

Ofcom Broadcast Bulletin

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Introduction

Under the Communications Act 2003 (“the Act”), Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives¹. Ofcom must include these standards in a code or codes. These are listed below. Ofcom also has a duty to secure that every provider of a notifiable On Demand Programme Services (“ODPS”) complies with certain standards requirements as set out in the Act².

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

- a) [Ofcom’s Broadcasting Code](#) (“the Code”).
- b) the [Code on the Scheduling of Television Advertising](#) (“COSTA”) which contains rules on how much advertising and teleshopping may be scheduled in programmes, how many breaks are allowed and when they may be taken.
- c) certain sections of the [BCAP Code: the UK Code of Broadcast Advertising](#), which relate to those areas of the BCAP Code for which Ofcom retains regulatory responsibility. These include:
 - the prohibition on ‘political’ advertising;
 - sponsorship and product placement on television (see Rules 9.13, 9.16 and 9.17 of the Code) and all commercial communications in radio programming (see Rules 10.6 to 10.8 of the Code);
 - ‘participation TV’ advertising. This includes long-form advertising predicated on premium rate telephone services – most notably chat (including ‘adult’ chat), ‘psychic’ readings and dedicated quiz TV (Call TV quiz services). Ofcom is also responsible for regulating gambling, dating and ‘message board’ material where these are broadcast as advertising³.
- d) other licence conditions which broadcasters must comply with, such as requirements to pay fees and submit information which enables Ofcom to carry out its statutory duties. Further information can be found on Ofcom’s website for [television](#) and [radio](#) licences.
- e) rules and guidance for both [editorial content and advertising content on ODPS](#). Ofcom considers sanctions in relation to ODPS on referral by the Authority for Television On-Demand (“ATVOD”) or the Advertising Standards Authority (“ASA”), co-regulators of ODPS for editorial content and advertising respectively, or may do so as a concurrent regulator.

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

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

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

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

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

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

Note to Broadcasters

COSTA rules and split-screen advertising

The Audiovisual Media Services Directive sets out a range of requirements about the amount and scheduling of television advertising. Ofcom enforces these requirements through the Code on the Scheduling of Television Advertising ('COSTA')¹, which includes rules that:

- require advertising to be distinct from programming;
- limit the amount of advertising a broadcaster can transmit; and
- restrict the placement of advertising during programmes that are deemed to require special protection.

This note provides guidance to broadcasters on the application of the COSTA rules to split-screen advertising, specifically in relation to the placement of such advertising.

Split-screen advertising involves transmitting editorial content and advertising content simultaneously, with each occupying a distinct part of the screen. Although the use of split-screen advertising is in broad terms permissible, it is subject to the COSTA requirements in the same way as traditional spot advertising (which appears in breaks during programmes). Licensees using split-screen advertising must therefore ensure that it complies with the COSTA rules e.g. it is included when calculating the amount of advertising shown (Rule 4), it remains distinct from editorial (Rule 11) and that it does not prejudice the integrity of programming (Rule 12).

In particular, broadcasters should note that, to ensure that the integrity of a programme is maintained, they must have regard to (amongst other things) the 'nature' of the programme during which split-screen advertising is scheduled. Broadcasters need to consider the type of programme e.g. its genre (news, current affairs etc) and the factors that go towards ensuring the overall 'integrity' of such a programme. It is not possible to set out a prescriptive list of the factors which may be included when considering the integrity of a programme. However, these may include the need to maintain viewer confidence that a programme is impartial and free from commercial influence (such as in the context of the news), the need to treat editorial content with appropriate sensitivity or to enable the programme to convey its messages without undue distraction (for example, where the programme focuses on a national tragedy or emergency), and the need to protect particular sectors of the audience (e.g. children) from excessive exposure to commercial messages.

¹ <http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/tacode.pdf>

Standards cases

In Breach

Tobacco Kills...Give It Up

Information TV, 27 July 2013, 12:00 and 12:15

Golf in Cornwall

Information TV, 27 July 2013, 06:30

How to...Plan for your retirement

Showcase, 28 July 2013, 18:00

Background

Information TV and Showcase are general entertainment services that broadcast light entertainment, teleshopping and documentary programmes. The licences for Information TV (Sky 212) and Showcase (Sky 191) are held by Information TV Limited (“Information TV Limited” or “the Licensee”).

