited on screen as CEO of Mashreq. However, Ofcom noted that, at the time of the broadcasts, he was also Vice Chairman and board member of the programme’s sponsor, DIFC, although this was not acknowledged in the programme, which comprised footage of UAE building projects and Abdul Aziz Al Ghurair, as interviewee, who stated:

*“I think UAE – Abu Dhabi, Dubai – have enjoyed phenomenal growth. The fundamentals of business have been built. Now we can afford to reconsider where we’re going next, be it slowing down our growth, be it postponing some of our projects, that’s okay, but I think this challenge will put people under some stress and only people who’ve built their business on correct fundamentals of business, they will succeed.”*

Ofcom considered *Highlight CNN* raised issues warranting investigation under Rule 9.1 of the Code (2008 edition), which prohibits the sponsorship of current affairs programmes on television. We therefore requested comments from the Licensee concerning how the programme complied with this rule.

**Response**

The Licensee said that, on reviewing the sponsored content, the broadcast material “could be considered by some as current affairs”, acknowledging that Abdul Aziz Al Ghurair discussed “the economic growth of Dubai and what [was] potentially next for the state”. The Licensee said its intention, however, had been for the content to be “an editorial snapshot of the previously broadcast programme, simply to give viewers an opportunity to see what they may have missed in that edition of *Marketplace Middle East*.”

**Decision**

Rule 9.1 of the Code prohibits, among other things, the sponsorship of current affairs programmes. The Code defines such programmes as those containing explanation and analysis of current events and issues.

Ofcom noted that the Licensee believed the content of *Highlight CNN* in this instance could be considered current affairs.

In *Highlight CNN*, Abdul Aziz Al Ghurair noted “*phenomenal growth*” that had been enjoyed in Abu Dhabi and Dubai, explaining that “*the fundamentals of business [had] been built*”. He continued with an analysis that this afforded the two emirates the opportunity to consider slowing down growth – by postponing projects – as, having built growth on the basis of such fundamentals, they would succeed, however stressful they may find immediate challenges.

In both explaining and analysing the current economic position of two emirates, Ofcom considered *Highlight CNN* was a current affairs programme, which could not therefore be sponsored. As it was sponsored (by DIFC), the programme was in breach of Rule 9.1 of the Code.

### **Breaches of Rules 9.1 (October 2008 Code)**

#### **2. Sponsorship of *Highlight CNN* (material from *i-List Macedonia*) – between 10 and 23 May 2010, various times**

##### **Introduction**

*i-List Macedonia* was a series of programmes concerning Macedonia’s economic, social, cultural and political development. The following four *Highlight CNN* programmes were each approximately one minute in duration, they were sponsored by Invest Macedonia (the Agency for Foreign Investments of the Republic of Macedonia) and Macedonia Tourism, and comprised extracts from *i-List Macedonia* or rushes taken for it:

##### Programme 1

The programme, which featured a school visit and Alex Woods (“AW”), Education Officer of USAID, an American charity, who was fully credited on screen, comprised the following:

Voiceover: *“This is no ordinary day for these school children in Tetovo, Macedonia. They’re putting on a show for some very special guests. Representatives from USAID are here to meet the kids, who’ll benefit from their support and money – money that is desperately needed for the country’s rundown schools. Most of them were built back in the late 1950s and there’s been little investment since”.*

AW: *“The investment in the Macedonian education system back in Yugoslavia days was quite strong, but since then there’s really been a lack of capital improvement. Generally there are these sort of emergency issues, like windows or boiler or toilets or a roof, really to get some of the immediate needs taken care of, and then that really helps the classroom environment for the students as well”.*

## Programme 2

The programme featured the official opening of a Johnson Matthey factory and Ian Godwin (“IG”), a representative of the company, who was fully credited on screen. The programme comprised the following:

- Voiceover: *“High-tech investment in Macedonia, the former Yugoslavia’s most southerly, and once impoverished, province”.*
- IG: *“What we’ve done is taken our experience in manufacturing all around the world and brought it together in this plant”.*
- Voiceover: *“Johnson Matthey is a world leader in catalytic converters. The company’s corporate executives flew in to add their thanks. They invited Macedonia’s Prime Minister, Nikola Gruevski, to cut the ribbon. Britain’s ambassador to Macedonia has been here for almost three years. Johnson Matthey’s fifty million dollar factory is the biggest British investment he’s seen. Macedonia needs plenty more like Johnson Matthey, if it’s to raise living standards amongst its two million citizens.”*

## Programme 3

The programme featured a winery business and its owner, Jordan Trajkov (“JT”). It comprised the following:

- Voiceover: *“Jordan Trajkov is a businessman who’s gone back to his roots”.*
- JT: *“My grandfather was, was making wine and had vineyard and that was his pet and I wanted to do it but then it, it, it came clear to me when I, when I went in Napa Valley”.*
- Voiceover: *“His visit to the Napa Valley wineries was a watershed. He quit his high-flying banking career and came home to realise his vision”.*
- JT: *“Bringing together the concept of wine tourism, together with the grape growing and wine making was fascinating for, for me”.*
- Voiceover: *“His aim: Give Macedonia’s ancient vines a future denied when the country was part of socialist Yugoslavia. Napa Valley has arrived in Macedonia – hiking, bird-watching, skiing, fishing, all thrown in”.*

## Programme 4

The programme featured an historic church in Ohrid and an interview with Lyupcho Kumbarovski (“LK”), a local historian, who was fully credited on screen. The programme comprised the following:

- Presenter: *“From a distance, Ohrid looks like it’s changed little over the centuries – five thousand years of civilisation, almost two millennia of Christianity”.*
- LK: *“Erasmus, who came from Antioch, from Syria, chose this place to build his church. And he built the Basilica”.*

Presenter: *“And this was the first church here?”*

LK: *“One of the first churches – Christian churches – of Europe. Because...imagine, St Erasmus died in 303, which is ten years before Christianity was even recognised by the Roman state. We are fortunate to have some of the oldest frescos known to the Christian world”.*

Presenter: *“A small country, but one with a rich and deep history”.*

Ofcom considered Programmes 1 and 2 raised issues warranting investigation under Rule 9.1 of the Code (2009 edition), which prohibits the sponsorship of current affairs programmes on television. We therefore requested comments from the Licensee concerning how the two programmes complied with this rule.

Ofcom considered Programmes 3 and 4 raised issues warranting investigation under Rule 9.5 of the Code (2009 edition), which limits the sponsor references permitted in sponsored television programmes. We therefore requested comments from the Licensee concerning how the two programmes complied with this rule.

## **Response**

### Programmes 1 and 2

The Licensee said it considered neither programme to be current affairs.

It said Programme 1 “concerned a school in Macedonia, which was putting on a show for ‘USAID’ – an American charity providing funds for the country’s “rundown schools””, adding that “the vignette contained no analysis or examination of current events or issues and did not cover controversial matters”, but “simply explained that USAID was giving funds to improve the building infrastructure of schools in Macedonia, which had suffered from a lack of investment.”

The Licensee said Programme 2 “simply concerned the opening of a Johnson Matthey factory – the multinational chemical and precious metals company”, adding that, “while there is one short line at the end of the vignette stating that if Macedonia is to raise living standards then it needs to have many more companies like Johnson Matthey, we do not believe that this should be characterised as current affairs.”

### Programmes 3 and 4

The Licensee said it accepted “that references to the sponsor’s interest...might not be seen as “incidental”.”

## **Decision**

### Programmes 1 and 2

Rule 9.1 of the Code prohibits, among other things, the sponsorship of current affairs programmes, such programmes containing explanation and analysis of current events and issues.

Ofcom noted the Licensee’s view that Programme 1 “contained no analysis or examination of current events or issues...”.

We accepted the broadcast “explained that USAID was giving funds to improve the building infrastructure of schools in Macedonia, which had suffered from a lack of investment”. However, Ofcom noted that this was in the context of an explanation concerning how post-Yugoslavian Macedonia had not invested in its schools, which had become rundown and were now in need of emergency repairs to basic infrastructure.

In analysing the state of Macedonian schools and explaining the measures being taken to tackle current resultant problems, Ofcom considered the broadcast to be a current affairs programme, which could not therefore be sponsored. As it was sponsored (by Invest Macedonia), the programme was in breach of Rule 9.1 of the Code.

Ofcom noted the Licensee’s view that Programme 2 “simply concerned the opening of a Johnson Matthey factory...”.

We accepted that “one short line at the end of the vignette [stated] that if Macedonia is to raise living standards then it needs to have many more companies like Johnson Matthey”. However, Ofcom considered that this statement was made in the context of an explanation concerning how the largest British investment that Britain’s ambassador had ever seen in Macedonia was assisting both a “*once impoverished province*” to benefit from “*high-tech investment*” and the country “*to raise living standards amongst its two million citizens*”. In analysing how the Johnson Matthey factory was helping to achieve this, Ofcom considered the broadcast to be a current affairs programme, which could not therefore be sponsored. As it was sponsored, the programme was in breach of Rule 9.1 of the Code.

#### Programmes 3 and 4

Among other things, Rule 9.5 of the Code permits non-promotional references to the sponsor or its direct or indirect interests only where they are editorially justified and incidental.

Ofcom noted the Licensee’s view. However, we considered that, in reflecting one or more aspects of the Republic of Macedonia’s economic, social, cultural and/or political development in each of the programmes, the Licensee had referred to the direct or indirect interests of the sponsor, Invest Macedonia, which represented the Republic, as an agency of that state. Although editorially justified, we did not consider such references could have been regarded as incidental.

Both programmes were therefore in breach of Rule 9.5 of the Code.

#### **Programmes 1 and 2: Breaches of Rule 9.1 (December 2009 Code)**

#### **Programmes 3 and 4: Breaches of Rule 9.5 (December 2009 Code)**

### **3. Sponsorship of *Highlight CNN* (material from *Face Time*, in *Marketplace Africa*) – between 18 May 2011 and 30 March 2012, various times**

#### **Introduction**

*Marketplace Africa* is a business programme concerning the economic trends and business developments that impact the continent.

*Face Time* is a programme segment that generally features an interview with a prominent individual from the business/finance community.

The following six *Highlight CNN* programmes were each approximately one minute in duration. They were sponsored by the telecommunications company, MTN (Mobile Telephone Networks) and comprised extracts from *Face Time* segments of *Marketplace Africa*.

The first programme comprised extracts from coverage of the G20 session at the 2011 World Economic Forum in South Africa. The other five programmes were recorded at the 2011 United Nations Climate Change Conference in Durban:

*Highlight CNN, 18-20 May 2011, various times*

The programme featured: South Africa's Minister of Finance, Pravin Gordhan ("PG"), the Chief Executive of Absa Group, Maria Ramos ("MR"), and the Group External Affairs Director of Vodafone, Matthew Kirk ("MK"). All were fully credited on screen. The programme comprised the following:

Presenter: *"What does Africa want? What does South Africa want from this? Do they expect anything, from, from, from the G20?"*

PG: *"They should be less focused on national interests, more focused on global interest, that we find areas of cooperation amongst the countries".*

MR: *"I think what we're starting to see in Africa and you see it also in the theme of this, of this wave, is the, the focus on, on Africa being open for investment and, in order to be open for investment, we need to, we need to have infrastructure".*

MK: *"I welcome enormously the focus on Africa, the focus on investment in Africa, and the focus on infrastructure in particular. But I, I think one of the areas where the G20 could add enormous value is looking at the factors which make a business case for investing in Africa more difficult".*

*Highlight CNN, 6-9 December 2011, various times*

The programme comprised the following extract from an interview with Sim Tshabalala ("ST"), the CEO of Standard Bank, South Africa, who was fully credited on screen:

ST: *"Sustainability is important in the long term. It's important because we all want to do something about environmental degradation. Acting as stewards in financial institutions, for example, we want to leave our businesses in better shape than we found them, for, for future generations. But broader than that, it's also a business opportunity".*

Presenter: *"So it need not be a drain on finances, is what you're saying?"*

ST: *"It makes perfect commercial sense – yeah".*

Presenter: *"Why?"*

ST: *"Here in South Africa, we've just been through a major programme – the first part of a process in terms of which the government is allowing*

*independent power producers to add to the grid. We have approved over twelve billion rands' worth of these projects. We're participating in at least half of them".*

Highlight CNN, 13-16 December 2011, various times

The programme comprised the following extract from an interview with Trevor Manuel ("TM"), a Cabinet Minister in South Africa, who was fully credited on screen:

TM: *"The emissions that are sitting, the greenhouse gases sitting in the atmosphere, got there largely as a consequence of the development path of now the world's wealthiest countries. The world needs a big fund and that fund was set down in Copenhagen at a hundred billion dollars a year".*

Presenter: *"That's a staggering amount of money".*

TM: *"Staggering amount of money".*

Presenter: *"Actually that's the most amount of money that's ever been pledged, essentially, to, to, to one cause, isn't it?"*

TM: *"In fact it goes further, if one looks at the, the decision in Copenhagen. It speaks of the transfer from the developed to the developing world. A hundred billion, I mean just changes all of the elements of, of distribution quite significantly".*

Highlight CNN, 20-23 December 2011, various times

The programme comprised the following extract from an interview with Brian Dames ("BD"), CEO of Eskom (a South African energy company), who was fully credited on screen:

BD: *"You know, it's about energy security first and foremost for us. It's about affordable energy and it's about energy access. You would agree with me, without those three things, there is no economic growth, no poverty alleviation, no job creation, in any of our economies. And then, fourthly, it is about, as we do this, how can we do it, in a lot cleaner manner?"*

Presenter: *"What percentage of your energy do you get from, from coal, for example?"*

BD: *"It's more than 80% – about 86% of the energy – and it has put us in a position as a company, as a country, to really fuel economic growth in South Africa. That's why this country's got the largest economy on the African continent. We said clearly, growth is important. We have said clearly that we're committed to a low carbon future, over time".*

Highlight CNN, 17-20 January 2012, various times

The programme comprised the following extract from an interview with Christine Lagarde ("CL"), Managing Director of the International Monetary Fund, who was fully credited on screen:

Presenter: *“More than ever the Eurozone crisis has put it to African leaders that they have to look east. How, how significant is that?”*

CL: *“All countries are interconnected. There is no question that a crisis in one particular part of the world is going to affect those countries, but also all other countries, especially if there is a large volume of trade between those countries”.*

Presenter: *“Does Africa, do African economies have a role to play that’s positive? Is there, is there something to be learnt from, from African economies over this?”*

CL: *“Well, first of all, the African continent in and of itself has had a growth rate that was significantly higher than that of Europe. It holds significant commodities, raw materials that are so needed for the growth of other countries”.*

Highlight CNN, 27-30 March 2012, various times

The programme comprised the following extract from an interview with Simon Scott (“SS”), Acting CEO of Lonmin – a primary producer of Platinum Group Metals (“PGMs”) – who was fully credited on screen:

Presenter: *“Is the platinum industry under threat in general in South Africa?”*

SS: *“I think that the, the platinum industry has seen these types of disruptions over the last few months – it, it isn’t good for the industry and it has placed, has placed pressure on the industry. The outlook for platinum and the underlying fundamentals for the metal are excellent. You know, it is a tough time at the moment because of that point we are in the cycle, but in my mind there’s no doubt that, over the longer term, demand for our PGM products will, will return. South Africa has a wonderful ore body. We’re, we’re blessed with the, the best ore body in the world with regard to PGMs and we, you know, we think in the longer term that the, that the, the fundamentals will return and, as an industry, you know we can provide a lot of support to South Africa by getting back to work.”*

Ofcom considered each of the above six programmes raised issues warranting investigation under Rule 9.15 of the Code (2011 edition), which prohibits the sponsorship of current affairs programmes on television. We therefore requested comments from the Licensee concerning how the programmes complied with this rule.

**Response**

Highlight CNN, 18-20 May 2011, various times

The Licensee said that, “on review, CNN International [appreciated] that this...material...could be considered by some as current affairs, dealing as it does with investment and the economic infrastructure in Africa and the role taken by the G20 nations”.

Highlight CNN, 6-9 December 2011, various times

The Licensee said that, “on review, CNN International [appreciated] that this...material...could be considered by some as current affairs, dealing as it does with the business relationship between sustainability and economic development”.

Highlight CNN, 13-16 December 2011, various times

The Licensee said that, “on review, CNN International [appreciated] that this...material...could be considered by some as current affairs, dealing as it does with the Copenhagen “green climate fund” and discussion of the richer nations paying for the pollution they have caused”.

Highlight CNN, 20-23 December 2011, various times

The Licensee said that, “on review, CNN International [appreciated] that this...material...could be considered by some as current affairs, dealing as it does with policies around cleaner energy and economic development”.

Highlight CNN, 17-20 January 2012, various times

The Licensee said that, “on review, CNN International [accepted] that this material would be defined as current affairs, dealing as it does with the Eurozone crisis and its effects on Europe and other nations – in particular the African continent”.

Highlight CNN, 27-30 March 2012, various times

The Licensee said “the interview concerned the perceived threat that the platinum industry is under in South Africa”, which it considered “a clear example where [the Licensee] can demonstrate successful execution of sponsored editorial...staying well within the Ofcom sponsorship rules on news and current affairs”.

The Licensee said it therefore considered “this vignette should not be classified as current affairs”, adding that “the focus of the short clip was the platinum industry itself and what the outlook for the PGMs could be”. The Licensee said “the interviewee also spoke of the natural resources that South Africa had...and importantly the vignette did not go on to discuss the way South Africa, its industry or its government had managed the tough time PGMs were suffering”. It added that “the editorial did not, in any way, focus on the macro-economic picture either globally or within South Africa” and “did not consider any policy issues and wider impact of the so-called “tough time” this specialised industry was facing”. The Licensee concluded by claiming “there was no explanation and/or analysis of what is normally understood to be “current events and issues”.”

## **Decision**

Rule 9.15 of the Code prohibits, among other things, the sponsorship of current affairs programmes. The Code defines such programmes as those containing explanation and/or analysis of current events and issues.

Highlight CNN, 18-20 May 2011, 6-9, 13-16 and 20-23 December 2011, and 17-20 January 2012, various times

We noted the Licensee's view that, having reviewed these five programmes, it considered each either could or would be considered to be a current affairs programme.

Ofcom considered that the interviewee in each of the programmes provided current economic explanation and/or analysis in the way described by the Licensee. Each was therefore a current affairs programme, which could not be sponsored. As each of the five programmes was sponsored (by MTN), it was in breach of Rule 9.15 of the Code.

Highlight CNN, 27-30 March 2012, various times

Ofcom noted that the Licensee did not consider this to be a current affairs programme, having considered "there was no explanation and/or analysis of what is normally understood to be "current events and issues"" and having stressed that "importantly the vignette did not go on to discuss the way South Africa, its industry or its government had managed the tough time PGMs were suffering". We disagreed with this view.

The Code's definition of a current affairs programme refers not only to it being a broadcast that "contains explanation and/or analysis of current events and issues" but also specifically to such explanation and/or analysis "including material dealing with political or industrial controversy...". In responding to a question concerning whether the platinum industry was "*under threat in general in South Africa*", the Acting CEO of Lonmin (a producer of PGMs) was clearly referring to recent strikes in South Africa's PGM mines, when he referred, in the context of the industry making a cyclical recovery, to both:

- the industry having seen "*disruptions over the last few months*", and
- "*getting back to work*" providing "*a lot of support to South Africa*".

The broadcast comprised current analysis (by the interviewee) of a matter of political and industrial controversy. Ofcom therefore considered it to be a current affairs programme, which could not be sponsored. As it was sponsored (by MTN), the programme was in breach of Rule 9.15 of the Code.

**Breaches of Rule 9.15 (February 2011 Code)**

**4. Sponsorship of *Highlight CNN* (material from *Outlook Indonesia*, in *World Business Today*) – 6, 15 and 22 June 2011, various times**

**Introduction**

*World Business Today* is a business programme concerning important issues from around the world.

*Outlook...* is a programme segment that examines more closely the business, industry and consumer trends of an individual country with an emerging market.

The following three *Highlight CNN* programmes were each approximately one minute in duration. They were sponsored by the Republic of Indonesia's Ministry of Trade and comprised extracts from *Outlook Indonesia* or rushes taken for it:

*Highlight CNN, 6 June 2011, various times*

The programme comprised visual clips of Indonesian life, business and industry, with the following voiceover:

*"In today's two-track economy, emerging markets like Indonesia are spearheading global growth. The World Bank predicts Indonesia's economy will expand by 6.4% in 2011. Growth is fuelled by exports of raw materials, a growing middle class at home and increased investments from overseas. Still Indonesia struggles to overcome ingrained problems like poor infrastructure, corruption and poverty. It has the world's fourth biggest population, nearly 250 million people and strong domestic consumption has helped drive growth. Now the country is looking for ways to ensure the benefits of future progress are shared by all its population."*

*Highlight CNN, 15 June 2011, various times*

The programme comprised visual clips of Indonesia, predominantly featuring heavy traffic, and Armida Alisjahbana ("AA"), Indonesia's State Minister for Development, who was fully credited on screen:

Voiceover *"There's no doubt that Indonesia's creaking infrastructure is holding back growth. Just 87 kilometres of new toll roads were built between 2004 and 2009. But a new economic master plan aims to make the economy one of the world's top ten by 2025. And new roads are a priority. A new bill now before parliament will allow a quicker and fairer way of acquiring land, says the minister for national economic planning"*.

AA: *"The, the process is that, that we'll be an independent appraisal – yeah? – that can assess the value, the fair price of the value of the land. And if there is still not an agreement, then the party, the owner, can, can petition, and/or can submit the case to the district court."*

*Highlight CNN, 22 June 2011, various times*

The programme comprised visual clips of Indonesians socialising and shopping, together with Nicole Lee ("NL"), a production manager, and Grace Italiaander ("GI"), a marketing consultant, who were both credited on screen:

Voiceover: *"A relaxed Saturday afternoon among friends in central Jakarta. All under-thirty, Michelangelo Moran, Nicole Lee and Grace Italiaander grew up here and watched this city transform"*.

NL: *"There's so many malls now. There's so many malls. I feel like they're getting bigger and bigger"*.

GI: *"I think I never went to a concert in high school, ever, and now there's one every weekend, it's great"*.

Voiceover: *"Educated abroad they return to Jakarta to live, work and spend. They're among the millions of Indonesian consumers that drive this country's"*

*growth story. About 60% of the country's GDP comes from domestic spending. It was the reason Indonesia emerged from the financial crisis virtually unscathed".*

Ofcom considered each of the above three programmes raised issues warranting investigation under Rule 9.15 of the Code (2011 edition), which prohibits the sponsorship of current affairs programmes on television. We therefore requested comments from the Licensee concerning how the programmes complied with this rule.

## **Response**

### Highlight CNN, 6 June 2011, various times

The Licensee said, "this vignette focussed on Indonesia as an emerging market, spear-heading growth", adding that, on review, it appreciated that "this short vignette could be considered current affairs, including as it did an explanation as to why Indonesia's GDP is growing".

### Highlight CNN, 15 June 2011, various times

The Licensee said, "this vignette focussed on how Indonesia's infrastructure was holding back economic growth, but looked at how a new legislative bill before the Parliament could help", and "contained an interview with the Indonesian Minister for Development". The Licensee added that it realised, "on review, this vignette would be considered to be current affairs".

### Highlight CNN, 22 June 2011, various times

The Licensee said, "this *Outlook* vignette looked at how the city of Jakarta has changed and how millions of Indonesian consumers have driven its economic growth", adding that, on review, it considered "this vignette could be viewed as current affairs, as it contained explanations of how the city's economic growth has occurred".

## **Decision**

Rule 9.15 of the Code prohibits, among other things, the sponsorship of current affairs programmes, such programmes containing explanation and/or analysis of current events and issues.

We noted that, having reviewed each of the three broadcasts, the Licensee stated that it considered each either could or would have been considered a current affairs programme.

Ofcom considered that each programme provided current economic explanation and/or analysis in the way described by the Licensee. Each broadcast was therefore a current affairs programme, which could not be sponsored. As each programme was sponsored (by the Republic of Indonesia's Ministry of Trade), it was in breach of Rule 9.15 of the Code.

## **Breaches of Rule 9.15 (February 2011 Code)**

## 5. Sponsorship of *Eye on Georgia* – 2, 3 and 5 July 2011, various times

### Introduction

*Eye on...* is a series of programmes and programme segments that examine an individual country's challenges and opportunities, revealing aspects of its business and culture.

*Eye on Georgia* was sponsored by Invest in Georgia, the public agency responsible for promoting and facilitating foreign investment in that country. The programme, which was approximately 30 minutes in duration, opened with the following introduction:

*“Georgia – Country on the move and still emerging from its Soviet past: fighting corruption, trying to improve the economy and attract tourists. With a vibrant culture and a love of sports, Georgia is trying to find its place on the international stage, so join us for a half-hour full of discovery, as we turn our eye on Georgia.”*

This was followed by pre-recorded items concerning:

- Nuclear safety – The item was introduced as follows:

*“...one thing Georgia does not want to be known for is loose nukes. It's working to try and secure her nuclear and radioactive material and keep it from getting into the wrong hands. Watch now as we gain exclusive access to a secret nuclear storage facility.”*

Viewers were then told, among other things, that stored material included “caesium 137, long sought by terrorists to create a dirty bomb” and that, “in Georgia, they are finding these dangerous materials with less frequency – now just a handful a year – but it's the country's potential as both a source and a transit point for illicit materials that keeps officials here on their toes...and still today officials say they are battling their past billing as a soft touch on traffickers”.

In an interview with “one of the country's top investigators”, the interviewee said that, although rumours of enriched uranium smugglers having been arrested had “spread immediately”, such smuggling attempts continued, the final destination point not being Georgia, which was merely a transit route, but possibly other European countries or the United States.

The item concluded that “Georgia has moved on, finally trying to safely account for, and contain, dangerous materials and keeping an eye on those who still are hoping to exploit them”;

- Education reform – The item was introduced as follows:

*“One of Georgia's top priorities has been trying to reform its educational system and they're very blunt about the legacy here. They say you used to be able to bribe your way into schools and pay off teachers to get better marks, but their path to reform here introduces competition into the education system – something many countries wouldn't dare try”.*

Featuring Georgia's Education Minister, Dimitri Shashkin, who was fully credited on screen, the item concerned Georgia's schools, which were “something of an

*educational laboratory”, the Government having “introduced reforms that involve a competitive voucher system, where schools compete to attract students”;*

- Georgia’s First Lady – Following a brief set of screened facts about Sandra Roelofs, the item was introduced as follows:

*“Back in 1993, a young Dutch woman met a Georgian law student in Europe. She says she thought he was French. Well, the pair of them became the President and first Lady of Georgia”.*

The pre-recorded item then commenced, by continuation from the introduction, as follows:

*“That’s because of what happened here in Freedom Square in 2003. That’s when Mikheil Saakashvili led the Rose Revolution, a peaceful protest that ultimately forced the ruling party to step down. Saakashvili became President and his wife, Sandra Roelofs, became an unlikely First Lady. She is an accomplished woman in her own right with a set of eclectic pursuits...”.*

Providing a portrait of Georgia’s First Lady, the item included interviews with her, which highlighted, among other things, her views on Georgia’s healthcare reforms and the country’s ongoing tensions with Russia;

- Fighting corruption – The item was introduced as follows:

*“Now, the Georgian Government claims that fighting corruption is its top priority. Well, nothing says that more than the sweeping façade of the new Interior Ministry. It is meant to symbolize Georgia’s new transparency, and the group, Transparency International, says those efforts are paying off. Out of 178 countries it’s moved Georgia up from the 125<sup>th</sup> most transparent Government in the world in 2003 to 68<sup>th</sup> place today”.*

Featuring Vano Merabishvili, Georgia’s Interior Minister, who was fully credited on screen, the item concerned a police force that *“routinely used to take bribes to supplement what were meagre incomes...until the Government made a very radical reform – it fired most of its police officers...and then hired and trained an entirely new force”;*

- Archaeological findings – The item concerned how the earliest traces of human settlement outside Africa had been found in Georgia, dating back 1.8 million years and challenging the prevailing view that humans left Africa only a million years ago; and
- Georgian wrestling – The item followed a wrestling match, the prize for the winner of which was a sheep.

Ofcom considered *Eye on Georgia* raised issues warranting investigation under Rule 9.15 of the Code (2011 edition), which prohibits the sponsorship of current affairs programmes on television. We requested comments from the Licensee concerning how the programme complied with this rule.

## Response

The Licensee's representations covered:

- the Licensee's view on what constitutes a current affairs programme when a broadcast comprises various separate items; and
- the 'Nuclear safety' item described above, albeit in the context of when it was broadcast on 30 June 2011, as part of a programme segment entitled, *Eye on Georgia*, which featured in the programme, *Prism* (a one hour news-based broadcast), about which Ofcom had not sought comment.

### Current Affairs

The Licensee emphasised that the Code prohibited the sponsorship of current affairs programmes (or identifiable programme segments), the sponsorship arrangement being attached to an entire broadcast (or segment) and not any specific individual item(s) within it. It therefore considered a broadcast "almost exclusively made up of non-current affairs items" could not be a current affairs programme. It appreciated that the overall emphasis of a programme was a matter of judgement, but considered "the programme itself must be current affairs – or at the very least, the overall balance of editorial content within the programme must lean towards current affairs".

### 'Nuclear safety'

The Licensee said the item "looked at how Georgia was keeping its nuclear material safe and out of the hands of terrorists", adding that "this documentary style report put the issue in historical context but did not deal in any detail with government policies or its consequences e.g. the effects of nuclear industry on the economy of the country". It considered the item "a straightforward piece of factual reportage with little analysis of current events or issues, but simply looking at how Georgia was keeping its nuclear legacy safe".

## Decision

Rule 9.15 of the Code prohibits, among other things, the sponsorship of current affairs programmes, such programmes containing explanation and/or analysis of current events and issues.

### Current Affairs

Ofcom accepted it was unlikely that a broadcast "almost exclusively made up of non-current affairs items" could be described as a current affairs programme. However, considering each investigation on a case by case basis, the most important issue was the overall tone and emphasis of the relevant programme or programme segment.

### *Eye on Georgia*, 2, 3 and 5 July 2011, various times

The following considers the first four of the six items that comprised *Eye on Georgia*, each of which, in Ofcom's view, contributed to the broadcast being a current affairs programme, covering such matters as Georgia "*fighting corruption, trying to improve the economy and...trying to find its place on the international stage*".

- Nuclear safety – Ofcom noted the Licensee’s view that “this documentary style report put the issue in historical context but did not deal in any detail with government policies or its consequences” and contained “little analysis of current events or issues”. However, in our view, the item focused on Georgia from the perspective of the ongoing concern in many countries of both post-Soviet nuclear security and the perceived terrorist threat associated with it. In explaining how Georgia was trying to cope with its nuclear legacy and how smugglers still appeared to view Georgia as a transit route through which they could move illicit materials (despite Georgian officials “*battling their past billing as a soft touch on traffickers*”), Ofcom considered the item analysed a current issue of political controversy and therefore contributed to *Eye on Georgia* being a current affairs programme;
- Education reform – Ofcom noted that the item explained how a new and controversial voucher scheme was being implemented, introducing competition in an attempt to reform a previously corrupt education system. Also featuring the views of Georgia’s Education Minister and examining how the system was working in a specific school, Ofcom considered the item explained a current issue of political controversy and therefore contributed to *Eye on Georgia* being a current affairs programme;
- Georgia’s First Lady – Although the item covered many different aspects of Sandra Roelofs’ life as First Lady, it explained her interest and involvement in healthcare and, in interviewing her, how she was “*also fiercely loyal to her husband President Mikheil Saakashvili, even to the point of weighing in on Georgia’s 2008 war with Russia, accusing Russia of still stirring things up*”. Ofcom therefore considered the item explained current issues of political controversy and contributed to *Eye on Georgia* being a current affairs programme; and
- Fighting corruption – Ofcom noted that the item focused on reforms to the police force in highlighting the Georgian Government’s claim that “*fighting corruption [was] its top priority*” and reflecting Transparency International’s assessment of the country’s achievement in relation to transparent governance. In doing so, it explained what measures had been taken to reform the police service in Georgia, which, even to the surprise of its Interior Minister, had come to have one of the lowest crime records in the world. Ofcom therefore considered the item analysed a current issue of political controversy and contributed to *Eye on Georgia* being a current affairs programme.

Ofcom considered the final two items in the programme (i.e. ‘Archaeological findings’ and ‘Georgian wrestling’) contained no explanation or analysis of current events or issues and did not therefore contribute to *Eye on Georgia* being a current affairs programme. Nevertheless, Ofcom considered the focus of the first four items clearly established the broadcast overall – for the reasons described above – as a current affairs programme, which could not therefore be sponsored. As it was sponsored (by Invest in Georgia), *Eye on Georgia* was in breach of Rule 9.15 of the Code.

### **Breaches of Rule 9.15 (February 2011 Code)**

**6. Sponsorship of *Outlook Cambodia* (in *World Business Today*) – 26, 28 and 30 September 2011, 18:00, and**

**Sponsorship of *Highlight CNN* (material from *Outlook Cambodia*, in *World Business Today*) – 27 September 2011, various times**

**Introduction**

*World Business Today* is a business programme concerning important issues from around the world.

*Outlook...* is a programme segment that examines more closely the business, industry and consumer trends of an individual country with an emerging market.

*Outlook Cambodia* programme segments, in each of three episodes of *World Business Today*, examined different aspects of investment in Cambodia and were sponsored by the Ministry of Tourism of Cambodia and the hotel/casino, NagaWorld Cambodia.

*Outlook Cambodia, 26 September 2011, 18:00*

Following a brief introduction to Cambodia's economy, the programme segment examined the current position of investment in Cambodia, explaining why it was attractive to "*those willing to take high risk in pursuit of high returns*" and featuring the views of: Brett Sciaroni, a leading business consultant and legal advisor in Cambodia, Stephen Higgins, CEO of ANZ Royal (a Cambodian Bank), and. In Channy, CEO of ACLEDA (Cambodia's biggest bank). Covering such current issues as corruption, dispute resolution and Chinese companies' infrastructure investment – which some claimed did not consider adequately local landowners or the environment – the programme segment also explained how low labour costs and a predicted growth of 6-7% had contributed to a rapidly changing investment landscape.

*Outlook Cambodia, 28 September 2011, 18:00*

The programme segment featured Brad Holes, President of the soft toy manufacturer, First & Main, which was one of only three American companies to invest in Cambodia, and explained how inward investment in industry needed an educated work force. The programme also explained that, as the "*inefficiencies legacy of three plus years of Khmer Rouge rule [had] destroyed the education system*", the manufacturer had to teach its workforce basic skills and change basic mindsets on such matters as punctuality. Two students at a private school, which charged \$1,000 per year and was therefore principally within the reach of only the middle classes, emphasised the importance of learning to speak English for the prospects of employment, higher salaries and the Cambodian economy.

*Outlook Cambodia, 30 September 2011, 18:00*

The programme segment explained how two contrasting businesses were "*finding ways to make money while bringing social change*", looking "*at efforts to do good for the environment, for the needy and for the bottom line*". The first business was the Cambodian design label, KeoK'jay, which trained and employed women with HIV to sew its clothes, the illness still carrying a stigma in Cambodia. The programme segment explained that Rachel Faller, an American who had founded KeoK'jay three years previously, after researching fair trade and fashion in Cambodia, paid her

employees twice the national minimum wage, as she had wanted “*to do something that could use fashion in a positive way*”, her goal being “*to become profitable and continue paying a fair wage in a country where almost a third of the population still lives under the poverty line*”. The second business examined was Pouk La’s rice farm. Having spent years struggling to make enough from it, Cambodian NGO, CEDAC, had trained Pouk La to switch to organic farming. The programme segment explained that Pouk La used compost from her kitchen waste and livestock, rather than pesticides and chemicals, which had doubled her yield, now bringing in \$1,000 per year from her rice being sold in shops operated by the NGO, whose profits were reinvested into training more farmers and improving both productivity and income.

Highlight CNN, 27 September 2011, various times

This programme was approximately one minute in duration and, like the *Outlook Cambodia* programme segments above, was sponsored by the Ministry of Tourism of Cambodia and the hotel/casino, NagaWorld Cambodia. It featured an extract from the *Outlook Cambodia* programme segment in *World Business Today*, as broadcast on 26 September 2011 (above), including the CEO of ACLEDA Bank, In Channy (“IC”), and was adapted as follows:

Voiceover: *“Cambodia is starting to attract the attention of foreign investors. Half the population is under the age of twenty and provides a fresh injection into the workforce. Wages are lower here compared to other countries like China, luring more manufacturing into the country. But Cambodia still faces other challenges like undeveloped infrastructure and power shortages. In Channy is the CEO of ACLEDA bank, Cambodia’s biggest bank. Their success has been partly due to the strategy of reaching out to the poor rural areas”.*

IC: *“They are like the other customer. They are entrepreneurial, they are smart business entrepreneur. They, they know how to do simple calculation and they need to have access to finance.”*

Voiceover: *“Growth in Cambodia is on track to come in at 6 to 7% this year.”*

Ofcom considered the above *Outlook Cambodia* programme segments (as broadcast in *World Business Today*) and *Highlight CNN* raised issues warranting investigation under Rule 9.15 of the Code (2011 edition), which prohibits the sponsorship of current affairs programmes on television. We therefore requested comments from the Licensee concerning how the programme complied with this rule.

## Response

*Outlook Cambodia, 26 September 2011, 18:00*

The Licensee said “this segment focussed on Cambodia’s economic challenges” and that, “as such...it could be considered to be current affairs.”

*Outlook Cambodia, 28 September 2011, 18:00*

The Licensee said “this segment focussed on foreign investment and how it approaches the education of the country’s workforce, the cost of labour, and what foreign investors may believe to be important”, adding that, “as such...it could be considered to be current affairs.”

Outlook Cambodia, 30 September 2011, 18:00

The Licensee said “this segment looked at two very specific businesses and how they were combining social needs for the community with profit”, adding that, “as such the material did not deal with macroeconomics or current events or issues”. The Licensee considered “the segment focussed on...two companies and how the owners were trying to adapt, turning a profit at the same time as creating social benefit”, and that neither “[dealt] with government or international policies”, but concerned “how some Cambodian businesses were trying to reconcile social needs with profit”. The Licensee considered “the segment contained no analysis or examination of current events or issues and therefore should not be considered to be current affairs.”

Highlight CNN, 27 September 2011, various times

In addition to the Licensee’s general response concerning “vignettes” (see ‘Licensee’s response’, above), the Licensee said “this *Outlook* vignette focussed on Cambodia’s economic challenges and how the country was dealing with them”, adding that, “as such...[it] could be considered to be current affairs.”

**Decision**

Outlook Cambodia, 26 September 2011, 18:00,  
Outlook Cambodia, 28 September 2011, 18:00, and  
Highlight CNN, 27 September 2011, various times

Ofcom considered that the two *Outlook Cambodia* programme segments and *Highlight CNN* provided current economic explanation and/or analysis in the way described by the Licensee and/or as detailed in the above description of each broadcast. Each was therefore a current affairs broadcast, which could not be sponsored. As each broadcast was sponsored (by the Ministry of Tourism of Cambodia and the hotel/casino, NagaWorld Cambodia), it was in breach of Rule 9.15 of the Code.

Outlook Cambodia, 30 September 2011, 18:00

Ofcom noted the Licensee’s view that the programme segment “did not deal with macroeconomics or current events or issues” but “focussed on...two companies and how the owners were trying to adapt, turning a profit at the same time as creating social benefit”. Ofcom disagreed. Although we accepted the broadcast focused on the economic progress of two specific companies, this appeared, in our view, to be in the context of a programme segment that was explaining how inward investment into Cambodia, from two contrasting sources – an individual American investor and the Cambodian NGO, CEDAC – demonstrated “*how the nation is discovering that environmental and social change can lead to profits*”, which was how the broadcast had been trailed at the end of the previous day’s *Outlook Cambodia* segment, in *World Business Today*. As such, Ofcom considered the programme segment explained and analysed a current economic (and politically controversial) issue and was therefore a current affairs broadcast, which could not be sponsored. As it was sponsored (by the Ministry of Tourism of Cambodia and the hotel/casino, NagaWorld Cambodia), the programme segment was in breach of Rule 9.15 of the Code.

**Breaches of Rule 9.15 (February 2011 Code)**

**7. Sponsorship of *Highlight CNN* (material from *Outlook Singapore*, in *World Business Today*) – 17 and 23 July 2012 and 4 August 2012, various times**

**Introduction**

*World Business Today* is a business programme concerning important issues from around the world.

*Outlook...* is a programme segment that examines more closely the business, industry and consumer trends of an individual country with an emerging market.

The following three *Highlight CNN* programmes were each approximately one minute in duration. They were sponsored by the Singapore Economic Development Board, Future Ready Singapore, and comprised extracts from *Outlook Singapore* or rushes taken for it:

*Highlight CNN*, 17 July 2012, various times

The programme comprised the following, which included explanation by research specialist, Tai Hui (“TH”), of Standard Chartered Bank, who was fully credited on screen:

Voiceover: *“Singapore built its economy on exports and foreign investment. Now, as the economy’s matured, the city state in South East Asia has had to rethink and work hard to diversify. It wants to encourage the growth of new industries, those like bio-technology, tourism, high-tech value added. And now the efforts of government with industry are part of a proactive policy that defines the place”.*

TH: *“The forward thinking: it’s critical. If you look at the ways government drives its policy, if you think a lot of the Singaporean, how they talk about their own personal career or, or their lives, there is a certain survivor mentality”.*

*Highlight CNN*, 23 July 2012, various times

The programme comprised the following, which included explanation by a former Chief Planner of Singapore, Liu Thai Ker (“LTK”), who was fully credited on screen:

Voiceover: *“This is Clarke Quay where tourists and locals enjoy the warmth on an island 100 miles north of the equator. In Singapore, they’ve made the most of what they’ve got. It’s 47 years since Singapore split from Malaysia and started turning swampland into an economic powerhouse”.*

LTK: *“When we started, there wasn’t a sense of nationhood. The Chinese looked to China as homeland, Malays to Malaysia and Indians to India. So how do we nurture a sense of nationhood? And the government thought that housing give, housing them would be the best way”.*

Voiceover: *“A home for everyone: the cornerstone of a policy where 80% of citizens live in public housing”.*

Highlight CNN, 4 August 2012, various times

The programme comprised an extract from an interview with Singapore's Finance Minister Tharman Shanmugaratnam ("TS"), who was fully credited on screen:

TS: *"The solutions if implemented immediately can make the immediate problem worse so, for instance, re-regulation of banking, capital liquidity and so on, if you move too quickly, it doesn't help the current situation, which is one of de-leveraging and a downward cycle in economies. Second is the more fundamental problem which is social compacts. A whole system of social entitlements has been built up, particularly in the most advanced countries, that now has to be unwound".*

Presenter: *"That's a very big, third rail of politics".*

TS: *"And it's the most fundamental problem we face. Not the financial crisis but the crisis in social policies".*

Presenter: *"You're asking people who have grown up expecting, to lower their expectations".*

TS: *"And to find a way in which we are fair to the younger generation".*

Ofcom considered the three programmes raised issues warranting investigation under Rule 9.15 of the Code (2011 edition), which prohibits the sponsorship of current affairs programmes on television. We therefore requested comments from the Licensee concerning how the three programmes complied with this rule.

**Response**

Highlight CNN, 17 July 2012, various times

The Licensee said it appreciated "on review...that as the vignette dealt with the economic policies in Singapore and issues around that territory's growth and future investment, it could be considered current affairs".

Highlight CNN, 23 July 2012, various times

The Licensee said "this *Outlook Singapore* vignette was about how Singapore developed its economy and sense of nationhood", looking "at Singapore's past and how years ago it managed to build up this sense of nationhood". The Licensee added that it considered the programme to be "historical and factual" and not a current affairs broadcast, as "it...explained, in historical terms, how Singapore split from Malaysia and then turned itself into 'an economic powerhouse'", focusing on "how years ago – Singapore believed that public housing was the key to nationhood"/ The Licensee claimed the programme "did not deal with any current public policy or controversial matters" and "did not analyse or explain any current issues or events".

In response to Ofcom's Preliminary View the Licensee explained it viewed the programme to be "backward looking", i.e. a "documentary short focusing on historical matters relating to Singapore and the growth of its nationhood" of which public housing had been a part. It reiterated that it considered the material contained no analysis or explanation of current issues or events.

Highlight CNN, 4 August 2012, various times

The Licensee said “the vignette covered the regulation of banking, social compacts and policies”, adding that it appreciated “on review...that, given the editorial content, this vignette would be classed as current affairs”.

**Decision**

Highlight CNN, 17 July 2012, various times, and  
Highlight CNN, 4 August 2012, various times

Ofcom considered the two programmes provided current economic explanation and/or analysis in the way described by the Licensee. Each was therefore a current affairs broadcast, which could not be sponsored. As the programmes were sponsored (by the Singapore Economic Development Board, Future Ready Singapore), they were in breach of Rule 9.15 of the Code.

Highlight CNN, 23 July 2012, various times

Ofcom noted why the Licensee considered the programme was “*historical and factual*” and not a current affairs broadcast. However, the opening voiceover clearly set the context of the former Chief Planner’s explanation that public housing provision had nurtured a sense of Singaporean nationhood, when it stated that it had been 47 years since Singapore had split from Malaysia and had “*started turning swampland into an economic powerhouse*”. Ofcom considered that the Chief Planner therefore appeared to explain not only how “*a home for everyone*” was “*the cornerstone of a policy where 80% of citizens live in public housing*” but also how such a significant ongoing policy continued to contribute to Singapore as “*an economic powerhouse*”.

In providing such explanation of a current economic (and politically controversial) issue, Ofcom considered *Highlight CNN* was a current affairs programme, which could not therefore be sponsored.

Ofcom noted the Licensee’s response to our Preliminary View. However, we did not agree that the sponsored material was “backward looking”, as the Licensee claimed. The programme opened with images of contemporary Singapore – the vibrant Clarke Quay – which represented how, “*in Singapore, they’ve made the most of what they’ve got*”. Although Singapore’s former Chief Planner then explained how the country had originally decided to foster its “*sense of nationhood*” through the provision of public housing, the programme clearly implied that Singapore remains stronger for the actions the country has taken and continues to take, concluding: “*A home for everyone: the cornerstone of a policy where 80% of citizens live in public housing*”.

It therefore remained Ofcom’s view that *Highlight CNN* was a current affairs programme, which could not be sponsored. As it was sponsored (by the Singapore Economic Development Board, Future Ready Singapore), the programme was in breach of Rule 9.15 of the Code.

**Breaches of Rule 9.15 (February 2011 Code)**

## Conclusion

The prohibition on the sponsorship of current affairs is directly derived from the requirements of the AVMS Directive. It supports the important principle of editorial independence and impartiality in news and current affairs. A broadcaster's editorial control over the content of its news and current affairs programming should not be, or appear to be, compromised by commercial arrangements.

Ofcom notes both the Licensee's view that its content maintains a "reputation for impartiality, accuracy and integrity" as well as its contention that "there has been an absolute separation between the sponsor and sponsored content". Nevertheless, Ofcom noted that, not only did the majority of the above Code breaches concern the sponsorship of current affairs programmes, but the Licensee had been found in breach of Rule 9.1 of the Code on two previous occasions<sup>2</sup>. Further, Ofcom noted that, during the current investigation, the Licensee accepted in the majority of cases that, on reflection, the material being investigated by Ofcom either could or would be considered to be current affairs programming. Ofcom considers that it is essential that licensees make a through and detailed assessment when any doubt arises about whether the prohibition on the sponsorship of news and current affairs programming applies. We will therefore invite the Licensee to attend a meeting with Ofcom to discuss further possible improvements to its procedures.

## Summary of Decisions

|                                                                                 |                                                                   |
|---------------------------------------------------------------------------------|-------------------------------------------------------------------|
| <b><i>Highlight CNN, 14-18 August 2009</i></b>                                  | <b>Breaches of Rule 9.1 (October 2008 Code)</b>                   |
| <b><i>Highlight CNN, 10-23 May 2010 (four programmes)</i></b>                   | <b>Breaches of Rule 9.1 (December 2009 Code) (two programmes)</b> |
|                                                                                 | <b>Breaches of Rule 9.5 (December 2009 Code) (two programmes)</b> |
| <b><i>Highlight CNN, 18 May 2011 – 30 March 2012 (six programmes)</i></b>       | <b>Breaches of Rule 9.15 (February 2011 Code)</b>                 |
| <b><i>Highlight CNN, 6-22 June 2011 (three programmes)</i></b>                  | <b>Breaches of Rule 9.15 (February 2011 Code)</b>                 |
| <b><i>Eye on Georgia, 2-5 July 2011</i></b>                                     | <b>Breaches of Rule 9.15 (February 2011 Code)</b>                 |
| <b><i>Outlook Cambodia, 26, 28 and 30 September 2011 (three programmes)</i></b> | <b>Breaches of Rule 9.15 (February 2011 Code)</b>                 |
| <b><i>Highlight CNN, 27 September 2011</i></b>                                  | <b>Breaches of Rule 9.15 (February 2011 Code)</b>                 |

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<sup>2</sup> See *Inside Africa* (Broadcast Bulletin 152, 22 February 2010) and *Connect the World* (Broadcast Bulletin 159, 7 June 2010), which can be found, respectively, at: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb152/> and <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb159/>.

***Highlight CNN, 17 July – 4 August 2012*** (three programmes) **Breaches of Rule 9.15 (February 2011 Code)**

## Advertising Scheduling cases

### In Breach

#### Advertising minutage

*BritAsia TV, 27 March and 8 April 2015, various times*

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#### Introduction

BritAsia TV is a digital satellite entertainment channel. The licence for BritAsia TV is held by BritAsia TV Ltd (“BritAsia” or “the Licensee”).

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

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

During its routine monitoring of COSTA compliance, Ofcom identified two instances between 27 March and 8 April 2015 where the amount of advertising in a single clock hour exceeded the permitted allowance by 18 and 51 seconds respectively.

These overruns follow recent breaches of Rule 4 of COSTA recorded against BritAsia TV<sup>1</sup>. As stated in Ofcom’s previous Finding, BritAsia had explained that it had “implemented a major change to [its] processes” in the week commencing 16 March 2015 to prevent recurrence, and was “fully confident these instances cannot occur again”.

Ofcom therefore considered the current minutage overruns raised issues warranting investigation under Rule 4 of COSTA and sought comments from the Licensee with regard to this rule.

#### Response

BritAsia said that it had recently registered with a third party audience monitoring system. In order to be able to report the channel’s playout to the third party, the Licensee said it had implemented changes to its playout systems, including a new scheduling system. BritAsia said these changes took place in January 2015 and that the overruns occurred within the “teething period”.

BritAsia said the overrun on 27 March 2015 was due to a technical issue caused by a playlist integration error. It stated that while it had “ironed out the initial teething problems” with its scheduling system, as noted in the previous Finding, the process of implementing a bespoke software solution had resulted in other “bugs”. BritAsia said it had identified and rectified these issues, had held regular reviews with the software developers, and was confident that it now had a system in place to prevent any further such instances.

BritAsia said the overrun on 8 April 2015 was caused by an error editing a programme which pushed some advertisements intended for the 21:00 hour into the

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<sup>1</sup> See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb279/obb279.pdf>

22:00 hour. The Licensee stated that this was immediately noted and rectified for the repeats, and its playout system was modified to prevent this from happening again.

The Licensee added that both of the instances occurred within three weeks of the 16 March 2015 (the date on which it had “implemented a major change to [its] processes” to prevent breaches of Rule 4) and that there had not been any overruns thereafter, “proving that the systems and procedures [it has] since put in place have been working”.

## **Decision**

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

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

In this case, Ofcom found that the amount of advertising broadcast by BritAsia TV was in breach of Rule 4 of COSTA on two occasions.

This compliance failure follows a recent breach recorded by Ofcom covering a series of minutage overruns on BritAsia TV<sup>2</sup>. In that case, BritAsia had provided assurances to Ofcom that procedures had been implemented to avoid further breaches of COSTA.

Ofcom is particularly concerned that despite assurances by the Licensee that it had improved its compliance procedures, the improvements have not proved sufficiently robust to prevent further breaches of Rule 4 of COSTA. We will continue to monitor the Licensee’s compliance with COSTA.

## **Breaches of Rule 4 of COSTA**

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<sup>2</sup> See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb279/obb279.pdf>

## In Breach

### Breach findings table

*Code on the Scheduling of Television Advertising compliance reports*

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

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

| Channel        | Transmission date and time                | Code and rule / licence condition | Summary finding                                                                                                                                                      |
|----------------|-------------------------------------------|-----------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Africa Channel | 14 May 2015, 21:00 and 15 May 2015, 03:00 | Rule 4 of COSTA                   | Ofcom noted, during monitoring, that Africa Channel exceeded the permitted advertising allowance by 120 and 61 seconds respectively.<br><br><b>Finding: Breaches</b> |

## Broadcast Licence Conditions cases

### In Breach

#### Providing a service in accordance with ‘Key Commitments’

*Pulse (Cheddar Valley), 12 to 14 February 2015 and 6 to 26 April 2015*

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#### Introduction

Pulse is a community radio station licensed to serve people in Cheddar and the surrounding villages (primarily to the west and south of Cheddar). The station’s licensed area is described as “Cheddar Valley and the surrounding villages.” The licence is held by Pulse Media Broadcasting Limited (“Pulse” or “the Licensee”).

Like other community radio stations, Pulse is required to deliver the ‘Key Commitments’ which form part of its licence.<sup>1</sup> These set out how the station will serve its target community and include a description of the programme service; social gain (community benefit) objectives such as training provision; arrangements for access for members of the target community; opportunities to participate in the operation and management of the service; and accountability to the community.

Ofcom received a complaint that Pulse was failing to serve its community and provide the community-based programming required by its licence. The complainant also noted that the FM analogue community radio service for Cheddar Valley was now also being simulcast on the DAB platform across the whole of Somerset.<sup>2</sup>

We requested recordings of three days of Pulse’s output, covering Thursday 12, Friday 13 and Saturday 14 February 2015.

After monitoring this output we identified some potential issues with Pulse’s delivery of the following Key Commitment:

“Speech programming will feature local news... Discussion shows will feature local issues of interest and relevance to the community with the opportunity to participate using phone-ins, email or text messages.”

Ofcom considered that this issue warranted investigation under Conditions 2(1) and 2(4) in Part 2 of the Schedule to Pulse’s licence. These state, respectively:

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

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

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<sup>1</sup> The Key Commitments are contained in an annex to BCL’s licence. They can be viewed in full at: <http://www.ofcom.org.uk/static/radiolicensing/Community/commitments/cr000039.pdf>

<sup>2</sup> The Pulse DAB service on the Somerset multiplex is provided by Pulse under a Digital Sound Programme (DSP) licence, which has different programming requirements to the analogue community radio licence for Cheddar Valley held by Pulse.

We therefore wrote to Pulse to request its comments on how it was complying with these conditions, with reference to the specific Key Commitment set out above.

## **Response**

The Licensee stated that it believed it was in compliance with its Key Commitment to provide local news. It explained that, when it originally applied for a licence, the intention was “to replace the local self-help TV relay which was not upgraded after the digital switchover leaving many residential properties without local Somerset news.” Therefore, it said it was complying with this Key Commitment by having a regular local news feature “covering any aspect within Somerset” and not just its licensed coverage area (of Cheddar Valley). It added that, until recently, it had aired a regular weekly feature with the local Cheddar Valley Gazette editor who talked about local issues.

In relation to its Key Commitment to “provide discussion shows featuring local issues of interest and relevance to the community with the opportunity to participate using phone-ins, email or text messages,” the Licensee reported that it did provide such programming “on an ad-hoc basis, as and when suitable material is available locally for discussion.” It stated that it had not committed to providing such discussion shows on a regular basis within its Key Commitments, and as such the three days of recordings requested by Ofcom did not contain any examples of this type of programming.

In light of these representations, we decided to give the Licensee a further opportunity to provide us with examples of more recent output that included discussion shows featuring local issues of interest and relevance to the community. We therefore asked Pulse to supply audio examples of such programmes drawn from a three week period (between 06 and 26 April 2015).

The Licensee was unable to provide us with any examples of discussion shows featuring local issues of interest during this three week period. Pulse repeated its view that its Key Commitments do not require such programming to be provided on a regular basis.

## **Decision**

Ofcom has a number of duties in relation to radio broadcasting, including securing a diverse range of local radio services which are calculated to appeal to a variety of tastes and interests, along with the optimal use of the radio spectrum. These matters are reflected in the licence condition requiring the provision of the specified licensed service. Provision by a licensee of its licensed service on the frequency assigned to it is the fundamental purpose for which a community radio licence is granted.

Based on the evidence of two separate monitoring periods, we acknowledged that although Pulse had been providing a news service featuring stories from around Somerset, it had not been delivering local news stories that were specific to its licensed area of Cheddar Valley. While it is entirely legitimate for Pulse to include stories from other areas of Somerset, such as Yeovil or Taunton, these would need to be supplemented by news items of direct relevance and interest to listeners in its licensed area (i.e. Cheddar Valley).

We also noted the lack of discussion shows featuring local issues of interest and relevance to the community, as required by the Key Commitments. While we would not necessarily expect this type of programming to be broadcast by the station every

single day, we nevertheless consider it reasonable to expect that the station would have broadcast at least some examples of this type of programming during a three week period.

Ofcom considers that providing local news and discussing local issues are important aspects of community radio, forming a key part of its locally-relevant content and ensuring that the station's target community (in this case, residents of Cheddar and the surrounding villages, primarily to the west and south of Cheddar) are kept informed of local events and issues.

We are putting the Licensee on notice that, should similar issues arise in future, we may consider taking further regulatory action.

**Breaches of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence held by Pulse Media Broadcasting (licence number CR000239BA).**

## In Breach

### Broadcasting licensees' late and non- payment of licence fees

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Ofcom is partly funded by the broadcast licence fees it charges television and radio licensees. Ofcom has a statutory duty to ensure that the fees paid by licensees meet the cost of Ofcom's regulation of broadcasting. The approach Ofcom takes to determining licensees' fees is set out in the Statement of Charging Principles<sup>1</sup>. Detail on the fees and charges payable by licensees is set out in Ofcom's Tariff Tables<sup>2</sup>.