Ofcom published a decision¹ on 22 April 2013 regarding the broadcast of a programme called *Cancer: Forbidden Cures* on Showcase 2². Because of the serious nature of the contraventions in that case and following a meeting with the Licensee to discuss its compliance procedures, Ofcom conducted a monitoring exercise of all material broadcast on the Licensee’s services over a five day period to assess whether the output was compliant with the Code.

During the course of that monitoring exercise Ofcom noted four programmes (under three titles – see above) that raised potential issues under Section Nine (Commercial References in Television Programming) of the Code.

The Code defines product placement as:

“The inclusion in a programme of, or a reference to, a product, service or trade mark where the inclusion is for a commercial purpose, and is in return for the making of any payment, or giving of other valuable consideration, to any relevant provider or any person connected with a relevant provider...”.

It also states that:

“With the exception of sponsorship credits, any reference to a sponsor that appears in a sponsored programme as a result of a commercial arrangement with the broadcaster, the programme maker or a connected person will be treated as product placement”.

In each of the programmes, Ofcom identified a significant number of verbal and visual references to the products or services of the company (or companies) which appeared to have paid for the programme’s production.

¹ *Cancer: Forbidden Cures*, Showcase 2, 8 May 2012, 19:00
(<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb228/obb228.pdf>)

² Information TV Limited holds licences for Showcase (SKY 191), Showcase 2 (SKY 192), Showcase +1 (SKY 193) and Information TV (SKY 212)

Tobacco Kills...Give It Up, Information TV, 27 July 2013 12:00 and 12:15

These programmes were described in the Electronic Programme Guide as the 'National Health Channel'³ and both episodes focussed on the benefits of giving up smoking. The first episode began with a full screen slate that said:

"[t]he following programme is in part sponsored by OK Smokey".

The programmes contained positive references to NHS smoking cessation services, such as:

Presenter:

"...many people find giving up a struggle. Help is available. GPs' practice nurses or pharmacists can provide information, encouragement and tips on stopping smoking. Also throughout the country there are specialist stop smoking clinics which have a good success in helping people to stop smoking. Your doctor may refer you to one if you're keen to stop smoking".

The presenter went on to set out the premise of the programme: *"In this programme we hear the views of family GP and a television personality Dr Chris Steele and we speak to electronic cigarette innovators, OK Smokey. [Close up image of product and people using product]. Although electronic cigarettes cannot be legally classed as smoking cessation aids, there is widespread anecdotal evidence from users crediting the devices with having provided long-term success with smoking cessation".*

The programme also contained: testimonials from members of the public who explained when and why they started to smoke; advice they would give to those trying to give up smoking; and an interview with Dr Chris Steele who explained the damage that smoking causes within the body and the burden imposed on the NHS in treating those who suffer from smoking related disease.

After approximately six minutes the presenter said:

"The next section of the programme is a sponsored editorial from electronic cigarette innovators, OK Smokey".

This was followed by content about the OK Smokey electronic cigarette. The content included several positive claims about the products and their safety and efficacy from the company's Financial Director:

"it contains no carcinogens, no toxic chemicals, no carbon monoxide and no other harmful substances".

"we think our prices are very competitive".

"...and there's [shots of people using OK Smokey products] no passive smoke from them either so it's ideal for places like pubs clubs, bars, aeroplanes even hospitals. But it's always best to get permission before you use them in places like this".

"At OK Smokey we have a range of products. They go from the simple e-cigarette that looks like an ordinary cigarette and even has a light at one end so that it

³ <http://www.nationalhealthchannel.tv/target-audience/>

looks much the same. We also sell a Kingo, which is a much larger version and is our most popular model [image showing a man using Kingo]. And we've now introduced the e-shisha [product shown]. This is a battery powered device that sits on the top of a standard shisha pipe...".

"OK Smokey high quality e-cig kits [image shown of OK Smokey kits] contain all the essential content, such as the battery, cartridges, atomiser, chargers and a manual".

The second episode broadcast at 12:15 was sponsored by ePuffer, another electronic cigarette manufacturer, and followed a similar format. Again, following a segment on the benefits of giving up smoking, a full screen slate was shown that said: "[t]he following programme is in part sponsored by E-Puffer". As before, a number of positive statements were made about ePuffer products, by the company's Managing Director. For example:

"ePuffer products are unique and totally different from nicotine patches, gums or any other quit smoking products out there. We create our products based on our customer's feedback. And if you just can't quit you might as well just stop inhaling smoke".