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

#### In Breach

The following licensees failed to pay their annual licence fees in accordance with the required payment date. These licensees have therefore been found **in breach** of their broadcast licences. The outstanding fees have now been paid.

| Licensee                                                      | Licence Number | Service Name       |
|---------------------------------------------------------------|----------------|--------------------|
| Celtic Music Radio Limited                                    | CR000257BA     | Celtic Music Radio |
| Eden FM Radio Ltd                                             | CR100181BA     | Eden FM            |
| WATCH Limited (Working Actively To Change Hillfields Limited) | CR000183BA     | The Hillz FM       |
| Trafficmaster Ltd                                             | DA000029BA     | Trafficmaster      |

**Breach of Licence Conditions 3 (1) and (2) in Part 2 of the Schedule of the relevant licences.**

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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/content/about/annual-reports-plans/tariff-tables/Tariff\\_Tables\\_2015\\_16.pdf](http://www.ofcom.org.uk/content/about/annual-reports-plans/tariff-tables/Tariff_Tables_2015_16.pdf)

3 As set out in Licence Condition 3 for radio licensees and Licence Condition 4 for television licensees.

## Fairness and Privacy cases

### Upheld

#### Complaint by Mr Sukhwinder Singh

*Miri Piri Gurdwara Live Kar Sewa, MATV, 24 November 2013*

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#### Summary

Ofcom has upheld this complaint of unjust or unfair treatment in the programme as broadcast made by Mr Sukhwinder Singh.

This discussion programme, which was broadcast live, featured a guest speaker Mr Jaswant Singh who, at the time of the broadcast, was the Chairman of the Miri Piri Gurdwara in Southall, west London. During the programme, Mr Sukhwinder Singh (the complainant) called the programme to discuss the ownership of the Gurdwara. At the conclusion of his call, Mr Jaswant Singh commented: “*This Sukhwinder Singh has been banned from the Guru’s House*” and that the ban had been imposed “*By the high Court*”.

Ofcom found that:

- The comments amounted to a serious allegation against Mr Sukhwinder Singh that were likely to materially and adversely affect viewers’ perception of him in a way that was unfair. Consequently, Ofcom considered that the broadcaster did not take reasonable care to satisfy itself that material facts in relation to the complainant were presented in the programme in a way that was fair to him.
- Given the serious nature of the allegation made in the programme the broadcaster was required to offer Mr Sukhwinder Singh an appropriate and timely opportunity to respond.

#### Introduction and programme summary

Midlands Asian Television (“MATV”) is a satellite television service that broadcasts principally Indian programming in Hindi, English, Gujarati and Punjabi.

On 24 November 2013, MATV broadcast an edition of *Miri Piri Gurdwara Live Kar Sewa*, a live discussion programme which focussed on religious matters. This particular edition of the programme was presented by Ms Manjeet, and featured a guest speaker, Mr Jaswant Singh. Mr Jaswant Singh was, at the time of the broadcast, the Chairman of the Miri Piri Gurdwara in Southall, west London. Both Ms Manjeet and Mr Jaswant Singh encouraged viewers to call the programme and donate money to help fund the building of the Gurdwara, as well as to share their views on how best to get the Gurdwara built and for what purposes it should be used.

During the course of the programme, a caller, Mr Balwant Singh Dhami asked if the Gurdwara belonged to the community or if it was a private place. He explained:

*“The issue is, if the construction is to be done through voluntary donations by the public, they should know if it is a public place or a private place”.*

In response, Mr Jaswant Singh stated:

*“...He has raised an objection that no one provides the accounts of the Guru’s House...I invite him to come to me tomorrow and I will show him accounts for every week...Our account number is already on display along with the Guru’s photo and the plan of the Gurdwara [in the temple]...This account number is the only account number; we do not have any other account. He can accompany me and I will account for every penny”.*

Mr Dhami then explained that his concern was that: *“...this Gurdwara has been mortgaged twice...”*.

At this point, Mr Dhami’s call was disconnected.

Mr Jaswant Singh then explained the financial history of the property and the fact that there were some questions surrounding the Gurdwara’s accounts and missing money. He explained that he could not talk about this as there was an ongoing court case into the matter. Ms Manjeet explained that:

*“There have been some problems in the Guru’s House because there had been two [executive] committees; let us clarify here that the first committee did something to the temple accounts; whatever it was, I do not know about it. The brother here knows what happened, but now a new account has been opened for the temple”.*

Later, Mr Sukhwinder Singh (the complainant) called the programme and said:

*“Ms Manjeet, I am Sukhwinder Singh. I request that you do not disconnect my call...Mr Balwant Singh Dhami [the previous caller] had asked a question and I want to ask the same; I want it clarified that this Miri Piri Gurdwara [drops the sentence]. My first question is the same as Mr Dhami asked and if you clarify it then I will ask the next question. He had asked if Gurdwara Miri Piri was in private ownership; is it in private ownership, a private Gurdwara, or does it belong to the Sikh community? Please have this question clarified first?”*

Mr Jaswant Singh responded:

*“This is Sukhwinder Singh who was with us for a long time as a previous committee member. He knows everything because he is supporting those who have left the Guru’s House. None of the Gurdwaras is privately owned. They belong to the community and this one too belongs to the community. As regards his concerns about the property, that is a different matter. I am unable to answer this question because this matter is in the court. However, I would like to say that the previous committee or the previous cashier, who is known to Brother Sukhwinder Singh, came to the Guru’s House once or twice after the 12<sup>th</sup> of May, but he did not interfere then. Ms Manjeet, when a committee leaves, it hands over the accounts and it informs how much money has been left in the account or what the expenditure was. If he is supporting them...[Mr Jaswant Singh was interrupted by Mr Sukhwinder Singh]”.*

Mr Sukhwinder Singh said:

*“Ms Manjeet, Ms Manjeet, I would request that he is twisting the question. He says that he is unable to answer the question about the property [but] he is asking for money for the [same] property...We are asking for money from the*

*Sikh community to build the Gurdwara, to build the property. For this reason, it is legally very important to provide correct information to the community, otherwise the community is being misled and the court is being misled. That is why we are seeking this information...He [Mr Jaswant Singh] has made it his own private property; he wants to transfer the Gurdwara property into his and his wife's name".*

Ms Manjeet and Mr Jaswant Singh discussed the Gurdwara's accounts further with Mr Sukhwinder Singh. Mr Sukhwinder Singh offered to bring details of the accounts for Mr Jaswant Singh to see:

*"...we will bring all of their previous account documents and these documents will tell in whose accounts the temple money went".*

Mr Jaswant Singh responded:

*"...This is very good, very good. If you do that it will solve 90 per cent of our problems...You do it this way, bring all the cheque books of Mohinder Singh Rathore, his account [papers] and the mortgages which Sohan Singh took. Bring these over and we will welcome you".*

Mr Sukhwinder Singh then said:

*"Those [papers] are already with you; everything is with you and your solicitor".*

Mr Jaswant Singh responded:

*"Firstly, Brother Sukhwinder Singh – we are talking amicably – I do not have them...You have promised that you will bring all the papers from them next Sunday. We will welcome you, we will spend an hour and discuss openly in front of the community...We will wait for you but you must come with the account [papers], their chequebooks, and [details of] where the money went. We will welcome you. If you do this for us, 90 per cent of our problems will be solved".*

At this point, Ms Manjeet explained that the call had been disconnected.

Mr Jaswant Singh then said:

*"This Sukhwinder Singh has been banned from the Guru's House. After being banned, he joined the group which has taken the money [in question]. He has said a good thing today that he will bring their accounts for which we have been asking for a year and a half and we have not received them. If he brings them, it will be a good thing and we will welcome him".*

Ms Manjeet and Mr Jaswant Singh then took a call from a Mr Bal, who Ms Manjeet explained was *"...involved in the counting of donations in the temple's donations box"*. Mr Bal spoke in detail about the Gurdwara's accounts. Mr Bal said:

*"Now we leave this to Sukhwinder Singh and Balwant Singh Dhami, and we have high hopes that they will do it, considering their interest and because they were associated with the Gurdwara Miri Piri. They have shown interest. I will welcome them. Jaswant Singh Thekedar should forget that at some time, under certain circumstances someone is banned or not, but the Gurdwara's House is open to all".*

Ms Manjeet interrupted and asked Mr Bal:

*“Sorry brother, I want to ask a question; when you said that they<sup>1</sup> have been banned, banned by whom? By yourself or by the police?”*

Mr Jaswant Singh responded to this: *“By the high Court”*.

Ms Manjeet then stated: *“Okay, by the High Court”*.

Mr Bal then explained:

*“... That money belonging to the temple has been stolen. Technically, the case is in court but these two friends [Mr Dhami and Mr Sukhwinder Singh] can help us a lot if they want. I am positive that the way they have shown interest, they have a great responsibility. If they take this responsibility and come forward, we will provide full support”*.

Mr Jaswant Singh later said:

*“I want to say that Sukhwinder Singh is like a younger brother to me. I have helped him a lot and he too has helped me. We have been together for many years. I request him on air to do as he has promised today and bring all the accounts...[to see] where the money went, who took the mortgages, and come here...If a sinner is called a sinner, people get to know about his truth. Mr Dhami has been with us for long; Sukhwinder Singh too has been with us from the start and now they conducted their attack [by raising doubts]. Our work had got stuck here because for a year and a half, we had been requesting Mohinder Singh Rathore to give us the account, provide the income/expense account, and give us the money. We were also saying to Sohan Singh, ‘Where is the money? Give it to us’. We had been unsuccessful in this and it would take us a year or two more in the courts but he [Mr Sukhwinder Singh] is going to do this job in a week. What more do we need? We would owe it to them if they bring these accounts next week”*.

Later in the programme, Mr Jaswant Singh also said:

*“They [Mr Dhami and Mr Sukhwinder Singh] have today given us cause for optimism and encouraged us that these two would get done what we could not do through courts or by our lawyer. And if they do it, it would be great”*.

Ms Manjeet then said:

*“We thank Brothers Balwant Singh and Sukhwinder Singh for calling into our programme. You must come to the Gurdwara this Sunday because we should clarify the misunderstanding we have in our minds. We should not think otherwise”*.

Ms Manjeet and Mr Jaswant Singh then went on to discuss the Gurdwara’s accounts further, including why particular bills had not been paid and that property had gone missing from the Gurdwara. The caller, Mr Bal, stated:

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<sup>1</sup> The translator explained that “they” in Panjabi also meant “he/she”.

*“Now that Mr Dhami and Sukhwinder Singh have been involved in this thing, I hope that they will look into this entire matter. The lost property of the Guru’s House, such as money, gold, and some other things are involved in this”.*

Mr Bal later stated:

*“We need to bring back our lost property or we will have to make up for those losses through austerity and hardship for a year. Mr Dhami and Sukhwinder Singh can help us forward this step and instead of tightening our belts for six months, they can help get our money from them”.*

Throughout the remainder of the programme Ms Manjeet continued to ask viewers to make donations to the Gurdwara.

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

#### *The complaint*

Mr Sukhwinder Singh complained that he was treated unjustly or unfairly in the programme as broadcast because:

- a) Mr Jaswant Singh, a guest on the programme, stated that he had been banned from the Miri Piri Gurdwara in Southall, west London, by an order of the High Court. Mr Sukhwinder Singh said that this was not true and that the allegation had damaged his reputation.
- b) He was not given the opportunity to respond to the allegation that he had been banned from the Miri Piri Gurdwara. He said that he had tried calling the studio repeatedly while the programme was being broadcast, but was not put through.

#### *MATV’s response*

In response to both heads of complaint, MATV said that at the time the complaint was made, there had been an ongoing legal dispute regarding the ownership of the Gurdwara. It said that the High Court had granted 66 per cent ownership of the Gurdwara to Mr Jaswant Singh. MATV also said that there were other legal issues in dispute, including Mr Sukhwinder Singh being “restrained from going to the Gurdwara”.

MATV said that Mr Sukhwinder Singh had not been treated unfairly in the programme because:

- MATV had provided Ofcom with documents that showed that Mr Sukhwinder Singh had been banned from the Gurdwara by the High Court;
- Mr Jaswant Singh had not abused Mr Sukhwinder Singh in any way;
- It had been Mr Sukhwinder Singh who had contacted the programme and had initiated “this issue” and not Mr Jaswant Singh or the programme makers;
- During the programme, Mr Sukhwinder Singh “lost his cool” on several occasions when Mr Jaswant Singh was just trying to arrange a meeting with him.

- Mr Sukhwinder Singh was engaged in conversation for a quite some time and agreed during the programme that the following week he would bring the Gurdwara's accounts to "clear the entire issue". MATV said that he did not come as promised, but that he had been given a "full and fair chance to present his case" during the programme.
- At the conclusion of Mr Sukhwinder Singh's call, Mr Jaswant Singh had explained "in a very respectful manner" that "this was Sukhwinder Singh...who has now agreed to come with accounts our 90 per cent problems are solved". MATV said that there was no unfairness as at the end of the conversation there was a clear understanding that Mr Sukhwinder Singh would bring the accounts the following week.

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

Ofcom prepared a Preliminary View on this case that the complaint should be upheld. Both parties were given the opportunity to make representations on the Preliminary View, but neither chose to do so.

### **Decision**

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

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

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and translated transcript, both parties' written submissions, and supporting documentation.

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

- a) Ofcom first considered Mr Sukhwinder Singh's complaint that he was treated unjustly or unfairly in the programme as broadcast because Mr Jaswant Singh stated wrongly that he had been banned from the Gurdwara by an order of the High Court and that the allegation had damaged his reputation.

In considering this complaint, we had particular regard to 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.

Whether a broadcaster has taken reasonable care to present material facts in a way that is not unfair to an individual or organisation will depend on all the

particular facts and circumstances of the case, for example, the seriousness of any allegations and the context within which they are presented.

Having carefully viewed the programme and examined the translated transcript of it, we noted that Mr Jaswant Singh stated that “*This Sukhwinder Singh has been banned from the Guru’s House*” and that when asked by the presenter “...*banned by whom?*” he answered “*By the High Court*” (see the “Introduction and programme summary” section above for the full exchange). In our view, it was clear from that that Mr Sukhwinder Singh was identified as the subject of Mr Jaswant Singh’s comments and, therefore, as a result we considered that the programme included an allegation that suggested that he had been engaged in behaviour of a type that warranted an order of the High Court to prevent him access to the Gurdwara.

Ofcom considered that the language used by Mr Jaswant Singh was accusatory in nature and that the comments were made within the context of the presenter and Mr Jaswant Singh discussing suspicions that money and property had been misappropriated from the Gurdwara. We noted too that Mr Jaswant Singh presented the allegation that Mr Sukhwinder Singh had been “*banned*” from the Gurdwara by the High Court as an unequivocal statement of fact. We took the view that, in these circumstances, Mr Jaswant Singh’s remarks would have left viewers in no doubt that he claimed that Mr Sukhwinder Singh had been involved in wrongdoing with regards to the running of the Gurdwara. Ofcom considered that the allegation made was serious in nature and had the potential to materially and adversely affect viewers’ opinions of Mr Sukhwinder Singh.

We then considered the presentation of Mr Jaswant Singh’s comments in the programme as broadcast and whether it resulted in unfairness. Ofcom acknowledged the broadcasters’ right to freedom of expression and that they must be able to broadcast programmes of matters of interest to viewers freely, including the ability to express views and critical opinions without undue constraints. However, this freedom 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.

We recognised that the programme was broadcast live and that, with such broadcasts, broadcasters need to take particular care. Given the nature of this type of programming, contributors can sometimes make unexpected comments which have the potential to cause unfairness to an individual or organisation. It is Ofcom’s view that it is not always possible for the broadcaster to obtain responses from others prior to or during a live broadcast. However, in such circumstances, Ofcom considers that when including material that has the potential to amount a significant allegation, reasonable care must be taken by the broadcaster that the broadcast material is consistent with the requirements of the Code and that it does not mislead viewers or portray individuals or organisations in a way that is unfair, without sufficient basis to do so. This may include briefing any studio guests about fairness requirements in advance of the programme, as well as ensuring that any allegations made during the programme are properly tested or challenged. This could be, for example, by pointing out any contradictory argument or evidence or by representing the viewpoint of the person or organisation that is the subject of the allegation.

Given the above, Ofcom then assessed what steps, if any, the broadcaster took to satisfy itself that material facts were not presented, disregarded or omitted in a way that was unfair to Mr Sukhwinder Singh. In doing so, we acknowledged that it

was Mr Sukhwinder Singh himself who had initiated contact with the programme and had freely discussed issues surrounding the ownership of the Gurdwara and its accounts.

However, we noted that Mr Jaswant Singh made his comment about Mr Sukhwinder Singh being “*banned*” from the Gurdwara by the High Court after their conversation had been disconnected. This resulted in Mr Sukhwinder Singh not being given the opportunity to respond to Mr Jaswant Singh’s remarks, nor did the presenter seek to clarify for what reason Mr Sukhwinder Singh had allegedly been “*banned*” from the Gurdwara. MATV provided no evidence that it had taken any reasonable steps before the live broadcast in this regard, for example, by advising Mr Jaswant Singh to take care about any allegations he might make or demonstrating that it had attempted to contact Mr Sukhwinder Singh during the broadcast to verify or to seek his comments on whether or not there was any truth in the allegation made.

In its response to the complaint MATV said that Mr Sukhwinder Singh had not been treated unfairly in the programme because it said he had been banned from the Gurdwara by the High Court. We took into account the information provided by MATV that it said showed that Mr Sukhwinder Singh had been banned from the Gurdwara by the High Court. In particular, Ofcom noted that MATV provided a copy of a High Court Order dated 20 December 2012. However, Ofcom noted that the Order did not refer to Mr Sukhwinder Singh being “*banned*” or otherwise excluded from the Gurdwara by the High Court. Therefore, Ofcom took the view that the documentation provided by MATV did not support the claim made in the programme that the High Court had “*banned*” Mr Sukhwinder Singh from the Gurdwara.

Given the above factors, we considered that Mr Jaswant Singh’s comments amounted to a significant allegation about Mr Sukhwinder Singh, and that they were presented in a manner which was likely to materially and adversely affect viewers’ opinions of him in a way that was unfair to him.

Taking all of the above into account, Ofcom considered that, in the particular circumstances of this case, the broadcaster did not take reasonable care, in accordance with Practice 7.9, to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Mr Sukhwinder Singh.

- b) Ofcom then considered Mr Sukhwinder Singh’s complaint that he was not given the opportunity to respond to the allegation that he had been “*banned*” from the Gurdwara. He said that he had tried calling the studio repeatedly while the programme was being broadcast, but was not put through.

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

For the reasons already given in head a) above, Ofcom considered that the comments made about Mr Sukhwinder Singh being banned from the Gurdwara in the programme (as detailed in the ‘Introduction and programme summary section’ above) amounted to a serious allegation against Mr Sukhwinder Singh. Normally, where a significant allegation is made about an individual or organisation in a programme, the broadcaster should ensure that the individual or organisation

concerned is given an opportunity to respond and, where appropriate, for that response to be represented in the programme in a fair manner.

Owing to the nature of this type of live programming, guests and callers can sometimes make unexpected comments which have the potential to cause unfairness to an individual/organisation. Nevertheless, the broadcaster must ensure that the Code is adhered to by taking measures to avoid unfairness. In this case, we noted that immediately after Mr Sukhwinder Singh's telephone call became disconnected, Mr Jaswant Singh stated: "*This Sukhwinder Singh has been banned from the Guru's House. After being banned, he joined the group which has taken the money [in question]*". We also noted that Mr Sukhwinder Singh had explained that after being disconnected he had tried calling the studio repeatedly while the programme was being broadcast, but was not put through. MATV did not dispute this in its response and in the absence of any evidence to the contrary Ofcom had no reason to doubt that the information provided by the complainant was correct.

Given the serious nature of the allegation made, we considered that the broadcaster should have ensured that Mr Sukhwinder Singh was given an appropriate opportunity to respond to Mr Jaswant Singh's comments. Mr Sukhwinder Singh told Ofcom that he had repeatedly asked to be put through to the presenter so that he could explain that he had not been banned from the Gurdwara. It therefore appeared that he had made the programme makers clearly aware that he was available and had wanted to give his view on the matter. We therefore considered that it was open to the broadcaster to have provided this opportunity had it chosen to. The broadcaster's failure in this instance to follow Practice 7.11 to give Mr Sukhwinder Singh an opportunity to respond to the allegation made by Mr Jaswant Singh resulted in unfairness to the complainant.

Taking the above factors into account, Ofcom considered that Mr Sukhwinder Singh was treated unfairly in the programme as broadcast.

**Therefore, Ofcom has upheld Mr Sukhwinder Singh's complaint of unjust and unfair treatment in the programme as broadcast.**

## Upheld

### Complaint Mr Abkar Singh Rai

*London Special Election Debate, Sangat Television, 26 September 2014*

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#### Summary

Ofcom has upheld Mr Abkar Singh Rai's complaint of unjust or unfair treatment in the programme as broadcast.

The programme included a live debate in advance of an election for a new committee to run the Gurdwara Sri Guru Singh Sabha ("the Gurdwara"), a Sikh temple in Southall, west London. At the end of the debate, two videos were shown. During the second video, the presenter alleged that he had seen a man (i.e. Mr Rai, the complainant) stealing money from a donation box in the Gurdwara.

Ofcom found that:

- The programme presented an allegation of theft against Mr Rai in a way that was likely to have materially and adversely affected viewer's perceptions of him unfairly.
- Given the serious nature of the allegation made in the programme about Mr Rai, the broadcaster was required to offer him an appropriate and timely opportunity to respond to avoid unfairness to Mr Rai. Its failure to do so resulted in unfairness to him.

#### Introduction and programme summary

Sangat Television ("Sangat TV") is a television service providing religious and general entertainment content in English and Panjabi. It can be received throughout the UK and in parts of Europe, but is primarily directed towards the Sikh community in the UK.

On 26 September 2014, Sangat TV broadcast a debate in advance of an election for a new committee to run the Gurdwara Sri Guru Singh Sabha ("the Gurdwara"), a Sikh temple in Southall, west London. The debate was between representatives of the then incumbent group (the Baaj Group) and its opponents (the Shayr Group).

A transcript in English (translated from the original Panjabi) of the programme was prepared by an independent translation company for Ofcom. Both parties to the complaint confirmed that the translated transcript accurately represented the content of the programme, and that they were satisfied that Ofcom could use the translated transcript for the purpose of investigating the complaint.

During the debate each contributor was given opportunities to speak about their group's past achievements and aspirations as well as to question their opponents' claims.

After the debate, two videos were shown. The second video included several sections of footage of the presenter, identified on screen as "*APS Mann, TV Personality, UK*" who discussed alleged incidents at the Gurdwara which he said had occurred when the Baaj Group was in control. In particular, Mr Mann said:

*“...last year [i.e. during a period when the Baaj Group was in charge], in the same temple an issue of stealing from the donations box came to surface. I did not want to speak about it but I went there for three weeks and I personally saw that when the donations were counted, perhaps he was a member of this committee – I will not name him – I personally saw him taking money from the donations box. Along with this – had we sought to promote these things [sentence dropped]. When this issue was raised, he stopped coming when the donations were counted. Moreover, I think he was a relative of a committee member or office bearer.*”

A short while later, Mr Mann said:

*“I am not saying these [claims] without proof or documentary proof. I have with me the raw footage which was never released. And even more I will play for you my statement of that time when all this happened”.*

No further footage or comments relating to Mr Mann’s claim to have seen a man “taking money from the donations box” were included in the programme.

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

#### *The complaint*

In summary, Mr Rai complained that he was treated unjustly or unfairly in the programme as broadcast because:

- a) In the second video shown at the end of the programme Mr Mann alleged that he had seen Mr Rai stealing money from the donation box at the Gurdwara. Mr Rai said that Mr Mann provided no proof of this claim. Mr Rai also said that although Mr Mann did not identify him by name in the video, he stated that the man he witnessed stealing money from the donation box was “a relative of the then president of the Gurdwara committee”. Mr Rai added that he was therefore identifiable to members of the Gurdwara who were all aware that he was the person against whom the allegation of theft from the donation box had previously been made.

By way of background, Mr Rai said that the allegation that he had stolen money from a donation box had been published in an article in *Pardes Weekly*, a newspaper for the Sikh community in the UK, on 17 May 2013 and that it had been circulated to members of the Gurdwara in the period prior to the broadcast of the programme. He also said that on 8 September 2014 (prior to the broadcast of this programme) he had informed Sangat TV that the article was subject to high court proceeding and that any repetition of the allegations in the programme would be considered an “aggravating factor”.

- b) Mr Rai was not given an appropriate and timely opportunity to respond to the serious allegation made about him by Mr Mann in the programme.

#### *Sangat TV’s response*

In response to both heads of complaint, Sangat TV said that theft from the donation box at the Gurdwara was not the subject of the debate and that it apologised to the complainant for its “failure...to relate” Mr Mann’s comments to him (Mr Rai) and said that this failure occurred because Mr Mann neither named

Mr Rai nor said that the person concerned was “a relative of the then president of the Gurdwara committee”.

Sangat TV said that it only became aware of Mr Rai’s concerns after the programme was broadcast and when Mr Rai emailed directly to complain about the inclusion of the claim. It added that Mr Rai’s previous notice to Sangat TV regarding this issue (i.e. his letter dated 8 September 2014) was dealt with by Sangat TV’s Birmingham office and that it “was only relevant after the broadcaster received Mr Mann’s video”. The broadcaster said that, as soon as it became aware of the issue, it promptly edited the second video to remove the section of it to which Mr Rai objected. Sangat TV provided Ofcom with a copy of an internal email sent at 14:20 on 27 September 2014 to Sangat TV staff informing them that only the edited version of the video should be shown in any further repeats of the programme. Sangat TV also said that it had received no further requests from Mr Rai regarding this issue and that it had had “no intention to name and shame Mr Rai at all”.

In addition, Sangat TV said that the decision to include the second video was made by the presenter of the programme during the broadcast and, given that the final debate was so close to the election, it would have been “impossible and impractical” to have invited the complainant to take part in another programme.

### **Ofcom’s Preliminary View**

Ofcom prepared a Preliminary View that Mr Rai’s complaint should be upheld. Both parties were given the opportunity to make representations on the Preliminary View and their comments (insofar as they were relevant to the complaint as entertained and considered by Ofcom in the Preliminary View) are summarised below.

#### *Mr Rai’s representations*

Mr Rai questioned Sangat TV’s claim that Mr Mann was an independent freelance journalist, given that he had a Sangat TV email address and was the main contact for the channel.

Mr Rai said that at no time did Sangat TV acknowledge receipt of his email or that his complaint was being looked into. Nor did he accept that the broadcaster edited the repeats of the programme and said that he “did not note...that the allegations against me were edited out.

#### *Sangat TV’s representations*

Sangat TV said that Mr Rai was not named at any point during the programme and further details connecting the allegation to the committee were vague and unspecific in details. It said that, accordingly, it would have been very difficult for the average viewer or members of the congregation of the Gurdwara to establish that the reference intimated towards any particular individual. Furthermore, it said that Mr Rai was not the only relative of the former president who held a position in the previous management committee. Therefore, although Mr Rai was not invited to respond to any allegations on screen, this was not considered appropriate as no specific direct allegations were levelled against him.

Sangat TV also said that although the *Pardes Weekly* article referred to by Ofcom may have contained a picture of Mr Rai, the allegations were made against another

individual. Therefore, although it acknowledged the concerns raised by Ofcom with respect to the article, the impact of it, if any, was unquantifiable.

## Decision

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

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

In reaching our Decision, we carefully considered all the relevant material provided by both parties. This included a recording and translated transcript, agreed by both parties, of the programme as broadcast, both parties' written submissions, and supporting documentation. Ofcom also took careful account of the representations made by the complainant and the broadcaster in response to being given the opportunity to comment on Ofcom's Preliminary View. After careful consideration of Mr Rai's and Sangat TV's representations, we concluded that the further points raised by both parties did not materially affect the outcome of Ofcom's Decision to uphold the complaint.

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

- a) Ofcom first considered the complaint that Mr Rai was treated unjustly or unfairly in the programme as broadcast it alleged that Mr Rai had stolen money from the donation box at the Gurdwara.

In considering this part of the complaint, Ofcom had regard to of Practice 7.9 of the Code which states that, before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to the individual or organisation.

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

As set out in the "Introduction and programme summary" section above, during the second video, Mr Mann said that for a period of three weeks he had witnessed a man "*taking money from the donations box*" at the Gurdwara. Mr Mann also said that he had not made this claim (amongst other claims relating to alleged incidents in the Gurdwara while the Baaj Group was in control) "*without proof or documentary proof*". In Ofcom's view, Mr Mann's comments amounted to an allegation of theft which was a serious allegation of wrongdoing.

In his complaint, Mr Rai said that although he was not named in the programme, Mr Mann said that the man he saw stealing money from the donation box was “a relative of the then president of the Gurdwara committee” and therefore he (Mr Rai) was identifiable to members of the Gurdwara who were all aware that he was the person against whom the allegation of theft from the donation box had previously been made.

Having assessed the programme, we observed that Mr Mann did not name the man he said he saw stealing and he did not say that he was “a relative of the then president of the Gurdwara committee”. However, Mr Mann did say that the man was related to “*a committee member*” (i.e. a member of the committee formed by the Baaj Group which was running the Gurdwara at the time). We noted that Mr Rai’s brother-in-law was the President of the Baaj Group at the time and that this information had previously been disseminated to the Sikh community via a newspaper article published in *Pardes Weekly*, a newspaper for the Sikh community in the UK. In addition, we noted that the allegation that Mr Rai had stolen money from a donation box had previously been included in an article published in the “11-17 May 2013” edition of *Pardes Weekly* and that this article was circulated to members of the Gurdwara in the period prior to the broadcast of the programme. Taking account of these factors, and having noted the representations made by Sangat TV on the Preliminary View in relation to this point, we concluded, nevertheless, that it was likely that Mr Rai would have been identifiable to many of the viewers of this programme as the person whom Mr Mann alleged to have seen stealing from the donation box at the Gurdwara.

Therefore, Ofcom considered that the programme included an allegation which questioned Mr Rai’s honesty and integrity and suggested he was involved in criminal behaviour.

Whenever a programme alleges wrongdoing or makes other significant allegations against an individual or organisation, the broadcaster must take certain measures to ensure compliance with Section Seven (Fairness) of the Code to avoid unjust or unfair treatment. For instance, broadcasters should normally:

- give the individual or organisation concerned an appropriate and timely opportunity to respond; and
- reflect any response in an appropriate way on air; and/or
- at least reflect the fact that the broadcaster has sought comment from the individual or organisation concerned; and/or
- place the allegation in an appropriate context (by, for example, explaining it is based on one source or is unverified).

In the circumstances of this case, Ofcom considered that Sangat TV took none of these steps. In particular, the programme neither gave Mr Rai an opportunity to respond to Mr Mann’s allegation (considered in detail under head b) below) nor attempted to place the allegation in any form of context by explaining that, for example, it was based on an article in one newspaper, or that it was an unproved allegation. We noted too that this was despite the fact that on 8 September 2014 (i.e. 19 days prior to the broadcast of the programme) Mr Rai had emailed Sangat TV to tell it that:

- Ofcom had previously published an Adjudication on a complaint he had made about a programme broadcast on Kismat Radio on 13 May 2013 which found that the radio station's broadcast of the allegation that he had been caught stealing money from the donation box at the Gurdwara had resulted in unfairness to him; and,
- the original publication of this allegation in Pardes Weekly was, at the time, the subject of legal proceedings at the High Court and should the broadcaster repeat the allegation Mr Rai would sue Sangat TV for libel and claim damages.

Ofcom acknowledged that Sangat TV edited the programme to remove the relevant allegation soon after it received Mr Rai's complaint about the matter. However, in light of all of the factors set out above, we considered that the original broadcast included an allegation which was likely to have materially and adversely affected viewer's perceptions of Mr Rai in a way that was unfair to him and that the broadcaster did not take reasonable care to satisfy itself that material facts were not been presented, disregarded or omitted in a way that was unfair to him. Therefore, we concluded that the way in which this allegation was presented in the programme resulted in unfairness to Mr Rai.

- b) Ofcom then considered Mr Rai's complaint that he was not given an appropriate and timely opportunity to respond to the serious allegation made about him in the programme.

In considering this aspect of the complaint, Ofcom took account of Practice 7.11 of the Code which states: "If a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond."

For the reasons already given in head a) above, Ofcom considered that the allegation made in the programme (i.e. that Mr Mann had witnessed Mr Rai stealing from the donation box) amounted to a significant allegation of wrongdoing against Mr Rai. Normally, where a significant allegation is made about an individual or organisation in a programme, as it was in this particular case, the broadcaster should ensure that the individual or organisation concerned is given an opportunity to respond and, where appropriate, for that response to be represented in the programme in a fair manner.

We noted that the decision to include the second video (that in which Mr Mann's comments in relation to Mr Rai were included) was made by the presenter during the course of this live programme. The decision to include the second video at the end of the programme was an editorial matter for the programme makers. However, in our view, it is reasonable to expect that before making such a decision, a broadcaster would be familiar with the content of any material it planned to broadcast, even if the decision to include the material was made at the last minute or during the course of the relevant programme. In addition, we noted that it is the responsibility of the broadcaster (in this case, a responsibility which Sangat TV explained was delegated to the presenter of the programme) to ensure that the Code is adhered to by taking measures to avoid unfairness. With regard to Practice 7.11, no action to ensure this (i.e. giving Mr Rai an opportunity to respond to the claim set out above) was taken by the broadcaster.

We noted too that Sangat TV said that, given the final debate was so close to the election, it would have been “impossible and impractical” to have arranged for another programme (i.e. one which included responses to the claims made by Mr Mann in the second video) to be broadcast. Nevertheless, and notwithstanding Sangat TV’s representations on the Preliminary View that giving Mr Rai an opportunity to comment was not appropriate as no specific direct allegations were levelled against him, Ofcom concluded that there remained an obligation on the broadcaster to ensure that it avoided unjust or unfair treatment to individuals and/or organisations in the programme, and its failure in this particular instance to give Mr Rai an opportunity to respond to the significant allegation of wrongdoing made by Mr Mann in the second video resulted in unfairness to Mr Rai.

Taking all of the factors set out above into account, Ofcom considered that Mr Rai was treated unfairly in this respect in the programme as broadcast.

**Ofcom has therefore upheld Mr Rai’s complaint of unfair treatment in the programme as broadcast.**

## Upheld in part

### **Complaint made by Dr Parvinder Singh Garcha made on behalf of the Baaj Group**

*London Special Election Debate, Sangat Television, 26 September 2014*

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#### **Summary**

Ofcom has upheld in part Dr Parvinder Singh Garcha's complaint of unjust or unfair treatment in the programme as broadcast on behalf of the Baaj Group<sup>1</sup>.

The programme included a live debate in advance of an election for a new committee to run the Gurdwara Sri Guru Singh Sabha ("the Gurdwara"), a Sikh temple in Southall, west London. The debate was between two people representing the Baaj Group (then the incumbent group) and two representing the Shayr Group (which went on to win the election) and was moderated by the programme's presenter. One of the key issues discussed during the debate concerned the placing of 'legless chairs' (i.e. chairs that have a seat and back support but no legs) in a prayer room in the Gurdwara<sup>2</sup> and which group, Baaj or Shayr, was running the Gurdwara when this incident occurred. At the end of the debate two videos were shown. Both included footage of the legless chairs – the first claimed that the chairs had been placed in the Gurdwara when the Shayr Group was in charge and the second that this had happened when the Baaj Group was in control. The second video also included the claim that money had been stolen from a donation box in the Gurdwara during a period when the Baaj Group was in control.

Ofcom found that:

- Notwithstanding the inclusion of material about which the Baaj Group's representatives had not previously been informed, Sangat Television ("Sangat TV") had obtained informed consent from these representatives for their contribution to the programme. Therefore, the Baaj Group was not treated unfairly in this respect.
- The broadcaster took reasonable steps to satisfy itself that material facts about the Baaj Group in relation to the claim made by Mr Mann (the presenter in the videos) that chairs were placed in the Gurdwara when the Baaj Group ran it were not presented, disregarded or omitted in a manner which gave viewers an unfair impression of it; and, given the wider context in which this claim was shown, it was not incumbent on the broadcaster to have offered a representative of the group an appropriate and timely opportunity to respond to this specific claim. Therefore, the Baaj Group was not treated unfairly in these respects.
- However, the broadcaster did not take reasonable steps to satisfy itself that material facts about the Baaj Group in relation to the claim made by Mr Mann that money was stolen from the donation box in the Gurdwara when the Baaj group

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<sup>1</sup> The Baaj (or Eagle) Group is a group of Sikh volunteers who until the end of September 2014 formed the committee that ran the Gurdwara Sri Guru Singh Sabha (a Sikh Gurdwara, or temple, in Southall).

<sup>2</sup> Ofcom understood that the placing of chairs in a Sikh temple is considered to contravene religious tradition.

ran it were not presented, disregarded or omitted in a manner which gave viewers an unfair impression of it. In addition, taking account of the context in which this claim was shown, it was incumbent on the broadcaster to have offered a representative of the group an appropriate and timely opportunity to respond to it but it did not do so. Therefore, the Baaj Group was treated unfairly in these respects.

### **Introduction and programme summary**

Sangat TV is a television service providing religious and general entertainment content in English and Panjabi. It can be received throughout the UK and in parts of Europe but is primarily directed towards the Sikh community in the UK.

On 26 September 2014, Sangat TV broadcast a live debate in advance of an election for a new committee to run the Gurdwara Sri Guru Singh Sabha (“the Gurdwara”), a Sikh temple in Southall. The debate was between Dr Parvinder Singh Garcha (the complainant) and Mr Sukhdeep Randhawa, representing the Baaj Group (then the incumbent group) and Mr Gurmail Singh Mahli and Mr Suraynder Singh Puraywal representing the opposing Shayr Group. It was moderated by Sangat TV presenter Mr Ranjit Singh Rana.

A transcript in English (translated from the original Panjabi) of the programme was prepared by an independent translation company for Ofcom. Both parties to the complaint confirmed that the translated transcript accurately represented the content of the programme, and that they were satisfied that Ofcom could use the translated transcript for the purpose of investigating the complaint.

During the debate each contributor was given opportunities to speak about their group’s past achievements and aspirations as well as to question their opponents’ claims. As the debate continued it became intemperate. At times the contributors started to interrupt each other or all speak at the same time; some complained that their opponents were being given more time than they were and on several occasions contributors either said or implied that the other group had told lies or had twisted the truth. Each group raised questions about the other group’s allegedly poor book-keeping and/or mismanagement of funds, sometimes in relation to specific expenditures, and a number of claims were made relating to conduct which would be deemed inappropriate by the Sikh Community served by the Gurdwara.

One of the key issues discussed during the debate concerned the placing of ‘legless chairs’ (i.e. chairs that have a seat and back support but no legs) in a prayer room in the Gurdwara and which group, Baaj or Shayr, was running the Gurdwara when this incident occurred. The Shayr Group representatives called for a video that they alleged proved that the chairs were placed in the Gurdwara when the Baaj Group was running it to be shown as part of this programme. Dr Garcha, on behalf of the Baaj Group, objected to this suggestion.

Towards the end of the debate, Dr Garcha said to the presenter: *“The important point Mr Rana, I am saying [is that] he [Mr Mahli – the chairman of the Shayr Group] is a Sangat TV trustee. You did not clarify [disclose] it. It is a conflict of interest going on here”.*

In response, the presenter confirmed that that Mr Mahli was one of the trustees of Sangat TV, but pointed out that previously he (the presenter) had been seen with Mr Himmat Singh Sohi (the president of the Baaj Group). He also said:

*“Sangat TV has many trustees and some are helping one group while others are helping the other group but Sangat TV is totally impartial and I am totally impartial”.*

After the debate two videos were shown. Both included footage of the legless chairs. The first video claimed that the chairs had been placed in the Gurdwara when the Shayr Group was in control, while the second video said that this had happened when the Baaj Group was in control. From comments made during the debate, it appeared that each video had previously been uploaded to the internet by supporters of either the Baaj or Shayr Group.

At the end of the first of these videos, footage of Dr Garcha sitting at a desk and talking to camera was shown. He said:

*“I have been informed that a video has been released which shows that sacrilege is being committed in the Guru’s House by using chairs. I have been fully ensured that this activity took place in 2010 during the term of the committee of Lion [Shayr] Group whose leader was Mr Malhi and the chairman was Dedar Singh Randhawa. I request to the entire community to complain to them about this disrespect”.*

The second video included footage of the presenter, identified on screen as “APS Mann, TV Personality, UK”. Some of the footage appeared to have been filmed in the run up to the election (“the recently filmed footage”) and some in April 2012.

During the recently filmed footage, Mr Mann said that on 30 April 2012 (i.e. when the Baaj Group was in control) he had visited the Gurdwara and seen chairs in the prayer room.

Mr Mann then criticised the Baaj Group’s General Secretary (whom he named as Dr Garcha) for having: *“recently issued a statement, which has also been published on the internet, stating that the incident took place in 2010 or so on”* (i.e. when the Shayr Group was in control of the Gurdwara).

Mr Mann (who appeared to be addressing Dr Garcha) said:

*“No. You see everyone can make a mistake and I think you should accept your mistake. This is because all this happened under your management and by disputing it or blaming the other party [i.e. the Shayr Group] that it happened in their period [of governance] [sentence dropped]. It did not happen like that”.*

Later in the second video, Mr Mann said:

*“Dr Garcha’s statement about it, though it is surely wishful, it surprises me as to how people on such high posts can tell such a big lie. It is a very shameful and insulting thing. I think he should not cheat the Sikh community in this manner. He should accept his mistake”.*

He also stated that *“many other issues have taken place in this temple”*. In particular, he said:

*“...last year [i.e. during a period when the Baaj Group was in control], in the same temple an issue of stealing from the donations box came to surface. I did not want to speak about it but I went there for three weeks and I personally saw that when the donations were counted, perhaps he was a member of this committee –*

*I will not name him – I personally saw him taking money from the donations box. Along with this – had we sought to promote these things (drops the sentence). When this issue was raised, he stopped coming when the donations were counted. Moreover, I think he was a relative of a committee member or office bearer”.*

A short while later, Mr Mann said:

*“I am not saying these [claims] without proof or documentary proof. I have with me the raw footage which was never released. And even more I will play for you my statement of that time when all this happened”.*

After this comment, the video included footage of Mr Mann talking to camera in front of the Gurdwara, interspersed with footage of the legless chairs - accompanied by on screen graphics indicating that this material had been filmed on 30 April 2012, when the Baaj Group was in control of the Gurdwara.

At the end of this section of footage, the video returned to the recently filmed footage of Mr Mann saying:

*“Whichever committee you select for the governance of the temple - just listen to your heart when deciding about who you are going to vote for. Whoever you think is the honest person, who can do better for you and with whom your [donated] money is safe, stand by him. With these words, I beg leave and seek pardon for any mistake I may have made”.*

The programme then ended.

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

Dr Garcha complained that the Baaj Group was treated unjustly or unfairly in the programme as broadcast.

- a) The Baaj Group’s informed consent was not obtained for the contribution by its representatives, Dr Garcha and Mr Randhawa, in the programme because they were not fully informed of the nature of the programme. Dr Garcha said that prior to broadcast he and Mr Randhawa had not been made aware that the second video, which included criticism about the Baaj Group, would be shown at the end of the programme.

Dr Garcha said that the inclusion of the second video, which he said was “premeditated”, was “an ambush” which “was sprung upon” them towards the very end of the programme and was shown despite their protestations. He also said that this was a “significant change” to the programme to which he and Mr Randhawa had not consented.

In response, Sangat TV said that having initially declined its invitation to contribute Dr Garcha agreed to represent the Baaj Group in the debate. The broadcaster said that that it had followed the same procedure with regard to both Baaj and Shayr groups. It also said that it had acceded to conditions, made by Dr Garcha prior to the broadcast, regarding who presented the programme and the amount of time to be given to the Baaj Group representatives at the beginning of the debate.

Sangat TV said that the presenter “was authorised to use the information already prevalent in the social media as a common knowledge and balance the debate by providing [the] right information to the viewers”. It acknowledged that it was the presenter who, during the programme, decided to include the second video after the debate (i.e. that which included claims about the Baaj Group made by Mr Mann) and said that he had done so in order to counter-balance the video which included Dr Garcha “accusing [the] Shayr Group of committing the sacrilegious act of installing chairs in [the Gurdwara]”.

- b) Material facts about or in relation to the Baaj Group were presented, disregarded or omitted in a manner which gave viewers an unfair impression of it.

In particular, Dr Garcha said that the second video included serious allegations about the Baaj Group which were “fabricated” and for which there was “no proof or validation”. These allegations were that chairs were placed in the Gurdwara and that money was stolen from the donation box during the period when the Baaj Group ran the Gurdwara. Dr Garcha also said that in the video, Mr Mann said that Dr Garcha had lied when stating that the chairs were placed in the Gurdwara when the Shayr Group was in control and that the alleged theft from the donation box had happened with Dr Garcha’s “connivance”.

Sangat TV responded by saying that its approach to the programme was totally unbiased and that all the information presented in it, including the claims made by Mr Mann, was already available prior to the broadcast via social and local media. It said that Mr Mann was an experienced freelance journalist who had covered previous elections, not one of its employees, and that it had always used his services in that capacity alone. It also said that second video was “only factually correcting the allegations being widely publicised in social media<sup>3</sup>. Sangat TV said that it had no reason to “disbelieve” Mr Mann; that Mr Mann stood by his statement and that it [Sangat TV] had “independently checked that the chair incident happened during the tenure of the Baaj Group”.

With regard to the claim in the second video that money was stolen from the donation box during the period when the Baaj group, Sangat TV said that the programme did not name the individual who was alleged to have stolen the money. It also said that as soon as it was notified of a complaint from this person, it edited the second video to remove the relevant claim and it was not included in subsequent repeats. It argued that therefore was “no intentional fabrication” on its part in this regard.

- c) The Baaj Group was not given an appropriate and timely opportunity to respond to the serious allegations (i.e. those set out in head b) above) made in the second video.

Dr Garcha said that he was given “no right of reply” to the allegations in the second video because by the time it was shown he had left the studio. He also said that he emailed and texted Sangat TV on the following day (27 September 2014 – the day prior to the election) to ask for an opportunity to respond to the claims made about the Baaj Group in this video, but he did not receive a reply until Monday 29 September 2014 (the day after the election).

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<sup>3</sup> Ofcom understood this to be a reference to the allegation that the Shayr Group was running the Gurdwara when the chair incident occurred and, in particular, the online video in which Dr Garcha was shown making this claim.

In response, Sangat TV said that, given that the final debate was so close to the election, it would have been “impossible and impractical” to have invited both groups to take part in another programme. It said that one of the programme makers sent the following response to Dr Garcha’s 27 September 2014 request for an opportunity to respond to the claims made about the Baaj Group in the video:

“Please accept my apologies for the delay. I accept it may be too late anyway. I was away this weekend and did not have access to my emails. I did give you my phone number in case you needed to contact me”.

The broadcaster also said that it always invited the Baaj Group to its election discussions but its invitations were repeatedly refused and added that the Baaj Group “always had access to our competitors, the Sikh Channel, to air its views”.

### **Ofcom’s Preliminary View**

Ofcom prepared a Preliminary View that Dr Garcha’s complaint on behalf of the Baaj Party should be upheld in part. Both parties were given the opportunity to make representations on the Preliminary View and their comments (insofar as they were relevant to the complaint as entertained and considered by Ofcom in the Preliminary View) are summarised below.

#### *Dr Garcha’s representations*

Dr Garcha said that while he did not necessarily agree with Ofcom’s Preliminary View not to uphold part of the complaint, he was willing to accept the decision.

In relation to Mr Mann, Dr Garcha questioned his independence as he was listed on the broadcaster’s website as being its complaints officer. He also said that in relation to the allegation of theft from the Gurdwara, the broadcaster had not given any credible reason(s) as to why the Baaj Group were not afforded a timely and appropriate opportunity to respond. Dr Garcha said that the broadcaster should have known that this most serious of allegations could have had repercussions for the Baaj Group - not only in losing the election, but also being tainted by the allegations.

#### *Sangat TV’s representations*

Sangat TV said that the management committee of the Gurdwara held an important position with respect to domestic and foreign Sikh affairs and it was the home to a diverse cross section of the Sikh community who have political, religious and social affiliations of the highest levels in South Asia, all playing a part in the Gurdwara’s politics. Accordingly, the management committee elections were an important community decision and of great pertinence to the global Sikh community. It said that the elections had been historically fraught with difficulties and litigation. The broadcaster said that the purpose of the programme was to provide representatives of the parties campaigning in the elections a platform to address the Sikh community and respond to any concerns raised.

Sangat TV said that both parties were provided with the opportunity to discuss their history, achievements and aspirations for the Gurdwara and that during the debate, several allegations were raised by both parties. All allegations discussed during the course of the debate had been circulating via social media for several weeks previously and were known to the contributors. While the contributors to the programme were not informed about every specific detail of the show, they were fully

aware that all relevant, pertinent issues to the election along with those raised by viewers which were presented to them in a fair and balanced manner. Subsequently, the contributors were given the opportunity to respond and Mr Malhi questioned Dr Garcha about a YouTube video containing allegations against the Baaj Group.

## **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 Preliminary View, we carefully considered all the relevant material provided by both parties. This included a recording and translated transcript, agreed by both parties, of the programme as broadcast, both parties' written submissions, and supporting documentation. Ofcom also took careful account of the representations made by the complainant and the broadcaster in response to being given the opportunity to comment on Ofcom's Preliminary View on this complaint. After careful consideration of Dr Garcha's and Sangat TV's representations, we concluded that the points raised by both parties did not materially affect the outcome of Ofcom's Decision to uphold the complaint in part.

In assessing this case it was not Ofcom's role to make a determination about the truth or otherwise of the claims made in the programme. Our concern in this case was solely whether the programme had complied with Section Seven (Fairness) of the Ofcom Broadcasting Code ("the Code"). In carrying out its assessment, Ofcom took into consideration the nature of the claims made against the Baaj Group. Against this background, and in line with the right to freedom of expression, we considered it legitimate for a broadcaster to make and broadcast a programme of this nature, i.e. one in which opposing groups were able to challenge each other regarding their past record of and/or future ambitions concerning the running of their local Gurdwara. Nevertheless, we considered that, in making and broadcasting such a programme, a broadcaster must ensure that it avoids unjust or unfair treatment of organisations or individuals in the programme pursuant to Section Seven of the Code.

When considering and deciding complaints of unjust or unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of the Code. It is important to note that where there appears to have been unfairness in the making of the programme, this will only result in a finding of unfairness, if Ofcom considers that it has resulted in unjust or unfair treatment to the complainant in the programme as broadcast.

- a) Ofcom first considered the complaint that the Baaj Group's informed consent was not obtained because its representatives, Dr Garcha and Mr Randhawa, were not fully informed of the nature of the programme.

In considering this part of the complaint, we had regard to Practice 7.3 of the Code which sets out that in order for those invited to contribute to a programme to be able to make an informed decision about whether to take part, they should be given sufficient information about: the programme's nature and purpose; their likely contribution; the areas of questioning and wherever possible, the nature of other likely contributions; and, any significant changes to the programme as it develops which might reasonably affect their original consent to participate, and which might cause material unfairness. This Practice indicates that taking these measures is likely to result in the consent that is given as being informed consent.

In Ofcom's view, consent and whether it remains valid is an issue that continues to be relevant from the commencement of a contributor's participation through to when their involvement is concluded. Therefore, in assessing whether a contributor has given informed consent for their participation, Ofcom will not only look at the information that it understands was provided to the contributor prior to the recording of the contribution, but, where possible, Ofcom will also consider the contribution itself.

We observed that from the parties' submissions it appeared that Dr Garcha and Mr Randhawa had understood and agreed to take part in the programme on the basis that it would include a debate between them (acting as representatives of the Baaj Group) and two other individuals (acting as representatives of the opposing Shayr Group). We considered that having agreed to take part in such a programme and negotiated with the programme makers about the precise format of the debate, Dr Garcha and Mr Randhawa would have understood that during the debate each group's representatives would set out the case for viewers who worshiped at the Gurdwara to vote for their group in the election and examine the opposing group's past record and/or ambitions for the future governance of the Gurdwara.

We also observed that, in its response to the complaint, Sangat TV acknowledged that the decision to show the second video after the debate was made by the presenter during the programme. Therefore, the Baaj Group representatives were unaware that this video would be shown as part of the programme when they agreed to contribute to it.

We therefore went on to consider whether or not the inclusion of the second video amounted to a "significant change" to the programme as set out in Practice 7.3. As set out in the "Introduction and programme summary" section above, during the second video Mr Mann said that a recent statement made by the Baaj Group, (and published on the internet) indicated that the Shayr Group was in control of the Gurdwara when the chair incident occurred was false and that the incident actually happened during a period when the Baaj Group was in control. During this video, Mr Mann also claimed that money had been stolen from a donation box in the Gurdwara during a period when the Baaj Group was in control.

However, Ofcom also observed that one of the key issues discussed during the debate preceding the showing of this video was about the placing of legless chairs in a prayer room in the Gurdwara and which group, Baaj or Shayr, was running the Gurdwara when this incident occurred. During this debate, the representatives of both groups made their respective positions on this matter very clear. In particular, on several occasions either Dr Garcha or Mr Randhawa responded to the claims of the Shayr Group representatives by saying that the chair incident occurred in 2010 when the Shayr Group ran the Gurdwara, rather

than 2012 when the Baaj Group ran it. In addition, the first video shown after the debate included a clear statement to this effect made by Dr Garcha. We also observed that in its response, Sangat TV said that the presenter had decided to show the second video in order to counter-balance the first video which included Dr Garcha “accusing [the] Shayr Group of committing the sacrilegious act of installing chairs in [the Gurdwara]”.

Ofcom noted that on various occasions during the debate Dr Garcha protested against the second video being shown in the programme. However, we also observed that during the discussion about the legless chairs representatives of both groups called for either one specific or both videos to be shown in the programme. In particular, at one point, Mr Mahli (representing the Shayr Group) said “*We want the previous video and their video both to be shown to the community. Both videos should be shown*” and Mr Randhawa (representing the Baaj Group) responded by saying “*Your video should be shown too*”.

In addition, on the information available, it appeared, that both of these videos were available online prior to the broadcast of this programme and that their content had generated comment and discussion amongst the Sikh community local to the Gurdwara. From information submitted in relation to an associated complaint about the same programme, Ofcom also understood that both claims made by Mr Mann in relation to the Baaj Group in the second video (i.e. not only that about the chairs, but also that about money allegedly being stolen from the donation box) were widely disseminated amongst the local Sikh community prior to the broadcast of the programme. Therefore, in our opinion, it was likely that, as key members of the Baaj Group, Dr Garcha and Mr Randhawa would have been aware prior to agreeing to take part in the programme that both of these claims about the Baaj Group had been made and were being discussed by the community. Accordingly, while they were not informed specifically that the second video would be shown as part of the programme, we considered that it would have been reasonable for them in the circumstances to have expected that these matters were likely to be raised in the programme.

Taking account of all of these factors, Ofcom concluded that the presenter’s decision to include the second video did not constitute a significant change to the programme that might reasonably have affected Dr Garcha’s and Mr Randhawa’s original consent to participate, and which might have caused material unfairness to the Baaj Group. Rather, given the context in which this video was shown (i.e. both the comments made during the debate and the video which was shown immediately before it) and taking account of the fact that both videos had previously been disseminated to and were likely to have been discussed by the local Sikh community, we considered that the second video was directly relevant to the debate and furthered the original purpose of the programme – namely, the examination of each group’s record and ambitions with regard to the running of the Gurdwara.

Given all the factors above, Ofcom considered that, notwithstanding the inclusion of the second video without the prior knowledge of Dr Garcha and Mr Randhawa, Sangat TV had obtained informed consent from Dr Garcha and Mr Randhawa for their contribution as representatives of the Baaj Group to the programme as broadcast.

Therefore, Ofcom considered that the Baaj Group was not treated unjustly or unfairly in this respect.

b) Ofcom next considered whether material facts about or in relation to the Baaj Group were presented, disregarded or omitted in a manner which gave viewers an unfair impression of it through the inclusion of the following claims in the second video:

- that legless chairs were placed in the Gurdwara when the Baaj Group was in control; and,
- that money was stolen from the donation box when the Baaj Group was in control.

In considering whether material facts about or related to the Baaj Group were presented, disregarded or omitted in a manner which gave viewers an unfair impression of it through the inclusion of the above claims, Ofcom had regard to Practice 7.9 of the Code which states that “Before broadcasting a factual programme [...] broadcasters should take reasonable care to satisfy themselves that: material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation [...]”.

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

We began by considering the seriousness of the allegations and whether they had the potential to materially and adversely affect viewers’ opinion of the Baaj Group in a way that was unfair. We then went on to consider whether, if they did have this potential, the manner in which the allegations were presented in the programme resulted in unfairness.

#### *Seriousness of the allegations*

- Legless chairs were placed in the Gurdwara when the Baaj Group was in control.

We noted that in the second video Mr Mann said that on 30 April 2012 (i.e. when the Baaj Group was in control) he had visited the Gurdwara and seen legless chairs in the prayer room. He also criticised Dr Garcha, in his role as General Secretary of the Baaj Group, for issuing a statement saying “*that the incident took place in 2010 [when the Shary Group was in control]<sup>4</sup>” and urged Dr Garcha to “*accept your mistake*”. In reference to Dr Garcha’s statement, said:*

*“it surprises me as to how people on such high posts can tell such a big lie. It is a very shameful and insulting thing. I think he should not cheat the Sikh community in this manner. He should accept his mistake”.*

In addition, Mr Mann said that he had not made either this, or his other claim about money being stolen from the donation box (see below for our consideration of the complaint about the inclusion of this claim in the programme), “*without proof or documentary proof*” and told viewers:

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<sup>4</sup> Ofcom understood that Mr Mann was referring to the footage of Dr Garcha included at the end of the first video shown after the debate which had been available online prior to the broadcast.