"ePuffer is a global company and electronic cigarette market pioneer. We started about five years ago and helped thousands of smokers to quit smoking or cut back. We've created a variety of products to pretty much cover every possible smoker out there".

"The warning[s] on tobacco cigarettes don't lie. Smoking kills, it's a well known fact and one of the major issues people are having when smoking tobacco cigarettes is the tar, carbon monoxide in the smoke, all the chemicals they inhale. Electronic cigarettes [have] none of those. There is no smoke; there is no tar or carbon monoxide".

"There are two types of smokers: some depend on physical and others will go the psychological. Physical is for people who are really [images of people smoking electronic cigarettes] addicted to nicotine – as we all know nicotine is very addictive. For the psychological, where people really want to hold something in their hand and to take a puff on. So ePuffer pretty much covers both of those issues. We provide smokers with a dose of nicotine or if they don't need nicotine they can just smoke non-nicotine products".

Golf in Cornwall, Information TV 27 July 2013, 06:30

This programme included a segment on two golf clubs and two companies providing golf services in Cornwall⁴. There were audio and visual references to the websites of all four companies.

The programme also included the following material:

"Killiow golf club was formed in 1987 and is located only five minutes from the Cathedral city of Truro. Set in the magnificent grounds [image of Killiow House] of the Killiow Estate this well maintained and picturesque 18 hole parkland [images of the course] course presents a challenge to golfers of all standards.... The

⁴ The clubs and companies featured were Killiow Golf Club, Cape Cornwall Golf Club, Cornwall Disc Golf and Carlyon Bay Trick Shot Golf.

course consists of three par fives, four par threes and eleven par fours. It measures 6,124 yards off the men competition tees and 5,440 yards from the ladies' tees... The club has a vibrant golf membership and offers society packages for all. Each new member receives 12 free group lessons in the first year of membership".

"There is a spacious [image of club house bar] bar and the restaurant can cater for up to 100 guests. There is a variety of food choices available from an excellent Sunday carveries to bar snacks. The club house is popular with private functions and the club holds regular social events for non-members. For more information about Killiow Golf Club please visit the website [website given]".

"...the trick shot shows are very entertaining and require a high level of skill to perform the shots. For more information about the trick shot golf shows Paul Martin and Mark Rowe can offer, please visit [website given]".

"Disc golf is fun to play and accessible for all abilities. It also a good form of gentle exercise. For more information about trying disc golf in Cornwall please visit [website given]".

"The [Cape Cornwall] complex moved to new ownership and management in August 2012 and an extensive refurbishment programme was put into place. To date [image of hotel room] seven hotel rooms have been completed to a high standard, together with the bar and restaurant area. [Image of a water tower] Further phases of the redevelopment are planned with seven additional rooms, a leisure centre, holiday lets and a converted water tower. The course [images of the course] will also be upgraded and improved in 2014".

The opening titles and end credits included a reference to the broadcast being "part funded" by six entities including the companies listed in footnote 4.

At the beginning and end of the programme a full screen slate was shown which included the product placement logo and text that informed viewers that the programme contained product placement.

How to...Plan for your retirement, Showcase TV, 28 July 2013

This programme focussed on the services provided by Leger Holidays. It included interviews with various representatives and customers of Leger Holidays who spoke about the benefits generally of coach holidays and of Leger coach holidays in particular, including the variety of destinations and tours available, how to make a booking and the facilities on board their coaches. A slate at the beginning and end of the programme identified the programme as being part funded by Leger Holidays. Ofcom noted the following material was broadcast:

Ian Henry, Managing Director, Leger Holidays:

"...Leger Holidays is a privately owned holiday company. We specialise in escorted tours by coach, predominantly to Europe, but also worldwide and few holidays in the UK. We are very involved hands on, all the people who own and run the company, with the holidays that we operate. We also as directors ensure that we travel regularly into Europe on the tours to the destinations, see the excursions; see the hotels that we use. So we are hands on so we know what holidays we are offering and we are quite confident that the customer is going to get the holiday they expect and deserve".

“The financial world has obviously made people look at their budgets and ensure that they are getting good value for money and I think coach holidays do offer good value for money particularly when you actually add up all the extras that you would be paying yourself if you were to arrange a holiday on your own such as excursions, visits transfers, meals all of those things that probably aren’t in the face price of another type of holiday are usually included in a coach tour and in particular with Leger Holidays we do include those types of things”.