*“Whoever you think is the honest person, who can do better for you and with whom your [donated] money is safe, stand by him”.*

We considered that Mr Mann’s comments amounted to a strong and unequivocal claim that the Baaj Group was in control of the Gurdwara when legless chairs were placed in the prayer room and that the Group, and specifically Dr Garcha in his role as its General Secretary, had lied about this incident and falsely blamed the opposing Shayr Group. We recognised the importance of this matter to the Sikh Community and, in particular, that this was made clear to viewers by the manner in which it was discussed to during the programme. For example, during the first video the placing of legless chairs in the prayer room was referred to as a *“sacrilege”* and in the second video it was referred to as a potential *“conspiracy against Sikh values”*. In addition, the question regarding which group was responsible caused considerable consternation amongst the contributors during the debate. In these particular circumstances, Ofcom considered that Mr Mann’s comments amounted to a serious allegation of either wrongdoing or incompetence on the part of the Baaj Group. Our assessment of whether, in light of the specific context in which it was presented, the inclusion of this claim had the potential to materially and adversely affect viewers’ opinion of the Baaj Group is set out below.

- Money was stolen from the donation box when the Baaj Group was in control.

During the second video Mr Mann also said that in addition to the chair incident *“many other issues have taken place in this temple”*. In particular, he said:

*“...last year [i.e. during a period when the Baaj Group was in control], in the same temple an issue of stealing from the donations box came to surface. I did not want to speak about it but I went there for three weeks and I personally saw that when the donations were counted, perhaps he was a member of this committee – I will not name him – I personally saw him taking money from the donations box. Along with this – had we sought to promote these things (drops the sentence). When this issue was raised, he stopped coming when the donations were counted. Moreover, I think he was a relative of a committee member or office bearer”.*

As noted above, Mr Mann went on to say that he had not made either of his claims about alleged incidents in the Gurdwara while the Baaj Group was in charge *“without proof or documentary proof”* and called on viewers who would be voting in the forthcoming election to stand by *“Whoever you think is the honest person, who can do better for you and with whom your [donated] money is safe”*.

In the complaint, Dr Garcha said that during the video, Mr Mann also said that the alleged thefts from the donation box happened with his (i.e. Dr Garcha’s) *“connivance”*. However, having assessed the programme, we do not consider that Mr Mann either said or implied that this was the case. Rather, in our opinion, viewers would have understood Mr Mann to be claiming that he had witnessed money being stolen from a donation box by a specific individual over a period of at least three weeks, and that *“when this issue was raised”* (i.e. when it was reported to the people managing the Gurdwara) the individual concerned, who was related to *“a committee member”*, no longer took part in the counting of the donation money.

Notwithstanding our view that Mr Mann did not claim that the alleged thefts from the donation box occurred with the specific connivance of Dr Garcha, we considered that that he had indicated that at least part of the responsibility for the alleged thefts lay with the Baaj Group. This was because he linked the individual concerned with “*a committee member*” (i.e. a member of the committee formed by the Baaj Group which was running the Gurdwara at the time) and later asked viewers, and potential voters in the forthcoming election, to consider with whom their donated money was safe. In these circumstances, Ofcom considered that Mr Mann’s comments amounted to a serious allegation of either wrongdoing or incompetence on the part of the Baaj Group. Our assessment of whether, in light of the specific context in which it was presented, the inclusion of this claim had the potential to materially and adversely affect viewers’ opinion of the Baaj Group is set out below.

#### *Presentation of allegations*

From the information provided to Ofcom by both parties (including the broadcaster’s response to the complaint) and the programme itself, we observed that the allegations made by Mr Mann related to matters of interest and discussion within Sikh community local to the Gurdwara in the run-up to the election. Notably, they were the subject of ongoing dispute between the two groups whose representatives contributed to the programme. As such, it was neither possible nor appropriate for Ofcom to make a determination about the accuracy or otherwise of what was said in the programme. We also observed that although the specific allegations about which this complaint has been made were included within a separate video, this video was presented as a part of programme designed to reflect and provoke robust debate about the record and ambitions of the two groups which were competing to win the election for a new committee to run the Gurdwara.

Having made these observations, Ofcom next considered the specific context in which the two allegations we presented.

- Legless chairs were placed in the Gurdwara when the Baaj Group was in control.

While we acknowledged the manner in which Mr Mann expressed his claim that the responsibility for the legless chair incident lay with the Baaj Group and that it had wrongly blamed the Shayr Group in this regard, we took the view that the inclusion in the programme of this specific allegation made in the second video would not have been likely to materially and adversely affect viewers’ opinion of the Baaj Group in a way that was unfair to it. Ofcom considered that it was clear from the earlier debate what the position of the Baaj Group was in relation to the legless chairs (i.e. that the legless chairs were placed in the prayer room when the Shayr Group was in control) and that their position was stated on a number of occasions both during the debate and in the first video shown after it. For this reason, Ofcom considered that the broadcaster had taken reasonable steps, in accordance with Practice 7.9, to satisfy itself that material facts about the Baaj Group in relation to this claim had not been presented, disregarded or omitted in a way that was unfair to it. Therefore, we considered that the way in which this allegation made by Mr Mann was presented in the programme did not result in unfairness to the Baaj Group in the programme as broadcast.

- Money was stolen from the donation box when the Baaj Group was in control.

In contrast to the claim considered above, the Baaj Group's position with regard to the claim by Mr Mann in the second video that money was stolen from a donation box while it was in control of the Gurdwara was not included earlier in the debate part of the programme. Nor was this claim contextualised in any other way. For example, the programme did not make it clear that the allegation that money had been stolen from the donation box was unproven.

For the reasons set out above, Ofcom considered that Mr Mann's claim that money was stolen from the donation box when the Baaj Group was in control was serious and had the potential to materially and adversely affect viewers' opinion of the Baaj Group. It was incumbent, therefore, on the broadcaster to give the Baaj Group an appropriate and timely opportunity to respond to it, or if that opportunity was offered but refused, this should have been made clear in the programme. We consider this in detail below under head c), where our reasons for reaching the view that the broadcaster failed to take these steps is set out. However, in relation to this element of head b) of the complaint, we considered that the broadcaster failed to take reasonable steps, in accordance with Practice 7.9, to satisfy itself that material facts about the Baaj Group in relation to this claim had not been presented, disregarded or omitted in a way that was unfair to it. Therefore, Ofcom considered that the way in which this allegation was presented by Mr Mann in the programme resulted in unfairness to the Baaj Group in the programme as broadcast.

- c) Ofcom then considered the complaint that the Baaj Group was not given an appropriate or timely opportunity to respond to the claims made about or in relation to in the second video.

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

- Legless chairs were placed in the Gurdwara when the Baaj Group was in control.

Ofcom noted that the Baaj Group was not given an opportunity to respond to the allegation made by Mr Mann on this matter in the second of the two videos shown after the debate. However, for the reasons already given in head b) above, Ofcom considered that although this allegation amounted to an allegation of wrongdoing or incompetence on the part of the Baaj Group, given the context in which it was shown, its inclusion in the programme did not have the potential to materially and adversely affect viewers' opinion of the Baaj Group in a way that resulted in unfairness to it. In light of this, Ofcom concluded that it was not incumbent upon the programme makers or the broadcaster to have offered the Baaj Group's representatives an appropriate and timely opportunity to respond to this specific claim in order to avoid unfairness to the complainant. Therefore, we considered that there was no unfairness to the Baaj Group in the programme as broadcast in this respect.

- Money was stolen from the donation box when the Baaj Group was in control.

For the reasons already given in head b) above, Ofcom considered that Mr Mann's comments amounted to an allegation of wrongdoing or incompetence on the part of the Baaj Group and that, taking account of the context in which it was presented, the inclusion of this allegation had the potential to materially and adversely affect viewers' opinion of the Baaj Group in a way that was unfair to it. Normally, where such an allegation is made about an individual or organisation in a programme, the broadcaster should ensure that the individual or organisation concerned is given an opportunity to respond and, where appropriate, for that response to be represented in the programme in a fair manner.

We noted that the decision to include the second video was made by the presenter during the course of the programme and that Dr Garcha said that he had left the studio before at the end of the debate (i.e. before the video in question was shown). The decision to include the second video at the end of the programme was an editorial matter for the programme makers. However, in our view, it is reasonable to expect that before making such a decision, a broadcaster would be familiar with the content of any material it planned to broadcast, even if the decision to include the material was made at the last minute or during the course of the relevant programme. In addition, we noted that it is the responsibility of the broadcaster (in this case, a responsibility which Sangat TV has explained was delegated to the presenter of the programme) to ensure that the Code is adhered to by taking measures to avoid unfairness. With regard to Practice 7.11, no action to ensure this (i.e. giving one of the Baaj Group's representatives an opportunity to respond to the claim made in the second video that money was stolen from the donation box when the Baaj Group was in control immediately after the video was shown) was taken by the broadcaster.

We noted that in its response to the complaint, Sangat TV said that, given the final debate was so close to the election, it would have been "impossible and impractical" to have invited both groups to take part in another programme. Nevertheless, there remained an obligation on the broadcaster to ensure that it avoided unjust or unfair treatment to individuals and/or organisations in the programme, and its failure in this particular instance to give the Baaj Group an opportunity to respond to the allegation made by Mr Mann in the second video resulted in unfairness to the complainant.

Taking all of the factors set out above into account, Ofcom considered that the Baaj Group was treated unfairly in this respect in the programme as broadcast.

**Ofcom therefore has upheld in part Dr Garcha's complaint of unfair treatment in the programme as broadcast on behalf of the Baaj Group.**

## Not Upheld

### Complaint by Ms Shadi Danin

*Can't Pay? We'll Take It Away, Channel 5, 12 November 2014*

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#### Summary

Ofcom has not upheld Ms Shadi Danin's complaint of unwarranted infringement of privacy in connection with the obtaining of material included in the programme and in the programme as broadcast.

The programme showed Ms Danin negotiating with High Court Enforcement Officers ("HCEOs") for the repayment of a business debt. Ms Danin was shown talking to the HCEOs as she negotiated the repayment of a debt. The programme showed her while she was in the publicly accessible areas of her business and as she escorted the officers through the premises and into her office. Ms Danin and her business were named in the programme, her face was clearly visible and her voice was audible.

Ofcom found that Ms Danin had a legitimate expectation of privacy with regard to both the filming of her and her business and the subsequent inclusion of parts of this footage in the programme as broadcast. However, Ofcom considered that, on balance, the broadcaster's right to freedom of expression and the public interest in the filming and broadcasting of the footage of Ms Danin and her business in the circumstances of this case outweighed her legitimate expectation of privacy. Therefore, Ms Danin's privacy was not unwarrantably infringed in connection with the obtaining of the footage of her and her business or the subsequent inclusion of part of this material in the programme as broadcast.

#### Introduction and programme summary

On 12 November 2014, Channel 5 broadcast an edition of *Can't Pay? We'll Take It Away*, a series which follows HCEOs as they resolve debt disputes through negotiated settlements and asset seizures.

The programme began with two HCEOs, Mr Brian O'Shaughnessy and Mr Graham Aldred, arriving at a health spa in Brighton to recover debts of £20,000. The officers were shown walking towards the entrance of the health spa building, with the name "*Shadi Danin Group*" visible in large lettering over the doorway. The HCEOs were then shown speaking to Ms Danin, the owner of the business, about her failure to repay money owed to Spa Vision Limited following the loss of a court case which she had brought against the company. Ms Danin assured the officers that she was making the necessary payments. After Mr O'Shaughnessy requested that she provide them with copies of receipts of these payments, Ms Danin led the officers upstairs to her office. The programme's narrator said that as Ms Danin was taking further legal action in relation to matters linked to the debt, she had not been aware that she was required to pay back legal costs.

The programme then showed several exchanges between Ms Danin and the HCEOs regarding her obligation to pay the debt immediately. Ms Danin said: "*they [the company to which she owed money] were waiting because I'm suing my solicitor for misjudgement of the case and they agreed to wait until the outcome of the case*". Mr Aldred and Mr O'Shaughnessy were then shown explaining to Ms Danin that she

must pay the required amount immediately or face asset seizure. The programme then showed Ms Danin as she told the officers that the property in which her business was located was let out to various businesses and that she had no assets there.

Following this, the HCEOs were shown checking one of Ms Danin's stockrooms. The narrator said that Ms Danin could not provide any receipts for items she claimed belonged to her clients, and that, instead, she showed the officers the only items she said were hers. Mr Aldred was later shown inspecting Ms Danin's stock to evaluate whether it should be seized.

The programme showed Mr Aldred entering Ms Danin's office. Mr Aldred was then shown offering a three-stage payment plan to Ms Danin to enable her to clear her debt. Ms Danin was shown as Mr Aldred asked her to pay £6,750 immediately or face the removal of her assets. The programme showed Mr Aldred explaining to camera his approach in cases like the one involving Ms Danin, which was followed by footage of the HCEOs entering a stockroom. Ms Danin was shown inside her office agreeing to Mr Aldred's payment plan.

Ms Danin was named in the programme, her voice was heard and her face was shown unobscured.

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

- a) Ms Danin complained that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programme as broadcast because:
- The programme makers filmed her and her business without her consent. Ms Danin said that although she had asked the camera crew to leave the building they refused.
  - The HCEOs entered Ms Danin's business premises and filmed her and the inside of her business surreptitiously.
- b) Ms Danin also complained that her privacy was unwarrantably infringed in the programme as broadcast because:
- Footage of her and her business was broadcast without her consent.
  - Footage of her and the inside of her business, filmed surreptitiously by the HCEOs, was included in the programme without her consent.

By way of background, Ms Danin said that she telephoned the programme's producer to ask her not to broadcast the programme as it would affect an ongoing court case that she was conducting against her previous solicitor. She also said that the programme had been detrimental to her business.

In response to both heads of complaint, Channel 5 said that the sequence in the programme which featured Ms Danin concerned the activities of HCEOs executing a high court writ to satisfy a debt. The execution of the writ in this case was a public matter that involved Ms Danin. It also argued that Ms Danin's interactions with the HCEOs were not a part of her private life.

Channel 5 said that Ms Danin was incorrect to claim that the camera crew refused to leave her building. It said that when the crew arrived with the HCEOs at the location where the writ was to be enforced, they were asked to leave by Ms

Danin. The broadcaster said that the crew then immediately withdrew and made their way to the public highway. It said that the HCEOs, who were inside the premises, explained the position with regard to the repayment of the debt to Ms Danin and negotiated with her regarding how best to deal with the enforcement of the writ. Channel 5 said that once the situation had settled down, one of the officers came outside to update the crew and returned with the crew to the premises. Channel 5 said that the receptionist opened the door to let the officer and crew back into the building, and that no objection was made to them entering the building. It said that at no subsequent point did Ms Danin or anyone else request that the crew leave the premises.

Channel 5 said that the crew filmed the HCEOs in the course of their work at the location as they tried to identify goods to seize and sell to cover the debt should Ms Danin not be able to pay it or make satisfactory repayment arrangements. The broadcaster said that Ms Danin was not filmed as part of this process, nor did the crew attempt to film Ms Danin in the office where she discussed the writ with the HCEOs.

In relation to Ms Danin's complaints that the HCEOs filmed her and the inside of her business surreptitiously, Channel 5 said that HCEOs wear body cameras which record their interactions with members of the public while they are carrying out their official duties. It said that this is for the safety of the officers as well as to provide a record of their activities in case of complaint or enquiry.

Channel 5 accepted that Ms Danin did not consent to being filmed or to her business premises being filmed. However, the broadcaster said that given that the HCEOs were engaged in official court business it was not necessary to obtain Ms Danin's consent in relation to the filming.

The broadcaster said that there was no breach of any of Ms Danin's privacy rights involved in the HCEOs recording their activities via body cameras. It said that it was not true that Ms Danin was unaware of the body cameras worn by the HCEOs, as the unedited footage revealed that at one point one of the officers restarted his camera in front of Ms Danin. Channel 5 said that at no time were the cameras hidden or concealed.

In relation to whether Ms Danin had a legitimate expectation of privacy (in regard to both the filming and subsequent broadcast of the footage), Channel 5 said that Ms Danin was not a bystander or a witness to the actions of the HCEOs, but was the owner of a business which was named as the respondent on a high court writ. It said that Ms Danin was the public face of the corporate debtor. Channel 5 said that Ms Danin's own name was used as the corporate name of the debtor and that it was a matter of public record that the debt had been incurred and had not been paid. The broadcaster said that while Ms Danin had indicated that she did not want to appear in the programme, no undertaking was given to her that she would not appear in the programme.

Channel 5 said that whether or not the broadcast had adversely affected Ms Danin's business was likely to have less to do with the broadcast and more to do with Ms Danin's company's litigation and failure to pay costs as ordered by the court.

In relation to Ms Danin's discussions with the programme's producer, Channel 5 provided Ofcom with information regarding communications between Ms Danin and the production company. It said that Ms Danin initially telephoned the office

of the production company on 24 September 2014, after the filming had been completed, to object to the filming and any broadcast of the filmed footage. The broadcaster said that Ms Danin spoke to the production coordinator and said that she was not happy about being filmed due to a pending court case. Channel 5 said that a senior member of the production team later telephoned Ms Danin to inform her that her concerns regarding her ongoing legal proceedings would be discussed with the production company, the company's lawyer and the Channel 5 Content Legal team.

Channel 5 said that, apart from her claim that to include the story in the broadcast would be prejudicial to on-going proceedings, Ms Danin did not discuss any other issue concerning the filming or broadcast of the relevant footage with the programme makers. The broadcaster said that, in contrast to claims which Ms Danin made in her complaint, the programme makers did not suggest to Ms Danin that they would call her again once they had decided whether or not footage of Ms Danin would feature in the broadcast. It also said Ms Danin did not ask that she be contacted again and that Ms Danin did not call the production company following the broadcast.

Channel 5 said that the activities of HCEOs; the manner in which the law is utilised, or ignored; the difficulties faced by HCEOs in carrying out their duties and the impact of the activities of HCEOs on the lives of those affected by their actions when they carry out their duties were all matters of public interest. For these reasons, the broadcaster took the view that it was generally appropriate and reasonable to include footage of persons interacting with the HCEOs in the programme.

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

Ofcom prepared a Preliminary View on this case that Ms Danin's complaint should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View. Channel 5 made two points in its representations regarding legitimate expectation of privacy. One was concerned with whether Ms Danin's financial conversations and negotiations with the HCEOs attracted a legitimate expectation of privacy, while the other related to the broadcaster's assertion that the existence of the High Court writ placed Ms Danin in a different position to an individual not named in such a document. Channel 5 said that this meant that certain aspects of Ms Danin's life (for instance, the existence of the debt and her failure to pay it in a timely fashion) were no longer private.

Ms Danin did not make representations on the Preliminary View.

### **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 transcript of the programme as broadcast and both parties' written submissions. We also examined the unedited and untransmitted footage provided by the broadcaster. Ofcom also took careful account of the representations made by the broadcaster in response to being given the opportunity to comment on Ofcom's Preliminary View on this complaint. After careful consideration of Channel 5's representations, we concluded that the further points raised relating to Ms Danin did not materially affect the outcome of Ofcom's Decision in this privacy complaint.

The 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 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 Ms Danin's complaint that her privacy was unwarrantably infringed in connection with the obtaining of material included in the broadcast because she and her business were filmed without consent and that part of that filming took place surreptitiously.

In considering this part of the complaint, we had regard to Practices 8.5, 8.7 and 8.9 of the Code. Practice 8.5 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. Practice 8.7 states that if an individual 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. Practice 8.9 states that the means of obtaining material must be proportionate in all the circumstances and, in particular, to the subject matter of the programme.

However, before assessing whether Ms Danin's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme complained of, Ofcom first considered whether Ms Danin and her business had been filmed surreptitiously by the cameras worn by the HCEOs for the purposes of Practice 8.13, which states that "surreptitious filming or recording should only be used where it is warranted. Normally, any infringement will only be warranted if: there is a *prima facie* evidence of a story in the public interest; there are reasonable grounds to suspect that further material evidence could be obtained; and, it is necessary to the credibility and authenticity of the programme".

The Code defines the meaning of "surreptitious filming and recording" as including "the use of long lenses or recording devices, as well as leaving an unattended camera or recording device on private property without the full and informed consent of the occupiers or their agent. It may also include recording telephone conversations without the knowledge of the other party, or deliberately continuing with a recording whether the other party thinks that it has come to an end".

Ofcom understood, from Channel 5's statement, that HCEOs routinely wore body cameras in order to record their interaction with members of the public while they

are carrying out their official duties. This is for personal safety reasons and in case of a complaint or inquiry. Ofcom acknowledged that Ms Danin complained that she had been unaware that the HCEOs had been filming her in her office, and that while Ms Danin had been present when one of the HCEOs restarted his camera, she was preoccupied speaking to her accountant on her mobile telephone and so may not have been aware of what he was doing. We also noted from the unedited footage that the HCEOs did not expressly inform Ms Danin at any point that she was being filmed by their body cameras. We also observed that the body cameras worn by the HCEOs, while small in size, were not concealed in any way, and were mounted prominently on the chest of the HCEO's anti-stab vests. Ofcom therefore took the view that the cameras were not being worn in a manner designed to deceive Ms Danin as to their presence or to capture the interaction between her and the HCEOs as they carried out their duties in a surreptitious manner.

Given the above, we therefore did not consider the footage filmed of Ms Danin and her business by the body cameras to have been obtained surreptitiously for the purposes of Practice 8.13 and, as such, we did not find it necessary to go on to consider whether such filming was warranted in the circumstances.

Having taken the view that the filming by the HCEOs had not been conducted surreptitiously, Ofcom moved on to consider whether or not Ms Danin had a legitimate expectation of privacy with regard to the circumstances in which she and her premises were filmed by both the camera crew and the HCEOs. In doing so, we had regard to the Code which states that "legitimate expectations of privacy will vary according to the place and nature of the information, activity and condition in question" and to a number of factors which are set out below.

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

Ofcom noted from the unedited footage provided by Channel 5 that Ms Danin was filmed interacting with the HCEOs and camera crew in the public reception area of the spa. In her complaint, Ms Danin said that although she asked the camera crew to leave the building they refused. However, we noted that after Ms Danin became aware that she was being filmed, she asked the camera crew to leave the building, and that, following this exchange, the camera crew first filmed the HCEOs and Ms Danin leaving the reception area and then withdrew to the area outside the building. We also noted that, the limited conversation between the HCEOs and Ms Danin that was filmed before the camera crew withdrew, related solely to the outstanding writ against Ms Danin and her £20,000 debt in legal costs. Later, Mr O'Shaughnessy was filmed emerging from the building to update the camera crew on the negotiated settlement with Ms Danin. Ms Danin's receptionist then opened the door to the spa for Mr O'Shaughnessy and the camera crew. No further objections were raised by Ms Danin to the presence of the camera crew in the building. The camera crew proceeded to film the reception area, corridors and stockroom of Ms Danin's spa. The camera crew remained in the corridor outside Ms Danin's office and did not film Ms Danin while she and Mr Aldred, who were in the office, spoke about a repayment plan.

Ms Danin was also filmed, by the HCEO's body cameras, during the period after she had asked the camera crew to leave the premises, and before her receptionist had allowed them back in to the building. During this filming, which

took place in Ms Danin's office and stock room, both areas to which the public would not have had access, Ms Danin discussed her financial situation and, most notably, her ability to repay the debt and what assets she had on the premises.

Ofcom considered that, ordinarily, financial conversations and negotiations in which the individuals concerned felt that they could speak openly (i.e. where they understood that the matter they were talking about would be treated in confidence) could reasonably be regarded as sensitive and attract an expectation of privacy. In the circumstances of this particular case, Ms Danin was approached by the HCEOs and the camera crew unannounced and immediately questioned about an outstanding writ against her and £20,000 of unpaid legal costs. Ms Danin was therefore obliged to respond to the HCEOs and discuss financial matters with them. In addition, as set out above, Ms Danin was filmed having further discussions about her financial situation, her ability to repay the debt and her assets in areas of the business to which the public would not have had access. In our view, given the subject of these discussions and, for at least part of the time, the location in which they took place, the material filmed was sensitive and private in nature. Given the above, and notwithstanding the high court writ, Ofcom considered that Ms Danin had a legitimate expectation of privacy with regard to the obtaining of the material.

Having concluded that Ms Danin had a legitimate expectation of privacy with regard to the filming of this footage of her and her business, and given that Ms Danin did not consent to the filming, we considered that her expectation of privacy was infringed in the circumstances. Therefore, Ofcom went on to consider whether the filming of this footage was warranted.

The Code states that "warranted" has a particular meaning, 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 individual's right to privacy. Examples of public interest could include revealing or detecting crime, protecting public health and safety, exposing misleading claims by individuals or organisations or disclosing incompetence that affects the public.

Ofcom considered that there was a genuine public interest in the making of observational programmes of this nature and in filming of the HCEOs as they executed their official duties with the aim of conveying to viewers an understanding of the work they do in recovering outstanding debts, the often lengthy negotiating between the HCEOs and those they come into contact with, and the impact the repossession of goods to satisfy an outstanding debt can have in individuals. In our view, the filming of Ms Danin by the programme makers was important as it enabled the broadcaster to use an authentic example to illustrate the work of the HCEOs and the difficulties experienced by individuals in the position of Ms Danin. On this basis, and notwithstanding that Ms Danin did not give her consent to the filming, Ofcom concluded that the infringement into Ms Danin's legitimate expectation of privacy was warranted.

Ofcom also considered whether, in accordance with Practice 8.9, the material had been obtained proportionately in all the circumstances. We noted that the footage was obtained while the programme makers accompanied the HCEOs in carrying out their duties. The filming both by the camera crew and the HCEOs appeared to be unobtrusive. We also noted that when told by Ms Danin to stop filming, the camera operator complied with her wishes and went outside. Given

these circumstances, and taking into account the public interest in the obtaining of this material, Ofcom considered that the means of the obtaining of the material had been proportionate.

Having taken all the above factors into account, Ofcom considered that, on balance, the broadcaster's right to freedom of expression and the public interest in obtaining material of Ms Danin in the circumstances of this case, outweighed her legitimate expectation of privacy. Therefore, we found that there was no unwarranted infringement of privacy in connection with the obtaining of the footage of Ms Danin and her business for inclusion in the programme.

- b) Ofcom next considered Ms Danin's complaint that her privacy was unwarrantably infringed in the programme as broadcast because footage of her and her business, part of which she claims was filmed surreptitiously, was broadcast without her consent.

In relation to this part of the complaint, Ofcom had regard to Practice 8.6 of the Code. Practice 8.6 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 also had regard to Practice 8.14 which states that material gained by surreptitious filming should only be broadcast when it is warranted.

Ms Danin complained that part of the footage of her and her business included in the programme (i.e. that recorded by the HCEOs using their body cameras) was filmed surreptitiously. However, as set out in the Decision at head a) above, we concluded that this material was not filmed surreptitiously for the purposes of Practice 8.13 of the Code and, as such, we did not find it necessary to go on to consider the specific issue any further.

Therefore, Ofcom moved on to consider whether or not Ms Danin had a legitimate expectation of privacy with regard to the inclusion of all of the footage of her and her business in the programme as broadcast (i.e. the material filmed by both the camera crew and the HCEOs).

As noted above, the test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective and fact sensitive and must always be judged in light of the specific circumstances.

In this instance, we took into account the circumstances in which Ms Danin was filmed by the camera crew and the HCEOs as well as the material that was included in the programme as broadcast (as set out in detail in the Decision at head a) and the "Introduction and programme summary" section above).

For the reasons set out under head a) of the Decision, Ofcom considered that the material in question was sensitive and private in nature, and that, notwithstanding the high court writ, Ms Danin had a legitimate expectation of privacy with regard to the inclusion of the material in the programme as broadcast.

Having concluded that Ms Danin had a legitimate expectation of privacy in this regard, and given that, on the information available, it did not appear that Ms Danin had consented to the broadcast of this material, we went on to consider whether the broadcast of this footage was warranted. In doing so we had regard to the meaning of "warranted" as set out in the Code and above in head a).

We carefully balanced Ms Danin's right to privacy with regard to the inclusion of the relevant footage in the programme with the broadcaster's right to freedom of expression and the audience's right to receive the information broadcast without unnecessary interference. In our view there was a genuine public interest in the programme broadcasting Ms Danin's interaction with the HCEOs because it provided a genuine illustration of the difficult situations in which individuals can find themselves in relation to outstanding debts and the ways in which the HCEOs deal with them. On this basis, and notwithstanding that Ms Danin did not give her consent to the filming, Ofcom concluded that the infringement into Ms Danin's legitimate expectation of privacy was warranted.

Having taken all the above factors into account, Ofcom considered that, on balance, the broadcaster's right to freedom of expression and the public interest in broadcasting the relevant material in the circumstances of this case, outweighed her legitimate expectation of privacy. Therefore, we found that there was no unwarranted infringement of Ms Danin's privacy in the inclusion of the footage in the programme as broadcast.