“You’re going to get the full Leger Holidays experience of seeing lots of great sites going to different countries and you’re with like-minded people in a very safe and secure environment”.

“We have a special programme of single traveller holidays. These are specially designed for people who wish to travel alone. You are picked up at your home and transported to the joining point with the coach, so that’s very safe and secure. Then you join the tour and you’re with likeminded people, other single travellers it’s the opportunity to make friends. The tours are fully hosted. There are ice breaker events which you can choose to attend or not....but you’re going to get the full Leger Holidays experience... What’s more you get your own room and there is no single supplement...”.

“Mr Cahill, Retired Travellers”:

“I was quite surprised on some of them the amount of people that do go on their own. I’ve tried to put myself in the same position would I do it? And I think yeah, I would if I was on my own”.

“Mrs Cahill, Retired Travellers”:

“Yeah, we’ve met a lot... more ladies that have been prepared to go on their own, whether they feel it’s a secure group being on a coach with other people, I think that’s probably it”.

Huw Williams, Marketing Director, Leger Holidays:

“One of things we have introduced in the last few years is our silver service. These are especially designed vehicles, er, coaches [image of Leger Silver Service coach] that have extra leg room, specially designed seats, er, drop down tables foot rests, uniquely for us they have a lounge in the rear where passengers can go chat to each other, there’s books and magazines...nine out of ten of our customers upgrade to our silver service...”.

Deborah Harris, Reservations Team Member, Leger Holidays:

“We offer lots of ways to make a booking to suit different people and the way they most feel comfortable, yeah and people can always come into the office [image of Mr & Mrs Cahill in the Leger Holiday office looking at brochures] and book face to

face, that's a great way to do it and we would encourage people to come in and do that. ...We've got a battlefield programme that's really popular and that used to be a small section in our brochure and that's now got a dedicated brochure and a lot of interest in those tours".

Ofcom noted the programmes contained significant verbal and visual references to a range of companies⁵ and their associated products or services.

As stated in the Code, a "sponsor" is defined as: "[a]ny public or private undertaking or individual...who is funding the programming with a view to promoting its products, services, trade marks and/or its activities".

Given the companies in each of these cases had paid a third party (i.e. a programme maker)⁶ to make the programmes with a view to promoting their products or services, they met the definition of sponsors.

The Code also states that: "[w]ith the exception of sponsorship credits, any reference to a sponsor that appears in a sponsored programme as a result of a commercial arrangement with the broadcaster, the programme maker or a connected person will be treated as product placement".

Therefore because the sponsored programmes contained references to the sponsors' products, services and trade marks, the product placement rules applied.

Ofcom considered each of the programmes described above raised issues under the following Code rules:

Rule 9.9: "References to placed products, services and trade marks must not be promotional".

Rule 9.10: "References to placed products, services and trade marks must not be unduly prominent".

Rule 9.14: "Product placement must be signalled clearly, by means of a universal neutral logo, as follows:

- a) at the beginning of the programme in which the placement appears;
- b) when the programme recommences after commercial breaks; and
- c) at the end of the programme".

We also considered that the two *Tobacco Kills...Give It Up* programmes described above raised issues under Rule 9.13 of the Code:

Rule 9.13: "The product placement of the following is prohibited:
[...]
f) electronic or smokeless cigarettes, cigarette lighters, cigarette papers, or pipes intended for smoking".

⁵ "the companies" refers to: E-Puffer, OK Smokey, Killiow Golf Club, Cape Cornwall Golf Club, Cornwall Disc Golf, Cornwall Golf Partnership, Cornwall Golf Union, Tehidy Park Golf Club and Leger Holidays.

⁶ The third parties that were paid to make the programmes in this case were: Health Sector TV with regard to *Tobacco Kills...Give It Up*, PMG Television Productions Ltd with regard to *How to ... Plan for your retirement* and the Cornwall Channel with regard to *Golf in Cornwall*.

We therefore asked Information TV Limited how the material shown complied with these rules.

Response

The Licensee responded with general comments explaining the basis of its approach to compliance. It also made specific comments about the origin of each of the programmes and points about their compliance with the Code.

General comments

The Licensee explained that it had since its origin sought “to provide an information service within... legal and regulatory constraints” and believed that this had been accepted by Ofcom. It argued that the business model described in the application for its first broadcast licence (granted by the ITC in November 2003) clearly stated that: “the programmes would not be funded by the broadcaster but by others, although not with a view to promoting any products or services. The programmes would be funded by third parties but not with the objective of selling anything”. Information TV Limited added the service would: “provide information, such as communicating public policy, but unlike current affairs would not debate it”. It would be funded by spot advertising and sponsorship and the services would be incubators “for new TV services” which it described as “microchannels”.

Although the Licensee acknowledged that product placement and sponsorship were expressly included within the definition of audiovisual commercial communications in the Audiovisual Media Service (“AVMS”) Directive, it also noted that the AVMS Directive explicitly restricted the definition to “images... designed to promote, directly or indirectly, the goods, services or image of a natural legal entity pursuing an economic activity” only.

Information TV Limited suggested that the AVMS Directive was focused on material that was designed to encourage sales and: “not directed at non-economic activities”. It pointed to s.321(7) of the Act, which contains an exception for certain material of a public service nature, and the ITC Code, which had permitted exceptions for some “instructional” programmes. Accordingly, it argued that the Licensee’s “informational” content could not constitute sponsorship within the terms of the AVMS Directive and therefore the Code.

For the same reason, Information TV Limited considered the extent to which the product placement rules applied to its programming was unclear. The Licensee also suggested that if a programme consisted of:

“information about an organisation, or its activities, with editorial justification for references to the organisation, no calls to action or other direct promotion and no undue prominence, it seems an unnatural reading of the word ‘placement’ to treat it in the same way as an arm’s length bargain with the producer for money of other consideration to include say a car or a trade mark in vision”.

As a result, Information TV Limited suggested that where: “the bargain that is struck is for supply of informational content generally and not for the inclusion of the product or reference as such, it does not seem appropriate to describe the transaction as a ‘placement’”. Information TV Limited considered this scenario was comparable to a cookery programme, in which references to the supermarket “involved in the production would not normally be treated as product placement”.

Although Information TV Limited accepted that it may have been “prudent” to assume the rules applied and insert the product placement logo “in all or most of its programmes”, it nevertheless claimed that doing so would “defeat the purpose of inserting the logo and would likely be a constant repetition to diminish the viewing experience”.

The Licensee also noted that none of the programmes considered in this case had been the subject of complaints from viewers.

Programme specific comments

Golf in Cornwall

The Licensee said that the programme was produced by the Cornwall Channel, which it explained “works with various organisations to promote Cornwall...and also to provide information to local residents as a form of local TV”.

Information TV Limited explained that the Cornwall Channel was contracted and paid by a separate party, the Cornwall Golf Partnership “to produce and air the programme”.⁷ The Licensee provided Ofcom with a copy of the contract between itself and the Cornwall Channel, as well as a copy of the contract between the Cornwall Channel and the (not for profit) Cornwall Golf Partnership. The Licensee stated “there is no commercial relationship between any of the clubs featured in the programme and [the Cornwall Channel], although the clubs made their staff available for the production of clips for the programme”.

With regard to the editorial content of the programme the Licensee said the programme is “informational, consistent with the company’s original business model... [and] not intended to become a vehicle for the purpose of promoting golf clubs or their interests.” Information TV Limited said the website details for the golf clubs and golf services were “provided merely as information for viewers to enable them to obtain further information”.

How to...Plan for your retirement

The Licensee said its client in this case was PMG Television Productions Limited (“PMG”), which had contracts with a range of its own clients to produce a series of “How to...” programmes. The Licensee explained that the programme in question was “part funded by Leger Holidays, as reflected in the slates, the funding being paid to PMG”.

Information TV Limited described *How to...Plan for your retirement* as “a self-promotional programme on behalf of Leger Holidays, part of PMG’s ‘How to...’ microchannel broadcast on Tuesdays and Sundays at set times”.

Tobacco Kills...Give It Up

The Licensee provided Ofcom with the latest version of a “long-standing contract from 2009” between itself and a company now known as Public Sector Health (“PSH”). The Licensee said that PSH had suffered a burglary earlier in the year which resulted in the loss of “all their email and contract information files”. It stated that it

⁷ Information TV stated that the Cornwall Golf Partnership, which aims to promote golf in Cornwall, was funded by three Cornwall County golfing associations, but had no direct relationship with any one golf course.

had been unable to obtain details of PSH's contractual relationship with OK Smokey and ePuffer, although it also stated that PSH had received payment from OK Smokey.