**Therefore, Ofcom has not upheld Ms Danin's complaint that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programme and in the programme as broadcast.**

## Not Upheld

### Complaint made by Mr Harish Bhakta on behalf of his son (a minor)

*Exposure: Charities Behaving Badly, ITV, 18 February 2015*

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#### Summary

Ofcom has not upheld this complaint of unwarranted infringement of privacy in the programme as broadcast made by Mr Harish Bhakta on behalf of his son.

The programme considered whether three registered charities were promoting race hatred, religious bigotry and extremism and questioned whether the Charity Commission was failing to regulate charities effectively in this regard. The second charity featured in the programme was Hindu Swayamsevak Sangh (UK), or HSS. This section of the programme included a promotional video for HSS in which Mr Bhakta's son was shown.

Ofcom found that, in the particular circumstances of this case, Mr Bhakta's son did not have a legitimate expectation of privacy with regard to the inclusion of the footage of him in the programme as broadcast. Therefore, the privacy of Mr Bhakta's son was not unwarrantably infringed in the programme as broadcast.

#### Introduction and programme summary

On 18 February 2015, ITV broadcast an edition of its current affairs programme *Exposure* entitled: *Charities Behaving Badly*. The programme examined concerns that some registered charities were promoting race hatred, religious bigotry and extremism and questioned whether the Charity Commission was failing to regulate charities effectively in this regard.

The programme sent undercover reporters to film three different charities and showed footage recorded by each reporter to illustrate its concerns. At the end of each of the three main sections of the programme, two experts (a barrister practising in charity law and an academic with an expertise in extremism) gave their opinions on the footage filmed at each charity, after which a response from the charity concerned was presented.

The second charity featured in the programme was Hindu Swayamsevak Sangh (UK), or HSS. At the beginning of this section of the programme the narrator said that *"HSS enjoys charitable status because it: advances the Hindu religion and educates the public in the Hindu ideals and way of life. As this promotional video demonstrates. But we've heard allegations that, in private, it's actually also teaching young Hindus to denigrate other religions"*.

An HSS promotional video was shown alongside this commentary. One of the images shown during the video was of a man standing in front of a room full of boys, to whom he appeared to be speaking. The boys were sitting in rows cross-legged on the floor facing the man while looking at papers in front of them. The image was shown briefly (for approximately one second) and was slightly blurry. The faces of the boys in the image were not obscured. One of the boys, sitting on the left-hand side of the front row in this image (i.e. closest to the camera that filmed the footage), was the complainant's son.

After the promotional video, the narrator introduced Ravi, an undercover reporter who had recorded surreptitiously filmed footage when he attended the HSS annual leadership camp in 2014. Sections of this footage (which did not feature Mr Bhakta's son) were then broadcast. During the first part of this footage, the narrator said "*Here the boys sing, play, learn and are taught martial arts*". However, the programme went on to show and discuss a number of incidents witnessed by Ravi which it said indicated that the boys who attended this camp were also being taught to feel distrust towards, and animosity towards, other religions.

No further footage of Mr Bhakta's son was shown in the programme.

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

Mr Bhakta complained that his son's privacy was unwarrantably infringed in the programme as broadcast because footage of his son was included in the programme without consent.

Mr Bhakta said that the footage of his son shown in the programme was recorded for a promotional video for Hindu Swayamsevak Sangh (UK), a Hindu religious charity, when he attended a leadership training event run by the charity in either 2012 or 2013. Mr Bhakta said that he understood that the video was to be used to promote knowledge and understanding of the charity's activities. He added that his son was a minor both when the material was filmed and when it was broadcast (he was 15 years old at the time of the broadcast) and said that his son was "easily identifiable" from the video.

By way of background to the complaint, Mr Bhakta said that he considered that his son's privacy was infringed because the programme linked footage from two separate events (i.e. the training camp during which footage of his son was recorded, that took place in either 2012 or 2013, and the training camp in 2014 filmed by the undercover reporter). Mr Bhakta said that this gave the impression that his son was involved in radicalisation and had been taught sectarian ideology.

In response to the complaint, ITV said that it was sorry that Mr Bhakta and his son were upset that the programme included a brief image of Mr Bhakta's son from the promotional video without consent. However, notwithstanding his age, ITV did not consider that Mr Bhakta's son had a legitimate expectation of privacy in the particular circumstances

ITV argued that, although the overall context of the programme was different to the context in which the promotional video originally appeared (i.e. an HSS YouTube posting promoting the 2014 Sangh Shiksha Varg ("SSV") or training camp), the promotional video was used in the programme for the same purpose as that for which it was originally used by HSS – to illustrate and explain the work of the charity, and in particular the activities at the annual SSV camp. ITV said that this was the case because the programme explicitly stated that HSS "*enjoys charitable status because it advances the Hindu religion and educates the public in the Hindu way of life, as this promotional video demonstrates*". The broadcaster added that, given that Mr Bhakta said that he had understood the video would be used "to promote knowledge and understanding of the charity's activities", the context in which the video was used in the programme also matched the context for which Mr Bhakta understood it would be used when he consented to his son's inclusion in it.

ITV also said that the footage of Mr Bhakta's son appeared to have been filmed openly and, from Mr Bhakta's complaint, it understood that he had not objected to the footage of his son being recorded or subsequently being included in the video.

In addition, the broadcaster said that the video was available in the public domain prior to the broadcast in that it was posted on YouTube by HSS on 12 May 2014<sup>1</sup> to promote the forthcoming SSV camp and explain what the camp offered attendees. ITV said that, therefore, the video was posted relatively recently, with regard to the date on which the programme was broadcast, and had now been available online for over a year. It also said that Mr Bhakta's son's circumstances did not appear to have materially changed during this period in a way that might have created an infringement of privacy and nor did it appear that he had suffered or reasonably expected to suffer any significant distress or negative reaction as a result of the programme's inclusion of a brief image of him from the video.

ITV acknowledged that the identity of Mr Bhakta's son was not obscured. However, it disputed Mr Bhakta's claim that his son was "easily identifiable" in the programme. It said that the footage of him was very brief (approximately one second); he was shown as one of a large number of boys attending a class; the image of him was slightly blurred; and, he was neither named nor referred to specifically in the programme. ITV also said that the footage of Mr Bhakta's son neither showed him engaged in any activities that were of a private or sensitive nature nor disclosed any obviously private or sensitive information about him. It merely disclosed that he had attended a SSV camp.

ITV also said that, given the age of those featured in the promotional video and the fact that they may not have been exposed to extreme views in the lessons they attended, the programme makers' had ensured that commentary made it clear that the video demonstrated HSS's charitable activities (and not any uncharitable activity). The video was also carefully edited to avoid sequences featuring groups of identifiable attendees and volunteers being directly juxtaposed with commentary referring to extremism and the promotion of bigotry and hatred. ITV added that there was also a clear separation in the programme between the sequences of the promotional video featuring Mr Bhakta's son and the footage of the Hindu history classes filmed surreptitiously by the undercover reporter that disclosed wrongdoing and extreme views. ITV said that the re-use of the promotional video in the programme would not have led viewers to conclude that those who featured in it (i.e. who had attended previous SSV camps) were extremists, shared the extreme views expressed in the undercover footage, were involved in radicalisation or had been taught sectarian ideology. Nor did the programme place blame on these boys and young men with regard to these matters. ITV said that the programme made clear that its evidence of the promotion of bigotry and hatred rested largely on the Hindu history lessons attended by the undercover reporter, and not on all lessons, other lessons or lessons at previous SSV camps.

ITV said that, given all of these circumstances, Mr Bhakta's son did not have a legitimate expectation of privacy with regard to the use of the footage of him in the programme.

However, it went on to say that, even if Ofcom concluded that Mr Bhakta's son had a legitimate expectation of privacy in this respect, his expectation would have been severely limited by the following factors: the fact the video was in the public domain; the brevity of the footage of Mr Bhakta's son; the very minor and incidental nature of

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<sup>1</sup> <https://www.youtube.com/watch?v=kO6qn-SJFmw>.

his inclusion; the information disclosed about him; the fact that the context was both very similar to that of its original use and was also uncontroversial. ITV argued that, in light of the above, it would not have needed to have obtained the consent of either Mr Bhakta or his son for the re-use of the footage in the programme.

ITV also argued that, in any case, the inclusion of the footage was warranted without the consent of Mr Bhakta or his son and without obscuring the identity of the latter. ITV said that this was because: the clips from the promotional video were used to illustrate HSS's charitable work (the broadcaster said that for reasons of fairness and impartiality it was important to include examples of HSS's good works as well as the concerns about it that the programme had discovered); the footage was available in the public domain; the programme used the footage in a very similar context to its original use; the footage of Mr Bhakta's son was brief, he featured incidentally and was not easily identifiable from it; the footage appeared to be the result of open recording and did not disclose any private or sensitive information about Mr Bhakta's son; and, the programme did not suggest that any of those featured in the footage were guilty of any wrongdoing, shared the extreme views later expressed in the programme or had been taught sectarian ideology.

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

Ofcom prepared a Preliminary View on this case that the complaint should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View, but neither chose to do so.

### **Decision**

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

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

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast, both parties' written submissions and a link to the promotional video on YouTube from which the footage of Mr Bhakta's son was taken.

In Ofcom's view, the 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 the Code which states that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.

Ofcom considered Mr Bhakta's complaint that his son's privacy was unwarrantably infringed in the programme as broadcast because footage of him was included in the programme without consent.

In assessing this complaint, 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 or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted. We also had regard to Practice 8.10 which states that broadcasters should ensure that the re-use of material (i.e. use of material originally filmed or recorded for one purpose or used in a later or different programme) does not create an unwarranted infringement of privacy. This applies both to material obtained from others and the broadcaster's own material.

In addition, we took account of Practice 8.20, which states that broadcasters should pay particular attention to the privacy of people under sixteen, and Practice 8.21, which states that where a programme features an individual under sixteen or a vulnerable person in a way that infringes privacy, consent must be obtained from:

- a parent, guardian or other person of eighteen or over in loco parentis; and
- wherever possible, the individual concerned;

unless the subject matter is trivial or uncontroversial and the participation minor, or it is warranted to proceed without consent.

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

We noted that the footage of Mr Bhakta's son shown in the programme was originally recorded for, and subsequently included in, a video to promote HSS' then forthcoming 2014 training camp. The promotional video illustrated the work undertaken by HSS and the activities in which Hindu boys and young men who had attended previous HSS training camps had taken part.

Mr Bhakta's son was shown as one of many boys attending class tuition and this image was included as one of many shown in quick succession during the video. Mr Bhakta recognised his son from the inclusion of this footage in the programme. In our view, however, it is unlikely that the complainant's son would have been easily identifiable to anyone to whom both he and his involvement in this particular video (and therefore his attendance at an HSS training camp) was not already well known. This is because the relevant footage was very brief and the image itself was slightly out of focus.

We also noted ITV's representations that, notwithstanding the wider context in which the footage from this promotional video was shown (i.e. the programme's allegation that, in addition to taking part in the activities for which HSS was given its charitable status, boys and young men who attended the 2014 camp were also being taught to feel distrust and animosity towards other religions), the commentary which accompanied it meant that the footage was used in the programme for the same purpose as that for which it was originally used and that for which Mr Bhakta had understood it would be used when he consented to his son's inclusion in the video.

As set out in the "Introduction and programme summary" section above, the promotional video was shown alongside the following commentary:

*“HSS enjoys charitable status because it: advances the Hindu religion and educates the public in the Hindu ideals and way of life. As this promotional video demonstrates. But we’ve heard allegations that in private it’s actually also teaching young Hindus to denigrate other religions”.*

The narrator then said:

*“To see if we can find out more, our second reporter Ravi is going undercover to attend the HSS annual leadership camp...”*

Clearly, this commentary indicated that the promotional video in which Mr Bhakta’s son was shown demonstrated HSS undertaking the activities for which it was given charitable status. However, immediately afterwards, the programme said that it had been told that the charity was *“also teaching young Hindus to denigrate other religions”* and then explained that its undercover reporter would attend the next HSS training camp *“to see if we can find out more”*.

As ITV said in its response, there was a clear separation in the programme between the footage from the promotional video in which Mr Bhakta’s son was shown and the sections of secretly recorded footage of the 2014 camp. We also noted that the narrator said that the first part of the footage from the 2014 camp showed the boys as they *“sing, play, learn and are taught martial arts”* (i.e. it did not show the boys attending the camp being taught to *“denigrate other religions”*). However, the remaining footage from the 2014 camp showed boys and young men at the camp being:

- encouraged to buy a book written by a M S Golwalker (a former leader of the Hindu nationalist organisation Rashtriya Swayamsevak Singh or RSS) which the programme said had a chapter entitled: *“Internal threats: with the subcategories: The Muslims, The Christians and The Communists”*;
- attending Hindu history classes in which they were taught to disparage and mistrust or hate people of other religious faiths, notably Muslims; and,
- taking part in daily military-style drills.

In addition, two individuals who attended the 2014 camp were shown expressing their animosity towards Muslims or people of Pakistani heritage, respectively; and, another young man was shown telling the undercover reporter that HSS was known *“as a right-wing movement, complete [sic] right-wing, Nationalist [which was] equated as like, as like Hitler Youth”*.

In our view, the promotional video (including the footage of Mr Bhakta’s son) was, as ITV stated, used in the programme to illustrate the legitimate activities of the charity. Nonetheless, the primary focus of this section of the programme was the alleged wrongdoing on the part of the charity and, as set out above, the programme said: that the undercover reporter had been sent to the 2014 camp after it had been told that HSS was *“also teaching young Hindus to denigrate other religions”*. This statement was then followed by footage which appeared to demonstrate such teachings. In our view, it is possible that a reasonable viewer might have assumed that, even if only some of the volunteers and leaders had promoted distrust or animosity towards other religions at the 2014 HSS camp (as the programme claimed), the boys featured in the promotional video (the footage of which was recorded at earlier HSS events or

camps) may also have been exposed to such views. Therefore, the inclusion of the footage of Mr Bhakta's son in the programme was potentially sensitive to him in that it disclosed that he had attended a previous HSS training camp.

However, we also noted the following points in relation to the footage of Mr Bhakta's son and its inclusion in this programme:

- Mr Bhakta consented to the recording and subsequent inclusion of his son in the promotional video and there was no evidence in the complaint to suggest that the circumstances of Mr Bhakta's son had materially changed since Mr Bhakta gave this consent.
- The promotional video had been in the public domain for nine months prior to the broadcast of this programme and therefore so too had the information that Mr Bhakta's son had attended an HSS training camp prior to 2014.
- As set out above, Mr Bhakta's son was not named or referred to in the programme and his inclusion in the footage was incidental and minor. Nor did the footage show him undertaking any specific activity which was private or sensitive to him.
- Notwithstanding the potential for some viewers to have concluded that individuals who had attended previous HSS camps might also have been exposed to the type of teaching witnessed by the undercover reporter at the 2014 camp, the programme made it clear that responsibility for any alleged wrongdoing lay with the charity itself and not the boys or young men who attended its camps.

We noted that Mr Bhakta's son was a minor both at the time the footage was originally recorded and when it was subsequently included in this broadcast. However, taking account of all of the factors set out above, and in particular: Mr Bhakta's consent for his son's inclusion in the promotional video; the fact that the video had been in the public domain for some months prior to the broadcast; the nature of the relevant footage and the fact that it did not show the complainant's son undertaking activities that were inherently private to him; and the fact that the video was used in the programme to illustrate the activities for which the HSS had secured charitable status and that the complainant's son featured solely as a participant in those activities, we concluded that, on balance, Mr Bhakta's son did not have a legitimate expectation of privacy with regard to the re-use of this footage of him in the programme as broadcast.

Given this conclusion, it was not necessary for Ofcom to consider whether any infringement of into the privacy of Mr Bhakta's son through the inclusion of this footage in the programme was warranted.

Therefore, Ofcom found that the privacy of Mr Bhakta's son was not unwarrantably infringed in the programme as broadcast in this respect.

**Ofcom has not upheld Mr Bhakta's complaint of unwarranted infringement of privacy in the programme as broadcast made on behalf of his son.**

## Not Upheld

### Complaint made by Mr Kishan Patel

*Exposure: Charities Behaving Badly, ITV, 18 February 2015*

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#### Summary

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

The programme considered whether three registered charities were promoting race hatred, religious bigotry and extremism and questioned whether the Charity Commission was failing to regulate charities effectively in this regard. The second charity featured in the programme was Hindu Swayamsevak Sangh (UK), or HSS. This section of the programme included secretly recorded footage of Mr Patel which was filmed by an undercover reporter attending an HSS annual leadership camp.

Ofcom found that Mr Patel had a legitimate expectation of privacy with regard to both the surreptitious filming of his conversation with the undercover reporter and the subsequent inclusion of part of this footage in the programme as broadcast. However, Ofcom considered that, on balance, the broadcaster's right to freedom of expression and the public interest in the filming and broadcasting of the relevant footage in the circumstances of this case outweighed Mr Patel's legitimate expectation of privacy. Therefore, Mr Patel's privacy was not unwarrantably infringed in connection with the obtaining of the footage of him or the subsequent inclusion of part of this material in the programme as broadcast.

#### Introduction and programme summary

On 18 February 2015, ITV1 broadcast an edition of its current affairs programme *Exposure* entitled: *Charities Behaving Badly*. The programme examined concerns that some registered charities were promoting race hatred, religious bigotry and extremism and questioned whether the Charity Commission was failing to regulate charities effectively in this regard.

The programme sent undercover reporters to film three different charities and showed footage recorded by each reporter to illustrate its concerns. At the end of each of the three main sections of the programme, two experts (a barrister practising in charity law and an academic with an expertise in extremism) gave their opinions of the footage filmed at each charity after which a response from the charity concerned was presented.

The second charity featured in the programme was Hindu Swayamsevak Sangh (UK), or HSS. At the beginning of this section of the programme, the narrator said that that "*HSS enjoys charitable status because it: advances the Hindu religion and educates the public in the Hindu ideals and way of life. As this promotional video demonstrates. But we've heard allegations that, in private, it's actually also teaching young Hindus to denigrate other religions*". An HSS promotional video was shown alongside this commentary.

After this promotional video, the narrator introduced Ravi, an undercover reporter who had recorded surreptitiously filmed footage when he attended an HSS annual

leadership camp. Sections of this footage were then broadcast. During the first part of this footage, the narrator said *“Here the boys sing, play, learn and are taught martial arts”*. However, the programme went on to show and discuss a number of incidents witnessed by Ravi which it said indicated that the boys who attended this camp were also being taught to feel distrust towards and hatred of other religions.

The narrator said that specific sections of the undercover footage filmed at the camp showed boys and young men at the camp being:

- encouraged to buy a book written by M S Golwalker (a former leader of the Hindu nationalist organisation Rashtriya Swayamsevak Singh or RSS) which the programme stated had a chapter entitled: *“Internal threats: with the subcategories: The Muslims, The Christians and The Communists”*; and,
- attending Hindu history classes in which they were taught to distrust or denigrate people of other religious faiths, notably Muslims.

In addition, two individuals who attended the 2014 camp were shown expressing their animosity towards Muslims or people of Pakistani heritage.

Towards the end of the sections of footage recorded by Ravi, the programme suggested that the boys and young men who attended the camp undertook military-style drills. In particular, the narrator said: *“day after day our reporter follows shouted orders and is taught to march in military formation”*. This was followed by parts of a second promotional video, showing boys marching, that was recorded at a previous HSS event (i.e. before the 2014 camp which Ravi attended) intercut with footage of the camp leaders. During this footage, the narrator said *“many of the leaders talk about the camp in entirely positive terms”* after which one camp leader was shown describing the camp attendees as being part of a *“superhero”* and a second said that: *“by bringing Hindus together we spread this word of world peace, world harmony”*.

Immediately afterwards, the narrator introduced the last section of footage filmed by Ravi by saying: *“But Ravi runs into one young man who’s aware of the origins of HSS. (The young man in question was the complainant, Mr Patel). Ravi and Mr Patel were shown having the following conversation:*

Mr Patel: *“Shakha<sup>1</sup> is known as a right-wing movement complete right-wing Nationalist we’re equated as like, as like Hitler Youth.*

Narrator: *But then two leaders walk up the boy stops mid-sentence. After they’ve gone our reporter picks up the conversation where they left off.*

Ravi: *So, it’s completely right-wing and nationalist?*

Mr Patel: *It’s completely right-wing and nationalist. It’s going back to Hitler Youth, when Hitler’s Youth army.*

Ravi: *For real?*

Mr Patel: *Yeah.”*

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<sup>1</sup> “Shakha” appeared to refer to the daily meetings of HSS which are central to the way it operates. However, in this context Ofcom understood Mr Patel to have used the word as a synonym for HSS itself.

After this footage, the programme's experts, who had been shown the undercover footage, criticised the actions of the charity. In particular, Professor Chetan Bhatt said that the charity was "*promoting hate driven ideas, ideas that have caused considerable violence in India, to British youngsters*", creating an environment in which "*hate speech like this is completely acceptable*" and promoting "*sectarianism and hatred, hatred towards other religions*".

No further footage of Mr Patel was shown in the programme. Mr Patel was not named in the programme. His face was obscured, but his voice was not disguised.

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

### *The complaint*

- a) Mr Patel complained that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because he was filmed surreptitiously by the undercover reporter whom he had befriended at the camp.
- b) Mr Patel also complained that his privacy was unwarrantably infringed in the programme as broadcast because the programme included surreptitiously filmed footage of him recorded by the undercover reporter whom he had befriended at the camp.

By way of background to both elements of his privacy complaint, Mr Patel said that he had built up a positive friendship with the reporter and felt able to trust him. He said their conversation was generic and not intended for wider distribution, particularly in the context of a programme of this nature. Mr Patel added that he would have happily spoken to the reporter about his experience of HSS and what he regarded as the positive aspects of it (for example, meeting people from a diverse range of backgrounds in terms of their expertise, education and employment) if he had known he was being recorded.

### *ITV's response*

ITV said that it was sorry that Mr Patel was upset that he was surreptitiously filmed and that part of this footage of him was included in the programme. However, in its view, both the recording and subsequent use of the surreptitiously filmed footage of Mr Patel was warranted.

ITV said that it accepted that Mr Patel had a legitimate expectation of privacy in connection with the obtaining of material included in the programme because he would not have expected to be filmed surreptitiously when he attended an Sangh Shiksha Varg ("SSV") or HSS training camp or to have his private conversations with another attendee recorded. However, it argued that the infringement of Mr Patel's legitimate expectation of privacy in this respect was warranted. In particular, ITV said that, through research and the attendance of the undercover reporter at earlier HSS events, the programme makers had gathered prima facie evidence that suggested that the connection between HSS and the right-wing Hindu nationalist organisation RSS (an organisation which ITV said was implicated in anti-Muslim violence in India and had origins that embraced fascist ideology) was stronger than the "ideological commonality" to which HSS trustees had previously admitted during a Charity Commission investigation in 2004-2005. ITV said that this evidence suggested that HSS was nationalist in nature and that its organisers were using the charity to promote a right-wing nationalist political agenda and anti-Muslim rhetoric, and to encourage children and young people attending HSS events and training camps to

revere former leaders of the RSS who had caused controversy by expressing admiration for Nazi and fascist ideas. It said that, taken overall, the evidence indicated that, as well as its stated charitable object of advancing the Hindu religion, HSS might also be advancing a Hindu nationalist agenda, and that it might be promoting hatred at its training camps in a way that was contrary to the Charity Commission's guidance on the advancement of religion for the public benefit. The broadcaster said that, in light of this evidence, it believed it had reasonable grounds to suspect that through surreptitious filming further material evidence in the public interest could be obtained, including evidence of HSS organisers promoting hatred and bigotry to children and young people at the SSV camp.

ITV also argued that the surreptitious filming was necessary to the credibility and authenticity of the programme and that, given the nature of the investigation, it was necessary to film covertly. It said that this was because it was unlikely that HSS, its organisers and volunteers, the school hosting the camp, attendees and (where required) their parents would have consented to the filming and even if they had, the organisers, volunteers and attendees may have behaved differently had they been aware they were being filmed. ITV added that filming covertly at the camp necessarily involved filming the attendees including Mr Patel.

ITV said that it accepted that Mr Patel had a legitimate expectation of privacy in relation to the broadcast of the surreptitiously filmed footage of him. However, this expectation was limited by the nature of the information disclosed in the footage and the steps taken to obscure his identity. It also argued that the resulting infringement of Mr Patel's privacy was warranted because his comments constituted material evidence that would have led viewers to a greater understanding of the concerns raised in the public interest by the programme.

The broadcaster said that during the, approximately 90 second-long, sequence in which Mr Patel featured in the programme he was visible for about 17 seconds and steps were taken to obscure his identity: his face was obscured; his height and build were not discernible from this footage; and, he was not named in the programme. ITV acknowledged that Mr Patel's voice was audible, and therefore that those who knew him well may have recognised him from the programme. However, it argued that he was not identifiable to the vast majority of viewers and that no personal or sensitive information about Mr Patel was disclosed in the footage shown in the programme; although ITV acknowledged that the footage did disclose his opinions about the origins of HSS.

The broadcaster said that the programme did not suggest or imply that Mr Patel was guilty of any wrongdoing himself. ITV acknowledged that Mr Patel's feelings may have been hurt when he discovered that his fellow attendee was, in fact, an undercover reporter who had surreptitiously filmed him, but it argued that the broadcast of his comments would not have resulted in Mr Patel being placed in a vulnerable or sensitive situation, or have caused any significant distress to him.

ITV accepted that Mr Patel had not consented to the footage of him being shown in the programme, but it argued that the inclusion of this footage, which obscured his identity while showing him disclosing his views about HSS, was warranted in the public interest. It said that Mr Patel's comments that HSS was known as "right-wing" and "nationalist" and was "going back to Hitler Youth" highlighted concerns about the origins and ideology behind HSS, which was something he appeared to express disquiet about as an attendee. ITV said that the comments highlighted and corroborated the programme's concerns regarding whether HSS was complying with its charitable object of advancing the Hindu religion and educating the public in Hindu

ideals and way of life, or whether it was also promoting right-wing ideology, hatred and bigotry. It added that because the comments were made by an attendee at the SSV camp, they also corroborated the concerns about HSS expressed by Professor Bhatt in his interview. In addition, ITV argued that Mr Patel's comments provided context to and gave a potential explanation for the earlier sequences in which a teacher at the SSV camp made a series of comments denigrating other religions and thereby assisted the viewers' understanding of the wrongdoing that the programme had exposed on the part of the teacher and HSS. ITV also said that the comments provided a potential explanation for the use of discipline and marching at the camp referred to in the programme. It argued that, given the factors set out above, the inclusion of Mr Patel's comments added to the credibility and authenticity of the programme, and was editorially justified.

ITV said that in the circumstances, notably the steps taken to minimise the infringement of Mr Patel's privacy in the broadcast of the programme and the public interest served by the inclusion of the relevant material, its freedom of expression and the audience's right to receive information outweighed Mr Patel's legitimate expectation of privacy in relation to the broadcast of surreptitiously filmed footage of him without his consent.

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

Ofcom prepared a Preliminary View on this case that the complaint should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View, but neither chose to do so.

### **Decision**

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

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

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript, and both parties' written submissions.

In Ofcom's view, the 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 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 Patel's complaint that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because he was filmed surreptitiously by the undercover reporter whom he had befriended at the camp.

In considering this head of complaint, Ofcom had regard to Practices 8.5 and 8.9 of the Code. Practice 8.5 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 8.9 states that the means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme. We also had regard to Practice 8.13 of the Code which states that surreptitious filming should only be used where it is warranted. Normally, it will only be warranted if: there is *prima facie* evidence of a story in the public interest; there are reasonable grounds to suspect that further material evidence could be obtained; and it is necessary to the credibility and authenticity of the programme.

Ofcom first assessed the extent to which Mr Patel had a legitimate expectation of privacy in the circumstances in which he was filmed, i.e. surreptitiously by the undercover reporter. As stated in the Code: "legitimate expectations of privacy will vary according to the place and nature of the information, activity or condition in question". Mr Patel was filmed when he attended an SSV camp, and while having a conversation with a person whom he believed to be a fellow attendee at the camp with whom he had forged a friendship. In our view, the conversation between Mr Patel and Ravi that was recorded during this filming was private to the complainant. This was because Mr Patel was unaware that he was being filmed at the time, and he believed that he was speaking in confidence to a friend about a topic which he considered to be sensitive. In Ofcom's view, the fact that Mr Patel considered this information to be both private and sensitive would have been apparent to the programme makers because, as the narrator observed in the programme, when two HSS team leaders approached Ravi and Mr Patel while they were having this conversation, Mr Patel stopped speaking "*mid-sentence*" and only resumed the conversation once the HSS team leaders had moved away and after Ravi had prompted him to do so. Taking these factors into account, Ofcom concluded that Mr Patel had a legitimate expectation of privacy in relation to the surreptitious filming of footage of the conversation he had had with Ravi.