The Licensee said the programme consisted of information about the hazards of smoking and the benefits of giving up. It added the programme "included content about the [OK] Smokey and e-Puffer electronic cigarettes which, although positive, is informational rather than promotional in accordance with [Information TV Limited's business model]... [t]he information about the products is for the editorial purpose of information and not in order to sell it". It also stated that "viewers were warned of [OK] Smokey's involvement by the slate at the beginning and end and the announcement during the programme".

Code specific comments

Information TV Limited responded with regard to all four programmes under Rules 9.9, 9.10 and 9.14 are set out below. It also responded with regard to the *Tobacco Kills...Give It Up* programmes under Rule 9.13.

Rule 9.9

Information TV Limited said its business model involved "the provision of informational content that falls short of promotion". The Licensee argued that the references to the products and services in the programme were "not promotional in the sense ...that they are not designed to encourage sales. There are for example no calls to action in the editorial content of the programme".

Rule 9.10

The Licensee said "the prominence of the references is a function of the informational nature of the programmes. The references appear in context to be editorially justified and for that reason any reference that is prominent does not appear to be unduly so".

Rule 9.13

With regard to the broadcast of *Tobacco Kills...Give It Up*, the Licensee said that it "accepts with regret that it overlooked the fact that the rule extended to electronic cigarettes" and assured Ofcom it would not make the same mistake again.

Rule 9.14

The Licensee apologised if the references in the four programmes amounted to product placement. It said it would insert the logo as necessary in future, although it added that "it would be helpful for Ofcom to clarify whether, in the particular circumstances of the company's business model, the rules are indeed engaged".

Decision

Under the Communications Act 2003 ("the Act"), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to ensure specific standards objectives, including that product placement requirements are met in relation to television programmes and: "that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with". These obligations include ensuring compliance with the AVMS

Directive. The AVMS Directive contains a number of provisions designed to help maintain a distinction between advertising and editorial content, including specific requirements in relation to product placement.

Both the AVMS Directive and the Act prohibit product placement where, among other things, such placement:

- directly encourages the purchase or rental of goods or services, whether by making promotional reference to those goods or services or otherwise; and
- gives undue prominence to the products, services or trade marks concerned.

There are also additional requirements relating to product placement set out in the Act, for example the prohibition of the product placement of particular products, including (but not limited to) electronic cigarettes.

The requirements of the AVMS Directive and the Act are reflected in Section Nine of the Code. This section of the Code includes a number of rules that are designed to ensure that broadcasters keep programmes distinct from advertising. These include the rules which apply to product placement (Rules 9.6 to 9.14 of the Code).

Firstly, Ofcom acknowledged the Licensee's point that Ofcom had received no complaints from viewers about the programmes described above. However, Ofcom's procedures make clear that we may launch investigations on our own initiative where we consider a broadcast may have failed to comply with the applicable provisions of the Code.

Ofcom then considered whether the product placement rules applied in relation to these programmes. In doing so, we noted in particular that the Licensee had argued that it was unclear whether the rules on product placement applied to content broadcast on its services on the grounds that this material was "informational" content rather than material designed to encourage sales. We also took account of the Licensee's view that Ofcom's guidance to Section Nine of the Code "casts the net very wide, advising that [the rules] extend to placements whether or not they are included for a commercial purpose" and that this was potentially inconsistent with the definition of an audiovisual commercial communication in the AVMS Directive.

The AVMS Directive defines an audiovisual commercial communication as:

"images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity. Such images accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement".

Consequently, in order for a commercial arrangement to constitute a commercial communication such as sponsorship or product placement, it must, in principle, meet three cumulative conditions. Firstly, the entity whose goods, services or image are promoted must be an entity pursuing an economic activity. Secondly, material must accompany or be included in a programme in return for payment (or other similar consideration). Lastly, the objective of the funding arrangement must be to promote, directly or indirectly, the brand, name, activities etc. of the funding entity.

In our view the programmes assessed as part of this Decision clearly met the three conditions set out above. In relation to the first condition, we noted that the promoted

companies marketed their products and services (electronic cigarettes, holiday and leisure activities) in competition with other entities. As a result we did not accept the Licensee's suggestion that the material in this case was unconnected to the pursuit of an economic activity. Although we noted the Licensee's view that the exception set out in s.321(7) of the Act was relevant, because that section applies specifically to advertisements of a public service nature inserted by, or on behalf of government departments, we did not consider it applied to the type of entities and arrangements at issue here.