Having assessed the extent to which Mr Patel had a legitimate expectation of privacy in connection with the obtaining of the material included in the programme, Ofcom then considered the application of the Practices set out above. There was no dispute that Mr Patel had not consented to the obtaining of the footage of his conversation with Ravi, in accordance with Practice 8.5. On that basis, Ofcom next considered whether or not the use of surreptitious filming to obtain the relevant footage was, in all the circumstances of this case, warranted and proportionate for the purposes of Practices 8.9 and 8.13.

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.

From ITV's response set out above, we noted the circumstances which preceded the decision to film surreptitiously at the SSV camp. In particular, we took into account ITV's submission that the programme makers had, through research and the attendance of the undercover reporter at earlier HSS events, gathered *prima facie* evidence that suggested there may be a connection between HSS and the right-wing Hindu nationalist organisation, RSS, and that HSS might be advancing a Hindu nationalist agenda in a way that was contrary to the Charity Commission's guidance on the advancement of religion for the public benefit. Ofcom also took account of ITV's submissions that surreptitious filming at the SSV camp was necessary for the credibility and authenticity of the programme, and that the broadcaster had reasonable grounds to suspect that, through this technique, further material evidence as to whether or not HSS camp leaders or teachers were promoting religious animosity and bigotry to young people could be obtained. Further, Ofcom noted ITV's submission that it was unlikely that individuals at the SSV camp would have spoken candidly and openly about their understanding of the aims and beliefs of HSS had they been filmed openly.

Ofcom also considered whether or not there was genuine public interest in the story which the broadcaster was seeking to convey. In this case, the programme makers were investigating whether HSS, a body which enjoys charitable status in the UK, might be promoting distrust or animosity towards other religious groups, contrary to the Charity Commission's guidance. In order to corroborate the claims being made in the programme about HSS, the programme makers sought the candid views of an attendee at the SSV camp. There was, in Ofcom's view a genuine public interest in the obtaining of this footage, in circumstances where members of the public may have a genuine interest in knowing whether bodies who have been granted charitable status are conducting themselves appropriately and in accordance with their public persona, and where such testimony may assist in conveying the 'true' position in this regard.

Finally, Ofcom considered whether or not the obtaining of the footage was proportionate. Again, Ofcom took into account ITV's submission that it was unlikely that individuals at the SSV camp would have spoken candidly and openly about their understanding of the aims and beliefs of HSS had they been filmed openly. We also noted that the filming appeared to be of a relatively short duration and targeted at obtaining information which was particularly germane to the claims about HSS which the programme was investigating. Given these factors, we considered that the means of obtaining the relevant footage was proportionate in all the circumstances and in particular to the subject matter of the programme.

On that basis, and taking into account all the factors set out above, Ofcom considered that the broadcaster's right to freedom of expression and the public interest in the programme-makers obtaining footage of Mr Patel's conversation with Ravi outweighed Mr Patel's legitimate expectation of privacy in this case. In particular, as noted above, it appeared that the programme makers had begun by gathering *prima facie* evidence to support their concerns about HSS and that they had reasonable grounds to believe that the surreptitious filming at the SSV camp might provide further evidence in relation to these matters. Further, it is Ofcom's view that the obtaining of the footage was necessary to the credibility and authenticity of the programme and to demonstrate the points that the programme was seeking to make; and, that, as a set out above, it was proportionate in the particular circumstances of this case. Given this, in this instance, there was justification for the programme makers to film the footage surreptitiously and any

infringement of Mr Patel's legitimate expectation of privacy was both warranted and proportionate, in accordance with Practices 8.9 and 8.13 of the Code.

Therefore, Ofcom found that Mr Patel's legitimate expectation of privacy was not unwarrantably infringed in connection with the obtaining of material included in the programme.

- b) Ofcom then considered Mr Patel's complaint that his privacy was unwarrantably infringed in the programme as broadcast because it included surreptitiously filmed footage of him recorded by the undercover reporter whom he had befriended at the camp.

In considering this head of complaint, we had regard to Practices 8.6 and 8.14 of the Code. Practice 8.6 of the Code 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. Practice 8.14 states that material gained by surreptitious filming and recording should only be broadcast when it is warranted.

Ofcom first considered the extent to which Mr Patel had a legitimate expectation of privacy in regard to the inclusion of the footage of him in the programme as broadcast. We took account of the circumstances in which Mr Patel was filmed – i.e. surreptitiously, by the undercover reporter – as well as the actual material which was broadcast. We noted that ITV took various steps to obscure Mr Patel's identity in the programme. However, as the broadcaster acknowledged, because Mr Patel's voice was audible, he was identifiable from the programme, albeit only to people to whom he was already well known. We also noted that, although ITV observed that the programme disclosed Mr Patel's opinions about the origins of HSS, it also argued that no personal or sensitive information about Mr Patel himself was disclosed in the footage shown in the programme. As set out in the Decision at head a) above, in our opinion, given the circumstances surrounding this conversation (i.e. that Mr Patel was unaware that he was being filmed at the time, and he believed that he was speaking in confidence to a friend about a topic which he considered to be sensitive), the disclosure of the information that Mr Patel understood HSS to have extreme right wing or nationalist origins was sensitive and private to Mr Patel.

Taking all these factors into account, Ofcom concluded that Mr Patel had a legitimate expectation of privacy in relation to the broadcast of the surreptitiously filmed footage of his conversation with Ravi. Ofcom considered next the application of Practices 8.6 and 8.14 in this case. As with head a) above, there was no dispute that Mr Patel had not consented to the broadcast of the footage. On that basis, Ofcom considered whether the broadcast of the surreptitious footage was warranted.

As set out above, the term "warranted" has a particular meaning under the Code. Further, an individual's legitimate expectation of privacy must be balanced against the competing rights of broadcasters to freedom of expression. Neither of these rights has precedence over the other and, where there is conflict between the two, it is necessary to intensely focus on the comparative importance of the specific right.

Ofcom carefully balanced Mr Patel's legitimate expectation of privacy in relation to the broadcast of the footage of him obtained through surreptitious filming against both the broadcaster's right to freedom of expression and the audience's

right to receive information in the public interest. We considered that there was a genuine public interest in broadcasting Mr Patel's comments about his understanding of HSS' origins and objectives, where such footage was intended to provide an honest and candid corroboration of the programme's claim that, in contrast to its public persona, HSS may be engaged in the promotion of distrust or animosity towards other religious groups.

Taking all the factors set out above into account, Ofcom considered that the broadcaster's right to freedom of expression and the public interest in receiving the information as broadcast outweighed Mr Patel's expectation of privacy in relation to the broadcast of the footage. On this basis, any infringement of Mr Patel's legitimate expectation of privacy was warranted under Practices 8.6 and 8.14 of the Code.

Therefore, Ofcom found that Mr Patel's legitimate expectation of privacy was not unwarrantably infringed in the programme as broadcast.

**Ofcom has not upheld Mr Patel's complaint of unwarranted infringement of privacy in connection with the obtaining of material included in the programme and in the programme as broadcast.**

## Not Upheld

### Complaint by Ms Heather Greenway

*ITV News, ITV Meridian, 13 March 2015*

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#### Summary

Ofcom's has not upheld this complaint made by Ms Heather Greenway of unwarranted infringement of privacy in connection with the obtaining of material included in the programme as broadcast and in the programme as broadcast.

This programme included a news report about the controversy surrounding plans to expand Campsfield House, an immigration detention centre<sup>1</sup> in Oxfordshire. Footage included people campaigning for the closure of the facility and an interview filmed outside of the facility with a local MP who had been campaigning against the expansion. Ms Greenway, a security guard at the detention centre, was shown with her colleague standing in the background. They were shown again when they requested the programme makers to stop filming and to leave the premises. The complainant's face was shown unobscured, her voice was heard and she was wearing her uniform.

Ofcom found that, in the particular circumstances of this case, Ms Greenway did not have a legitimate expectation of her privacy with regard to the obtaining and subsequent broadcast of the footage of her in the programme. Therefore, Ofcom considered that Ms Greenway's privacy was not unwarrantably infringed.

#### Introduction and programme summary

On 13 March 2015, ITV broadcast an edition of its regional news programme, *ITV News Meridian*, which included a report about the Home Office's decision to withdraw its planning application to expand Campsfield House, an immigration detention centre near Oxford.

The presenter in the studio introduced the report as follows:

*"Good evening, campaigners fighting plans to more than double the size of an immigration detention centre in Oxfordshire are claiming victory tonight after the application was withdrawn by the Home Secretary. Campsfield House in Kidlington houses hundreds of failed asylum seekers in conditions which critics claim are poor and degrading. Gary Johnston has the story".*

A pre-recorded report was then shown. The report included footage of people outside Campsfield House campaigning for the closure of the facility.

Later in the report, the reporter said:

*"Local politicians have also campaigned against any expansion 'though today stopped short from calling for a complete closure".*

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<sup>1</sup> i.e. one of a number of holding centres in the UK for foreign nationals awaiting decisions on their asylum claims or awaiting deportation following a failed application.

An interview with Ms Nicola Blackwood, a local MP who had been campaigning against the expansion of the detention centre, filmed outside the facility in its car park, was then shown. During this footage, the camera turned from Ms Blackwood to show two security guards, one of whom was the complainant, Ms Greenway, as they told the programme makers to stop filming. The reporter said:

*“At that moment, the security for the centre told us to stop filming”.*

This was followed by footage of Ms Blackwood saying: *“We’re only going to be a couple of minutes”*. Ms Greenway, whose face was not obscured, was shown briefly (for approximately one second) standing a short distance away from Ms Blackwood and the reporter as the camera turned from her to the second security guard. The second security guard was shown coming towards the camera operator to stop the filming.

Ms Blackwood and the reporter were then shown leaving the facility. As they walked away, the security guards could be seen (again for approximately one second) standing some distance away in the background as the reporter said:

*“Despite the local MP’s polite request, we’re all swiftly ejected from the area. Clearly issues surrounding Campsfield House are still a touchy subject for its management”.*

No further footage of Ms Greenway was shown in the programme. She was not named nor identified in any other way.

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

### *The complaint*

- a) Ms Greenway complained that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because footage of her was filmed on private property after the programme makers had repeatedly been told to stop filming. In particular, Ms Greenway said she had been filmed while she was carrying out her duties as a security guard at her place of work.
- b) Ms Greenway also complained that her privacy was unwarrantably infringed in the programme as broadcast because footage of her was included in the programme without her consent. In particular, she said she was shown in uniform at her work place and added that it was for her to decide whether or not to disclose her role as a security guard at Campsfield House, not the broadcaster.

### *ITV’s response*

Before responding to the specific heads of the complaint, ITV explained that Campsfield House became an immigration detention centre in 1993 in the face of local opposition. It said that a Home Office proposal to expand the detention centre, which had attracted further opposition, was withdrawn on 12 March 2015 by the Home Secretary. The broadcaster said that there was therefore a strong public interest in the story, which had been reported both locally and nationally. It said that on 13 March 2015, ITV Meridian decided to broadcast an interview with the local MP, Ms Blackwood, about the withdrawal of the expansion proposal.

In responding specifically to Ms Greenway's complaint, ITV submitted that the complainant did not have a legitimate expectation of privacy in the circumstances in which she was filmed and that, there was therefore no unwarranted infringement of her privacy in connection with the obtaining of material included in the programme, or in the programme as broadcast.

ITV pointed out that the complainant worked as a security guard for Campsfield House and that her job required interacting with members of the public, including the media. It said that it was not conceivable that the complainant would be able to carry out her job without being identifiable as a security guard who worked at the detention centre.

ITV also said that the car park of Campsfield House was accessible to the public without restriction. It said that the filming of the complainant as she asked the filming crew to stop filming at her place of employment did not involve any sensitive or private circumstances or events giving rise to an expectation of privacy.

ITV said that footage of the complainant was filmed because the filming crew were in the midst of filming the interview of the local MP when they were approached by the complainant and her colleague who asked them to stop filming. The broadcaster said the film crew and the MP then sought to query being asked to leave immediately and that a short section of this footage was included in the news report to represent fairly that the reporter and the MP were asked to move away from the detention centre.

ITV said that even if Ofcom was to find out that the complainant did have a legitimate expectation of privacy in this situation, and that there had been an infringement of the complainant's privacy in the obtaining of the material and/or the broadcast of the material in the news report, it considered that such infringement was warranted, in view of the public interest in the story.

ITV also submitted that in reporting the existing tension between the local community and Campsfield House, the broadcaster considered that it was editorially justified to show that an interview with the local MP had been brought to a halt by staff at the detention centre, reflecting the sensitivity surrounding the detention centre that the MP was discussing in the interview. The broadcaster said that in the circumstances of this case, it believed that it was warranted to include the brief footage of the complainant in the broadcast report, as representing the public face of Campsfield House, and the apparent attitude of its management to media scrutiny, in sending out its security staff to terminate a filmed interview in a non-sensitive location close to the detention centre.

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

Ofcom prepared a Preliminary View in this case that the 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.

Both parties were given the opportunity to comment on the Preliminary View. Both made representations and the relevant points relating to the Preliminary View are summarised below.

#### *Ms Greenway's representations*

Ms Greenway said that the majority of the footage of her included in the programme had been filmed after the programme makers had been repeatedly told to switch off

their camera. Further, Ms Greenway said that they included in the report, unrelated film footage, including footage which showed various incidents and protests which Ms Greenway was not associated with and which were not really relevant to the story being told.

### *ITV's representations*

In response to Ms Greenway's representations, ITV said that the footage of the exchange between the complainant, the camera crew and the MP was brief. ITV said that the report did contain some historical footage of Campsfield House and that the relevance of this footage was to explain the ongoing controversy surrounding the centre. ITV added it was clear that this footage was historical and was not connected to the incident between the complainant, the camera crew and the MP.

### **Decision**

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

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

In reaching this Decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast, a transcript of it, a transcript of the exchange that took place between the complainant and the film crew (which was not included in the programme as broadcast but submitted by ITV in their response), and both parties' written submissions and supporting material. We also took into account both parties' representations on Ofcom's Preliminary View, however, we concluded that their representations did not materially affect the outcome of Ofcom's Decision not to uphold the complaint.

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

- a) Ofcom first considered the complaint that Ms Greenway's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because footage of her was filmed on private property after the programme makers had repeatedly been told to stop filming.

In considering this head of the complaint, Ofcom had regard to Practice 8.3 and Practice 8.5. Practice 8.3 provides that when people are caught up in events which are covered in the news they still have a right to privacy in both the making

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

In considering whether or not Ms Greenway's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme, Ofcom first assessed the extent to which Ms Greenway had a legitimate expectation of privacy in the particular circumstances in which the material included in the programme was obtained.

Ofcom considers that the test as to whether a legitimate expectation of privacy arises in connection with the obtaining of material included in a programme or the broadcast of a programme is objective: it is fact sensitive and must always be assessed in light of the circumstances in which the individual concerned is filmed (and what footage and information is subsequently broadcast) of him or her. Ofcom approaches each case on its facts in this respect.

We noted that Ms Greenway had been filmed in the car park of Campsfield House as she was carrying out her duties as a security guard. The complainant was filmed as she was standing in the background with her colleague some distance away from local MP, Ms Blackwood. We noted that Ms Greenway stated in her complaint that the car park was private property and that the programme makers were therefore not allowed to film. However, we also noted ITV's submission that the car park had been accessible to the public without restriction and that it had been filming in this car park many times in the past to report on stories concerning Campsfield House without the need for permission. We further observed that the report included footage of what appeared to be members of the public walking across the car park, as well as footage of campaigners putting up banners on the outside of the fence surrounding the detention centre. Taking into account those elements, Ofcom considered that the car park, although private property, was not a private area insofar as it was accessible to members of the general public without apparent restriction and that the programme makers conducted the filming openly until they were asked to leave.

Nonetheless, we acknowledged that Ms Greenway was filmed at her workplace while carrying out her duties and we recognised that an individual may have a legitimate expectation of privacy in relation to activities of a private nature that are undertaken in these circumstances. Such activities may include, for instance, a discussion about personal matters with a colleague, or carrying out a business function in a place where the public do not have open access. In this particular case however, it appeared to Ofcom from viewing the footage included in the programme that Ms Greenway was not filmed engaging in any conduct or action that could reasonably be regarded as private or sensitive in nature. We considered that she was filmed fulfilling her duties as a security guard at Campsfield House which we understood was public-facing role in which she would be expected to engage with the general public at times, especially when the detention centre had become the focus of local and national media interest. As such, we took the view that Ms Greenway should have reasonably expected that she may have to deal with the media as part of her job, and that this may potentially involve her being filmed by news reporters for inclusion in broadcast programmes.

Taking into consideration the nature of the filming (a news channel reporting on a controversial subject and interviewing a local MP), that the filming occurred in a location to which members of the public had open access, and that, notwithstanding the fact that Ms Greenway was filmed in her place of work, there was nothing inherently private about the activities in which she was engaging, nor about the actions that she took., Ofcom considered that she did not have a legitimate expectation of privacy in connection with the obtaining of footage of her in the particular circumstances of this case.

Having concluded that Ms Greenway did not have a legitimate expectation of privacy in this regard, Ofcom found that her privacy was not infringed in connection to the obtaining of footage of her included in the programme as broadcast. It was therefore not necessary for Ofcom to further consider whether any infringement of her privacy was warranted or not.

Therefore, we found that there was no unwarranted infringement of Ms Greenway's privacy in connection with the obtaining of footage of her included in the programme as broadcast.

- b) Ofcom next considered Ms Greenway's complaint that her privacy was unwarrantably infringed in the programme as broadcast because footage of her was included in the programme without her consent.

In considering whether or not Ms Greenway's privacy was unwarrantably infringed in the programme as broadcast, 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 also had regard to Practices 8.3, as set out under head a) above.

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

Ofcom noted that Ms Greenway appeared only very briefly a couple of times in the news report. Nevertheless, her face was visible and she was wearing her uniform, therefore we considered that she was identifiable in the footage broadcast of her. As set out in head a) above, Ms Greenway was filmed in her workplace while carrying out her duties as a Campsfield House's security guard. Ofcom considered that the footage of Ms Greenway did not show her engaging in any conduct or action that could reasonably be considered as private or sensitive in nature to her. We also noted that she was filmed openly and in a car park, albeit privately owned, in which the general public had unrestricted access.

Again, as set out in head a) above, Ofcom considered that Ms Greenway, a security guard, was shown engaged in a public-facing role while carrying out her duties in line with the requirements of the management of the detention centre.

Taking all the factors above into account, Ofcom considered that in the particular circumstances of this case, Ms Greenway did not have a legitimate expectation of privacy in relation to the broadcast of unobscured footage of her in the

programme as broadcast. It was therefore not necessary for Ofcom to consider further whether any intrusion into the privacy of Ms Greenway was warranted.

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

**Ofcom has not upheld Ms Greenway's complaint of unwarranted infringement of her privacy in connection with the obtaining of material included in the programme and in the programme as broadcast.**

## Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed between 18 July and 7 August 2015 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

| <b>Programme</b> | <b>Broadcaster</b> | <b>Transmission date</b> | <b>Categories</b>                         |
|------------------|--------------------|--------------------------|-------------------------------------------|
| BBC News         | BBC News Channel   | 19/05/2015               | Violence and dangerous behaviour          |
| Steve Allen      | LBC 97.3 FM        | 15/06/2015               | Sexual orientation discrimination/offence |
| Nick Ferrari     | LBC 97.3 FM        | 16/06/2015               | Race discrimination/offence               |

## Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 18 July and 7 August 2015 because they did not raise issues warranting investigation.

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

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

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

| Programme                                   | Broadcaster    | Transmission Date | Categories                               | Number of complaints |
|---------------------------------------------|----------------|-------------------|------------------------------------------|----------------------|
| American Horror Story (trailer)             | 5*             | 15/07/2015        | Scheduling                               | 1                    |
| Benefits Britain: Big Families Special      | 5*             | 13/07/2015        | Under 18s in programmes                  | 1                    |
| The Dam Busters                             | 5USA           | 01/08/2015        | Advertising scheduling                   | 1                    |
| The Frank Skinner Show                      | Absolute Radio | 18/07/2015        | Generally accepted standards             | 1                    |
| Phil Kennedy                                | Amber Sound FM | 23/06/2015        | Disability discrimination/offence        | 1                    |
| ARY News                                    | ARY News       | 01/05/2015        | Crime                                    | 1                    |
| Azam e Magrib                               | ATN Bangla     | 08/07/2015        | Product placement                        | 1                    |
| Bridal Show                                 | Bangla TV      | 19/05/2015        | Promotion of products/services           | 1                    |
| BBC News                                    | BBC 1          | 20/07/2015        | Religious/Beliefs discrimination/offence | 1                    |
| BBC News                                    | BBC 1          | 31/07/2015        | Generally accepted standards             | 1                    |
| BBC News – Look East – West (Milton Keynes) | BBC 1          | 03/07/2015        | Generally accepted standards             | 1                    |
| Breakfast                                   | BBC 1          | 21/07/2015        | Offensive language                       | 1                    |
| DIY SOS The Big Build                       | BBC 1          | 16/07/2015        | Religious/Beliefs discrimination/offence | 1                    |
| Don't Tell the Bride                        | BBC 1          | 15/07/2015        | Offensive language                       | 1                    |
| Earth's Natural Wonders                     | BBC 1          | 05/08/2015        | Generally accepted standards             | 2                    |
| EastEnders                                  | BBC 1          | 02/07/2015        | Violence and dangerous behaviour         | 1                    |
| EastEnders                                  | BBC 1          | 07/07/2015        | Disability discrimination/offence        | 1                    |
| EastEnders                                  | BBC 1          | 13/07/2015        | Outside of remit / other                 | 1                    |
| EastEnders                                  | BBC 1          | 16/07/2015        | Generally accepted standards             | 8                    |
| EastEnders                                  | BBC 1          | 17/07/2015        | Generally accepted standards             | 68                   |
| EastEnders                                  | BBC 1          | 23/07/2015        | Violence and dangerous behaviour         | 1                    |

| <b>Programme</b>              | <b>Broadcaster</b> | <b>Transmission Date</b> | <b>Categories</b>                        | <b>Number of complaints</b> |
|-------------------------------|--------------------|--------------------------|------------------------------------------|-----------------------------|
| EastEnders                    | BBC 1              | 24/07/2015               | Outside of remit / other                 | 1                           |
| EastEnders                    | BBC 1              | 28/07/2015               | Generally accepted standards             | 1                           |
| EastEnders                    | BBC 1              | 30/07/2015               | Offensive language                       | 43                          |
| EastEnders                    | BBC 1              | 31/07/2015               | Scheduling                               | 2                           |
| EastEnders                    | BBC 1              | 06/08/2015               | Under 18s in programmes                  | 1                           |
| Golf                          | BBC 1              | 19/07/2015               | Crime                                    | 2                           |
| Golf                          | BBC 1              | 19/07/2015               | Race discrimination/offence              | 1                           |
| Golf                          | BBC 1              | 20/07/2015               | Gender discrimination/offence            | 1                           |
| Golf                          | BBC 1              | 20/07/2015               | Outside of remit / other                 | 1                           |
| Pointless                     | BBC 1              | 01/08/2015               | Race discrimination/offence              | 1                           |
| Radio 1 Summer Mix (trailer)  | BBC 1              | 21/07/2015               | Violence and dangerous behaviour         | 1                           |
| Raiders of the Lost Ark       | BBC 1              | 01/08/2015               | Scheduling                               | 3                           |
| Songs of Praise               | BBC 1              | 26/07/2015               | Religious/Beliefs discrimination/offence | 1                           |
| Tennis                        | BBC 1              | 06/07/2015               | Offensive language                       | 1                           |
| The Dog Factory               | BBC 1              | 19/05/2015               | Harm                                     | 1                           |
| The John Bishop Show          | BBC 1              | 18/07/2015               | Drugs, smoking, solvents or alcohol      | 2                           |
| The Met: Policing London      | BBC 1              | 06/07/2015               | Generally accepted standards             | 1                           |
| The Syndicate                 | BBC 1              | 07/07/2015               | Harm                                     | 3                           |
| The Syndicate                 | BBC 1              | 07/07/2015               | Materially misleading                    | 1                           |
| BBC Scotland Sport            | BBC 1 Scotland     | n/a                      | Outside of remit / other                 | 1                           |
| Golf                          | BBC 2              | 17/07/2015               | Generally accepted standards             | 1                           |
| Radio 1 Summer Mix (trailer)  | BBC 2              | 03/08/2015               | Violence and dangerous behaviour         | 1                           |
| Repo Chick                    | BBC 2              | 26/07/2015               | Outside of remit / other                 | 1                           |
| Tennis                        | BBC 2              | 02/07/2015               | Race discrimination/offence              | 1                           |
| Tennis                        | BBC 2              | 19/07/2015               | Generally accepted standards             | 1                           |
| The Javone Prince Show        | BBC 2              | 19/07/2015               | Race discrimination/offence              | 1                           |
| The Javone Prince Show        | BBC 2              | 26/07/2015               | Race discrimination/offence              | 1                           |
| Don't Tell the Bride          | BBC 3              | 26/07/2015               | Offensive language                       | 1                           |
| Family Guy                    | BBC 3              | 06/07/2015               | Sexual material                          | 1                           |
| People Just Do Nothing        | BBC 3              | 02/08/2015               | Race discrimination/offence              | 1                           |
| Young, Welsh and Pretty Skint | BBC 3              | 01/04/2015               | Harm                                     | 1                           |
| Top of the Pops               | BBC 4              | 23/07/2015               | Generally accepted standards             | 2                           |

| <b>Programme</b>                | <b>Broadcaster</b>                | <b>Transmission Date</b> | <b>Categories</b>                        | <b>Number of complaints</b> |
|---------------------------------|-----------------------------------|--------------------------|------------------------------------------|-----------------------------|
| Top of the Pops                 | BBC 4                             | 24/07/2015               | Generally accepted standards             | 1                           |
| BBC News                        | BBC News Channel                  | 18/07/2015               | Generally accepted standards             | 1                           |
| BBC News                        | BBC News Channel                  | 01/08/2015               | Violence and dangerous behaviour         | 1                           |
| Victoria Derbyshire             | BBC News Channel                  | 20/04/2015               | Under 18s in programmes                  | 1                           |
| Pop-up video                    | BBC News website                  | 30/07/2015               | Outside of remit / other                 | 1                           |
| Clara Amfo                      | BBC Radio 1                       | 29/07/2015               | Race discrimination/offence              | 2                           |
| Liz Kershaw                     | BBC Radio 2                       | n/a                      | Outside of remit / other                 | 1                           |
| Secrets and Lattes              | BBC Radio 4                       | 20/07/2015               | Offensive language                       | 1                           |
| The Now Show                    | BBC Radio 4                       | 17/07/2015               | Offensive language                       | 2                           |
| The Ashes: Test Match Special   | BBC Radio 5 Live Sports Extra     | 18/07/2015               | Scheduling                               | 1                           |
| Benefits-related programming    | BBC, Channel 4, Channel 5         | n/a                      | Outside of remit / other                 | 29                          |
| Programming                     | Belfast 89FM                      | 01/07/2015               | Commercial communications on radio       | 1                           |
| Programming                     | British Muslim TV / Islam TV Urdu | 22/06/2015               | Appeals for funds                        | 1                           |
| Martin Lowes                    | Capital FM (North East)           | 08/07/2015               | Scheduling                               | 1                           |
| Clarence                        | Cartoon Network                   | 05/08/2015               | Disability discrimination/offence        | 1                           |
| Blue Peter                      | CBBC                              | 09/07/2015               | Offensive language                       | 1                           |
| Bing                            | CBeebies                          | 01/07/2015               | Violence and dangerous behaviour         | 1                           |
| Topsy and Tim                   | CBeebies                          | 16/07/2015               | Generally accepted standards             | 1                           |
| Neighbours at War               | CBS Reality +1                    | 20/07/2015               | Offensive language                       | 1                           |
| Bullseye                        | Challenge                         | 28/07/2015               | Generally accepted standards             | 1                           |
| 24 Hours in A and E             | Channel 4                         | 08/07/2015               | Generally accepted standards             | 1                           |
| 24 Hours in Police Custody      | Channel 4                         | 03/08/2015               | Generally accepted standards             | 3                           |
| 8 Out of 10 Cats Does Countdown | Channel 4                         | 17/07/2015               | Generally accepted standards             | 1                           |
| 8 Out of 10 Cats Does Countdown | Channel 4                         | 19/07/2015               | Religious/Beliefs discrimination/offence | 1                           |
| 999: What's Your Emergency?     | Channel 4                         | 06/08/2015               | Generally accepted standards             | 2                           |
| 999: What's Your Emergency?     | Channel 4                         | 06/08/2015               | Suicide and self-harm                    | 6                           |
| A Very British Brothel          | Channel 4                         | 03/08/2015               | Generally accepted standards             | 1                           |
| Channel 4 News                  | Channel 4                         | 17/07/2015               | Religious/Beliefs discrimination/offence | 4                           |

| <b>Programme</b>                        | <b>Broadcaster</b> | <b>Transmission Date</b> | <b>Categories</b>                         | <b>Number of complaints</b> |
|-----------------------------------------|--------------------|--------------------------|-------------------------------------------|-----------------------------|
| Channel 4 News                          | Channel 4          | 17/07/2015               | Sexual orientation discrimination/offence | 1                           |
| Channel 4 News                          | Channel 4          | 20/07/2015               | Generally accepted standards              | 1                           |
| Channel 4 News                          | Channel 4          | 22/07/2015               | Due impartiality/bias                     | 1                           |
| Channel 4 News                          | Channel 4          | 23/07/2015               | Race discrimination/offence               | 1                           |
| Channel 4 promotion                     | Channel 4          | 21/07/2015               | Materially misleading                     | 1                           |
| Channel 4 promotion                     | Channel 4          | n/a                      | Materially misleading                     | 1                           |
| Child Genius                            | Channel 4          | 30/06/2015               | Under 18s in programmes                   | 1                           |
| Child Genius                            | Channel 4          | 07/07/2015               | Under 18s in programmes                   | 1                           |
| Food Unwrapped                          | Channel 4          | 27/07/2015               | Offensive language                        | 1                           |
| How to Get a Council House              | Channel 4          | 20/07/2015               | Generally accepted standards              | 1                           |
| Jimmy Carr: Being Funny                 | Channel 4          | 10/07/2015               | Generally accepted standards              | 1                           |
| Jimmy Carr: Being Funny                 | Channel 4          | 10/07/2015               | Religious/Beliefs discrimination/offence  | 2                           |
| Jimmy Carr: Being Funny                 | Channel 4          | n/a                      | Generally accepted standards              | 1                           |
| Married at First Sight                  | Channel 4          | 23/07/2015               | Generally accepted standards              | 2                           |
| Sex in Class (trailer)                  | Channel 4          | 04/08/2015               | Sexual material                           | 1                           |
| The Last Leg                            | Channel 4          | 17/07/2015               | Race discrimination/offence               | 1                           |
| The Last Leg                            | Channel 4          | 19/07/2015               | Race discrimination/offence               | 2                           |
| The Last Leg                            | Channel 4          | 26/07/2015               | Generally accepted standards              | 1                           |
| The Last Leg                            | Channel 4          | 31/07/2015               | Race discrimination/offence               | 1                           |
| 20 Moments That Rocked Pop              | Channel 5          | 28/07/2015               | Race discrimination/offence               | 1                           |
| Benefits Britain: Life on the Dole      | Channel 5          | 08/07/2015               | Materially misleading                     | 1                           |
| Benefits by the Sea: Jaywick            | Channel 5          | 07/07/2015               | Animal welfare                            | 2                           |
| Benefits by the Sea: Jaywick            | Channel 5          | 21/07/2015               | Materially misleading                     | 1                           |
| Benefits: 19 Kids and Counting the Cost | Channel 5          | 25/07/2015               | Materially misleading                     | 1                           |
| Benefits: 37 Years on the Dole          | Channel 5          | 02/07/2015               | Drugs, smoking, solvents or alcohol       | 2                           |
| Big Brother                             | Channel 5          | 14/07/2015               | Generally accepted standards              | 3                           |
| Big Brother: Live Eviction              | Channel 5          | 10/07/2015               | Voting                                    | 11                          |
| Big Brother: The Live Final             | Channel 5          | 16/07/2015               | Generally accepted standards              | 1                           |

| <b>Programme</b>                                | <b>Broadcaster</b>     | <b>Transmission Date</b> | <b>Categories</b>                  | <b>Number of complaints</b> |
|-------------------------------------------------|------------------------|--------------------------|------------------------------------|-----------------------------|
| Carry on Caravanning                            | Channel 5              | 22/07/2015               | Scheduling                         | 6                           |
| Films on 5 (trailer)                            | Channel 5              | 19/07/2015               | Scheduling                         | 1                           |
| Furious and Funny: Caught on Camera             | Channel 5              | 22/06/2015               | Offensive language                 | 8                           |
| Neighbours                                      | Channel 5              | 30/07/2015               | Nudity                             | 1                           |
| Nightmare Tenants, Slum Landlords               | Channel 5              | 15/07/2015               | Race discrimination/offence        | 1                           |
| Nightmare Tenants, Slum Landlords               | Channel 5              | 29/07/2015               | Crime                              | 1                           |
| Police Interceptors: Unleashed                  | Channel 5              | 12/07/2015               | Transgender discrimination/offence | 1                           |
| Police Interceptors: Unleashed                  | Channel 5              | 14/07/2015               | Transgender discrimination/offence | 1                           |
| Police Interceptors: Unleashed                  | Channel 5              | 02/08/2015               | Gender discrimination/offence      | 1                           |
| Programming                                     | Channel 5              | n/a                      | Outside of remit / other           | 1                           |
| Resident Evil: Retribution (trailer)            | Channel 5              | 25/07/2015               | Scheduling                         | 1                           |
| Sick Note Skivers Exposed                       | Channel 5              | 15/07/2015               | Materially misleading              | 9                           |
| Sick Note Skivers Exposed                       | Channel 5              | 18/07/2015               | Materially misleading              | 1                           |
| Teenage Mutant Ninja Turtles                    | Channel 5              | 05/07/2015               | Scheduling                         | 1                           |
| The Holiday Airport: Sun, Sea and Scousers      | Channel 5              | 23/07/2015               | Generally accepted standards       | 1                           |
| The Wright Stuff                                | Channel 5              | 20/07/2015               | Due impartiality/bias              | 1                           |
| The Wright Stuff                                | Channel 5              | 20/07/2015               | Generally accepted standards       | 1                           |
| The Wright Stuff                                | Channel 5              | 22/07/2015               | Generally accepted standards       | 1                           |
| The Wright Stuff                                | Channel 5              | 28/07/2015               | Generally accepted standards       | 1                           |
| American Horror Story (trailer)                 | Comedy Central         | 27/06/2015               | Scheduling                         | 1                           |
| Popoz Filthy Cops                               | Comedy Central         | 29/06/2015               | Generally accepted standards       | 1                           |
| American Horror Story (trailer)                 | Comedy Central Extra   | 28/06/2015               | Scheduling                         | 1                           |
| News                                            | Cool FM/Downtown Radio | 31/07/2015               | Due accuracy                       | 1                           |
| Halfords' sponsorship of Happy Motoring on Dave | Dave                   | 12/07/2015               | Generally accepted standards       | 1                           |

| <b>Programme</b>                  | <b>Broadcaster</b>    | <b>Transmission Date</b> | <b>Categories</b>                         | <b>Number of complaints</b> |
|-----------------------------------|-----------------------|--------------------------|-------------------------------------------|-----------------------------|
| Storage Hunters UK                | Dave                  | 21/07/2015               | Materially misleading                     | 1                           |
| Doc McStuffins                    | Disney Junior         | 30/07/2015               | Offensive language                        | 1                           |
| Hollyoaks                         | E4                    | 10/07/2015               | Generally accepted standards              | 1                           |
| Hollyoaks                         | E4                    | 22/07/2015               | Generally accepted standards              | 1                           |
| Gavin and Stacey                  | Gold                  | 14/07/2015               | Offensive language                        | 1                           |
| The Interviews: Oliver Reed       | Gold                  | 21/07/2015               | Nudity                                    | 1                           |
| The League of Gentlemen           | Gold                  | 27/07/2015               | Animal welfare                            | 1                           |
| Viking River Cruises sponsorship  | Gold                  | n/a                      | Religious/Beliefs discrimination/offence  | 1                           |
| Programming                       | Heart FM              | n/a                      | Competitions                              | 1                           |
| Heart Breakfast                   | Heart FM (North West) | 29/07/2015               | Outside of remit / other                  | 1                           |
| Iman FM                           | Iman FM               | 01/07/2015               | Religious/Beliefs discrimination/offence  | 1                           |
| Anadin's sponsorship of The Chase | ITV                   | 08/07/2015               | Offensive language                        | 1                           |
| Anadin's sponsorship of The Chase | ITV                   | 21/07/2015               | Offensive language                        | 1                           |
| Anadin's sponsorship of The Chase | ITV                   | 22/07/2015               | Sponsorship credits                       | 1                           |
| Anadin's sponsorship of The Chase | ITV                   | 30/07/2015               | Gender discrimination/offence             | 1                           |
| Boxing                            | ITV                   | 18/07/2015               | Outside of remit / other                  | 1                           |
| Catchphrase                       | ITV                   | 19/07/2015               | Fairness                                  | 1                           |
| Coronation Street                 | ITV                   | 20/07/2015               | Scheduling                                | 2                           |
| Coronation Street                 | ITV                   | 20/07/2015               | Sexual orientation discrimination/offence | 1                           |
| Coronation Street                 | ITV                   | 20/07/2015               | Violence and dangerous behaviour          | 1                           |
| Coronation Street                 | ITV                   | 22/07/2015               | Offensive language                        | 1                           |
| Coronation Street                 | ITV                   | 22/07/2015               | Scheduling                                | 1                           |
| Coronation Street                 | ITV                   | 22/07/2015               | Violence and dangerous behaviour          | 1                           |
| Coronation Street                 | ITV                   | 24/07/2015               | Drugs, smoking, solvents or alcohol       | 1                           |
| Coronation Street                 | ITV                   | 27/07/2015               | Generally accepted standards              | 1                           |
| Coronation Street                 | ITV                   | 27/07/2015               | Outside of remit / other                  | 1                           |
| Coronation Street                 | ITV                   | 31/07/2015               | Generally accepted standards              | 1                           |

| Programme                              | Broadcaster | Transmission Date | Categories                               | Number of complaints |
|----------------------------------------|-------------|-------------------|------------------------------------------|----------------------|
| Coronation Street                      | ITV         | 31/07/2015        | Religious/Beliefs discrimination/offence | 1                    |
| Coronation Street                      | ITV         | 03/08/2015        | Outside of remit / other                 | 1                    |
| Coronation Street (trailer)            | ITV         | 03/08/2015        | Outside of remit / other                 | 1                    |
| Dickinson's Real Deal                  | ITV         | 29/07/2015        | Competitions                             | 1                    |
| Dickinson's Real Deal                  | ITV         | 31/07/2015        | Competitions                             | 1                    |
| Emmerdale                              | ITV         | 13/07/2015        | Sexual material                          | 1                    |
| Emmerdale                              | ITV         | 13/07/2015        | Violence and dangerous behaviour         | 2                    |
| Emmerdale                              | ITV         | 22/07/2015        | Scheduling                               | 1                    |
| Emmerdale                              | ITV         | 27/07/2015        | Materially misleading                    | 1                    |
| Emmerdale                              | ITV         | 28/07/2015        | Materially misleading                    | 2                    |
| Emmerdale                              | ITV         | 30/07/2015        | Harm                                     | 1                    |
| Emmerdale                              | ITV         | 30/07/2015        | Outside of remit / other                 | 1                    |
| Emmerdale                              | ITV         | 04/08/2015        | Generally accepted standards             | 33                   |
| Emmerdale                              | ITV         | 05/08/2015        | Generally accepted standards             | 10                   |
| Good Morning Britain                   | ITV         | 22/07/2015        | Scheduling                               | 1                    |
| Guess This House                       | ITV         | 04/08/2015        | Offensive language                       | 1                    |
| Harry Potter and the Half-Blood Prince | ITV         | 04/07/2015        | Violence and dangerous behaviour         | 1                    |
| It's a Funny Old Week                  | ITV         | 29/06/2015        | Generally accepted standards             | 1                    |
| ITV News and Weather                   | ITV         | 18/07/2015        | Generally accepted standards             | 1                    |
| ITV News and Weather                   | ITV         | 23/07/2015        | Race discrimination/offence              | 1                    |
| ITV News and Weather                   | ITV         | 30/07/2015        | Due accuracy                             | 1                    |
| ITV News at Ten and Weather            | ITV         | 09/07/2015        | Generally accepted standards             | 1                    |
| ITV News at Ten and Weather            | ITV         | 21/07/2015        | Generally accepted standards             | 1                    |
| ITV News at Ten and Weather            | ITV         | 23/07/2015        | Due impartiality/bias                    | 1                    |
| ITV Sport (trailer)                    | ITV         | n/a               | Materially misleading                    | 1                    |
| Jackpot247                             | ITV         | 16/07/2015        | Gambling                                 | 1                    |
| Judge Rinder                           | ITV         | 14/07/2015        | Generally accepted standards             | 1                    |
| Loose Women                            | ITV         | 22/07/2015        | Generally accepted standards             | 2                    |
| Lorraine                               | ITV         | 06/07/2015        | Gender discrimination/offence            | 1                    |
| Lorraine                               | ITV         | 13/07/2015        | Generally accepted standards             | 1                    |
| Lorraine                               | ITV         | 29/07/2015        | Competitions                             | 1                    |

| <b>Programme</b>                                     | <b>Broadcaster</b> | <b>Transmission Date</b> | <b>Categories</b>                | <b>Number of complaints</b> |
|------------------------------------------------------|--------------------|--------------------------|----------------------------------|-----------------------------|
| Nationwide's sponsorship of ITV documentaries        | ITV                | 02/07/2015               | Generally accepted standards     | 13                          |
| Nationwide's sponsorship of ITV documentaries        | ITV                | 06/07/2015               | Generally accepted standards     | 1                           |
| Nationwide's sponsorship of ITV documentaries        | ITV                | 12/07/2015               | Generally accepted standards     | 2                           |
| Nationwide's sponsorship of ITV documentaries        | ITV                | 15/07/2015               | Generally accepted standards     | 1                           |
| Nationwide's sponsorship of ITV documentaries        | ITV                | 28/07/2015               | Generally accepted standards     | 1                           |
| On Assignment                                        | ITV                | 28/07/2015               | Under 18s in programmes          | 1                           |
| Real Stories with Ranvir Singh                       | ITV                | 06/08/2015               | Generally accepted standards     | 1                           |
| Superhospital                                        | ITV                | 09/07/2015               | Generally accepted standards     | 2                           |
| The Jeremy Kyle Show                                 | ITV                | 20/07/2015               | Generally accepted standards     | 1                           |
| This Morning                                         | ITV                | 01/07/2015               | Nudity                           | 1                           |
| This Morning                                         | ITV                | 13/07/2015               | Competitions                     | 1                           |
| This Morning                                         | ITV                | 21/07/2015               | Competitions                     | 1                           |
| This Morning                                         | ITV                | 23/07/2015               | Gender discrimination/offence    | 1                           |
| This Morning                                         | ITV                | 04/08/2015               | Generally accepted standards     | 1                           |
| Tombola's sponsorship of Loose Women                 | ITV                | 14/07/2015               | Sponsorship                      | 1                           |
| Tonight: Over-the-Counter Addiction                  | ITV                | 10/07/2015               | Due impartiality/bias            | 1                           |
| Vicious                                              | ITV                | 22/06/2015               | Offensive language               | 1                           |
| Vicious                                              | ITV                | 06/07/2015               | Offensive language               | 1                           |
| Win Cash Live                                        | ITV                | 16/07/2015               | Gambling                         | 1                           |
| ITV News London                                      | ITV London         | 16/07/2015               | Race discrimination/offence      | 1                           |
| ITV News London                                      | ITV London         | 20/07/2015               | Generally accepted standards     | 1                           |
| Royal London's sponsorship of London Weekday Weather | ITV London         | 02/07/2015               | Generally accepted standards     | 1                           |
| ITV News West Country                                | ITV West Country   | 22/07/2015               | Violence and dangerous behaviour | 1                           |

| Programme                            | Broadcaster              | Transmission Date | Categories                                | Number of complaints |
|--------------------------------------|--------------------------|-------------------|-------------------------------------------|----------------------|
| Dinner Date                          | ITV2                     | 15/07/2015        | Sexual orientation discrimination/offence | 1                    |
| Love Island                          | ITV2                     | 06/07/2015        | Religious/Beliefs discrimination/offence  | 1                    |
| Love Island                          | ITV2                     | 08/07/2015        | Generally accepted standards              | 1                    |
| Love Island                          | ITV2                     | 12/07/2015        | Sexual material                           | 1                    |
| Love Island                          | ITV2                     | 15/07/2015        | Competitions                              | 1                    |
| Love Island                          | ITV2                     | 15/07/2015        | Generally accepted standards              | 1                    |
| Love Island                          | ITV2                     | 15/07/2015        | Under 18s in programmes                   | 1                    |
| The Jeremy Kyle Show                 | ITV2                     | 10/07/2015        | Generally accepted standards              | 1                    |
| The Jeremy Kyle Show                 | ITV2                     | 21/07/2015        | Generally accepted standards              | 1                    |
| 118 118's sponsorship of ITV Movies  | ITV4                     | n/a               | Outside of remit / other                  | 1                    |
| Live and Let Die                     | ITV4                     | 03/08/2015        | Generally accepted standards              | 1                    |
| The Wild Bunch                       | ITV4                     | 31/07/2015        | Outside of remit / other                  | 1                    |
| Tour de France Live                  | ITV4                     | 14/07/2015        | Advertising minutage                      | 1                    |
| Tour de France Live                  | ITV4                     | 26/07/2015        | Advertising minutage                      | 1                    |
| The Only Way is Essex                | ITVBe                    | 05/07/2015        | Generally accepted standards              | 1                    |
| The Real Housewives of Beverly Hills | ITVBe                    | 02/08/2015        | Harm                                      | 1                    |
| Drivetime                            | Juice FM (Liverpool)     | 05/08/2015        | Violence and dangerous behaviour          | 1                    |
| The Talk Back Show                   | Kemet Radio (Nottingham) | 26/07/2015        | Race discrimination/offence               | 1                    |
| Programming                          | Kiss 100                 | n/a               | Offensive language                        | 1                    |
| James O'Brian Show                   | LBC 97.3 FM              | 21/07/2015        | Due impartiality/bias                     | 1                    |
| Steve Allen                          | LBC 97.3 FM              | 21/07/2015        | Generally accepted standards              | 1                    |
| James O'Brien                        | LBC 97.3FM               | 23/06/2015        | Due impartiality/bias                     | 1                    |
| Ex On the Beach (trailer)            | MTV                      | 21/07/2015        | Scheduling                                | 1                    |
| Ex On the Beach (trailer)            | MTV                      | n/a               | Generally accepted standards              | 1                    |
| Judge Geordie                        | MTV                      | 29/07/2015        | Gender discrimination/offence             | 1                    |
| Danone sponsorship credit            | n/a                      | n/a               | Gender discrimination/offence             | 1                    |
| Programming                          | n/a                      | n/a               | Outside of remit / other                  | 1                    |
| Subtitling                           | n/a                      | n/a               | Television Access Services                | 1                    |
| News                                 | Nation Radio             | 15/07/2015        | Offensive language                        | 1                    |

| Programme                              | Broadcaster   | Transmission Date | Categories                                | Number of complaints |
|----------------------------------------|---------------|-------------------|-------------------------------------------|----------------------|
| Danone sponsorship credit              | Pick TV       | 25/07/2015        | Gender discrimination/offence             | 1                    |
| Danone's sponsorship of Criminal Minds | Pick TV       | 26/07/2015        | Gender discrimination/offence             | 1                    |
| Programming                            | Radio Biafra  | n/a               | Crime                                     | 1                    |
| Gregor Runciman                        | Radio Borders | 21/07/2015        | Commercial communications on radio        | 1                    |
| Continuity announcement                | Really        | 31/07/2015        | Sexual orientation discrimination/offence | 1                    |
| Programming                            | Rishtey       | n/a               | Outside of remit / other                  | 1                    |
| Bapu Surat Singh Khalsa Ji             | Sangat TV     | 13/07/2015        | Harm                                      | 1                    |
| Programming                            | Sangat TV     | 14/07/2015        | Harm                                      | 1                    |
| Win Cash Live                          | Showcase TV   | 20/05/2015        | Participation TV - Misleadingness         | 1                    |
| Erotica Season on Sky Arts (trailer)   | Sky Arts      | 19/07/2015        | Scheduling                                | 1                    |
| Erotica Season on Sky Arts (trailer)   | Sky Atlantic  | 27/07/2015        | Scheduling                                | 1                    |
| Erotica Season on Sky Arts (trailer)   | Sky Atlantic  | 01/08/2015        | Scheduling                                | 1                    |
| Game of Thrones                        | Sky Atlantic  | 18/07/2015        | Generally accepted standards              | 1                    |
| Erotica Season on Sky Arts (trailer)   | Sky Living    | 16/07/2015        | Scheduling                                | 1                    |
| The Enfield Haunting                   | Sky Living    | 27/06/2015        | Advertising minutage                      | 1                    |
| Press Preview                          | Sky News      | 01/08/2015        | Due impartiality/bias                     | 1                    |
| Sky News                               | Sky News      | 25/07/2015        | Religious/Beliefs discrimination/offence  | 3                    |
| Sky News at Nine                       | Sky News      | 27/07/2015        | Due accuracy                              | 1                    |
| Sky News at Nine                       | Sky News      | 03/08/2015        | Due impartiality/bias                     | 1                    |
| Sky News at Ten                        | Sky News      | 28/07/2015        | Gender discrimination/offence             | 1                    |
| Sky News Tonight with Adam Boulton     | Sky News      | 24/07/2015        | Generally accepted standards              | 1                    |
| Sky News Tonight with Adam Boulton     | Sky News      | 27/07/2015        | Drugs, smoking, solvents or alcohol       | 1                    |
| Sky News with Kay Burley               | Sky News      | 22/07/2015        | Generally accepted standards              | 3                    |
| Sky News with Kay Burley               | Sky News      | 24/07/2015        | Generally accepted standards              | 1                    |
| Sky News with Kay Burley               | Sky News      | 29/07/2015        | Generally accepted standards              | 1                    |

| Programme                            | Broadcaster     | Transmission Date | Categories                               | Number of complaints |
|--------------------------------------|-----------------|-------------------|------------------------------------------|----------------------|
| Sky World Review and Business Report | Sky News        | 30/07/2015        | Due accuracy                             | 1                    |
| Sunrise                              | Sky News        | 29/07/2015        | Due impartiality/bias                    | 1                    |
| Sunrise                              | Sky News        | 29/07/2015        | Generally accepted standards             | 1                    |
| Sunrise                              | Sky News        | 04/08/2015        | Due impartiality/bias                    | 1                    |
| Erotica Season on Sky Arts (trailer) | Sky Sports 1    | 02/08/2015        | Scheduling                               | 1                    |
| Erotica Season on Sky Arts (trailer) | Sky Sports 3    | 28/07/2015        | Scheduling                               | 1                    |
| Sports Sunday                        | Sky Sports News | 12/07/2015        | Materially misleading                    | 5                    |
| Cricket's Funniest Moments           | Sky1            | 31/07/2015        | Generally accepted standards             | 1                    |
| Sky Poker Highlights                 | SkyPoker.com    | 14/10/2014        | Product placement                        | 1                    |
| Babestation                          | Smile TV2       | 04/08/2015        | Outside of remit / other                 | 1                    |
| STV News at Six                      | STV             | 27/07/2015        | Drugs, smoking, solvents or alcohol      | 1                    |
| Jason Cundy                          | Talk Sport      | 12/07/2015        | Generally accepted standards             | 1                    |
| The Alan Brazil Sports Breakfast     | Talksport       | 29/07/2015        | Generally accepted standards             | 1                    |
| Weekend Sports Breakfast             | Talksport       | 02/08/2015        | Generally accepted standards             | 1                    |
| Jesse Duplantis Ministries           | TBN UK          | 02/08/2015        | Disability discrimination/offence        | 1                    |
| Programming                          | Various         | 19/07/2015        | Outside of remit / other                 | 1                    |
| Programming                          | Various         | n/a               | Competitions                             | 1                    |
| XFM Breakfast Show                   | XFM             | 08/07/2015        | Scheduling                               | 1                    |
| Xpanded Cheap Chat Show              | Xpanded TV      | 02/08/2015        | Religious/Beliefs discrimination/offence | 2                    |
| Sounds of the Sixties                | Yesterday +1    | 25/07/2015        | Generally accepted standards             | 1                    |

**Complaints assessed under the General Procedures for investigating breaches of broadcast licences**

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

| Licensed service | Licensee            | Categories | Number of complaints |
|------------------|---------------------|------------|----------------------|
| Wave 105         | Wave 105 FM Limited | Format     | 1                    |

## Complaints outside of remit

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

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

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

## Complaints about television or radio programmes

For more information about how Ofcom assesses complaints about content

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

| Programme                                                                         | Broadcaster       | Transmission Date | Categories                         | Number of complaints |
|-----------------------------------------------------------------------------------|-------------------|-------------------|------------------------------------|----------------------|
| Breakfast                                                                         | BBC 1             | 17/07/2015        | Due impartiality/bias              | 1                    |
| Breakfast                                                                         | BBC 1             | 17/07/2015        | Materially misleading              | 1                    |
| Breakfast                                                                         | BBC 1             | 04/08/2015        | Due impartiality/bias              | 1                    |
| Regional News and Weather                                                         | BBC 1             | 30/07/2015        | Due impartiality/bias              | 1                    |
| Rip Off Britain                                                                   | BBC 1             | 21/07/2015        | Materially misleading              | 1                    |
| Victoria Derbyshire                                                               | BBC 2             | 09/06/2015        | Product placement                  | 1                    |
| Scotland 2015                                                                     | BBC 2 Scotland    | 23/07/2015        | Due impartiality/bias              | 1                    |
| British Muslim Comedy - Sadia Azmat: Things I have been asked as a British Muslim | BBC iPlayer       | 18/06/2015        | Race discrimination/offence        | 1                    |
| Zoe Ball                                                                          | BBC Radio 2       | 31/07/2015        | Commercial communications on radio | 1                    |
| Road Traffic Reports                                                              | BBC Radio Devon   | 31/07/2015        | Due accuracy                       | 1                    |
| Landward                                                                          | BBC Scotland      | 28/11/2014        | Due accuracy                       | 1                    |
| E-cigarette competition                                                           | Carrickfergus FM  | 18/06/2015        | Competitions                       | 1                    |
| Advertisement                                                                     | Channel 4         | 21/07/2015        | Advertising content                | 1                    |
| Advertisement                                                                     | Channel 4         | 25/07/2015        | Advertising content                | 1                    |
| Advertisement                                                                     | Channel 4         | 26/07/2015        | Advertising content                | 1                    |
| Advertisement                                                                     | Channel 4         | 31/07/2015        | Advertising content                | 1                    |
| Extreme Fishing with Robson Green                                                 | Demand 5          | n/a               | Animal welfare                     | 1                    |
| Advertisement                                                                     | Discovery Turbo   | 26/07/2015        | Advertising content                | 1                    |
| Advertisement                                                                     | E4                | 02/08/2015        | Advertising content                | 1                    |
| Advertisement                                                                     | Heart FM (London) | 04/08/2015        | Advertising content                | 1                    |
| Advertisement                                                                     | Heart FM (London) | n/a               | Advertising content                | 1                    |
| Advertisement                                                                     | ITV               | 24/07/2015        | Advertising content                | 1                    |

| <b>Programme</b> | <b>Broadcaster</b>                    | <b>Transmission Date</b> | <b>Categories</b>   | <b>Number of complaints</b> |
|------------------|---------------------------------------|--------------------------|---------------------|-----------------------------|
| Advertisement    | ITV                                   | 25/07/2015               | Advertising content | 1                           |
| Advertisement    | ITV                                   | n/a                      | Advertising content | 1                           |
| Advertisement    | More4                                 | 23/07/2015               | Advertising content | 1                           |
| Advertisement    | More4                                 | 25/07/2015               | Advertising content | 1                           |
| Advertisement    | More4                                 | 06/08/2015               | Advertising content | 1                           |
| Advertisements   | n/a                                   | 13/07/2015               | Advertising content | 1                           |
| Advertisement    | Nick Jr                               | 21/07/2015               | Advertising content | 2                           |
| Advertisement    | STV                                   | 04/08/2015               | Advertising content | 1                           |
| Advertisement    | STV and<br>Scottish Radio<br>stations | n/a                      | Advertising content | 1                           |
| Advertisement    | Watch                                 | 28/07/2015               | Advertising content | 1                           |

## Investigations List

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

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

Here are alphabetical lists of new investigations launched between 18 July and 7 August 2015.

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

| Programme                   | Broadcaster       | Transmission date |
|-----------------------------|-------------------|-------------------|
| Azan-e-Maghrib              | Bangla TV         | 8 July 2015       |
| Rugby Tonight               | BT Sport 1        | 8 June 2015       |
| Azan-e-Maghrib              | Channel i         | 30 June 2015      |
| Workaholics (trailer)       | Comedy Central    | Various           |
| Subh-e-Pakistan             | Geo TV            | 19 June 2015      |
| Drivetime                   | New Style Radio   | 16 July 2015      |
| Jimmy Swaggart The Classics | SBN International | 7 July 2015       |
| Ian King Live               | Sky News          | 30 July 2015      |
| Cops                        | Spike             | 12 July 2015      |
| Tattoo Nightmares: Miami    | TruTV             | 6 July 2015       |

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 Procedures for the consideration and adjudication of Fairness and Privacy complaints

| Programme                          | Broadcaster | Transmission date |
|------------------------------------|-------------|-------------------|
| Exposure: Charities Behaving Badly | ITV         | 18 February 2015  |

For more information about how Ofcom considers and adjudicates upon Fairness and Privacy complaints, go to:  
<http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/fairness/>.