In relation to the second condition, we noted that the material and representations provided by Information TV Limited made clear that the companies in question had each paid the producers of the programmes to produce or include the material in the programmes.⁸ Although we noted the point made by the Licensee that payments were made in some cases in return for the production of an entire programme and not for the inclusion of individual promotional images, we did not consider this had any impact on the classification of the arrangements at issue as "commercial communications" for the purposes of the AVMS Directive. This is because it was clear, in our view, that the relevant definition covered such situations.⁹

Finally, in relation to the third condition, although we noted Information TV Limited's argument that the definition might not apply where the funding from third parties was provided "in pursuit of non-economic activities or for other purposes such as in instructional (how to do) programmes" rather than sales, we considered Information TV Limited's argument was misconceived: the AVMS Directive does not exclude "informational content" about the product or services provided by an entity pursuing an economic activity from material which promotes that entity "directly or indirectly". In our view, the objective of the arrangements at issue was to promote the products and services offered by the promoted entities and associated companies, by providing information about these products and services, their brand, features, availability and prices. We also noted in this respect that commercial arrangements relating to "consumer advice programmes" could also fall within the definitions of sponsorship and product placement, albeit subject to stricter requirements.¹⁰

Accordingly, because all three conditions were met, we concluded that the programmes were capable of constituting commercial communications in the form of product placement.

We noted Information TV's view that it would be "an unnatural reading of the word 'placement'" to treat a programme consisting of "information about an organisation, or its activities, with editorial justification for references to the organisation, no calls to action or other direct promotion and no undue prominence" in the same way as: "an arm's length bargain with the producer for money or other consideration to include say a car or a trade mark in vision".

⁸ In relation to *Tobacco Kills...Give it Up*, Ofcom noted the Licensee's submission that it had been unable to obtain details of the contractual relationship between the producers of the programme and one of the promoted entities. We also noted, however, that the programmes at issue clearly indicated that they were sponsored by the promoted entities as well as the Licensee's acceptance that the relevant commercial arrangement was contrary to Rule 9.13.

⁹ We note in this respect that the definition of sponsorship in the AVMS Directive expressly refers to the "financing of audiovisual media services or programmes" (see Art.1(k)).

¹⁰ See Rule 9.23 of the Code (in combination with Rule 9.12).

Again, however, it was our view that the Licensee's interpretation was misconceived, as the definition in the Act is broader than suggested by the Licensee. The Code includes the statutory definition of product placement, which states:

“[t]he inclusion in a programme of, or of a reference to, a product, service or trade mark where the inclusion is for a commercial purpose, and is in return for the making of any payment, or the giving of other valuable consideration, to any relevant provider or any person connected with a relevant provider, and is not prop placement”.

The Code goes on to define a relevant provider as “the provider of the television service in which the programme is included or the producer of the programme.”

For each programme considered in this Decision, we considered that, as envisaged by the above definition, visual and verbal references were made to the products and services of companies in return for payments made to the programme producers. In Ofcom's view, application of the rules on product placement to these practices could therefore not be said to rely on an “unnatural” reading of said rules. (The question of whether such references were editorially justified is dealt with below, under the heading “Rule 9.9”).

We also considered the Licensee's suggestion that the inclusion of references to the products or services of the funders of the programmes was comparable to that of a “supermarket involved in the production” of a cooking programme, which: “would not normally be treated as product placement”. In our view, the nature of the “involvement” in such circumstances would be crucial to determining whether the product placement rules were engaged. According to section 1(2) of Schedule 11A of the Act, prop placements are only excluded from the definition of product placement in so far as no relevant provider has received payment for the inclusion or reference to the product, service or trademark concerned. However, in the programmes in this case, each of the companies featured had paid the producers for their inclusion in the programmes.

Further, although the Licensee made clear its view that the material it had broadcast was “self-promotional”, its understanding of the type of material which constitutes self-promotional content was incorrect. The Licensee had previously been informed by Ofcom about the definition of a self-promotional service (which can be found in the Code on the Scheduling of Television Advertising¹¹ and Television Licensable Content Services Guidance Notes for Applicants) which states:

“A self-promotional service is a service which consists of self-promotional material. Self-promotional material is a particular kind of advertising in which the broadcaster promotes its own products, services or channels. Spot advertising and teleshopping for other products and services are permitted on self-promotional services up to same limits as for editorial services. For the avoidance of doubt, self-promotional services may not broadcast material (other than permitted advertising and teleshopping) which does not promote the broadcaster's own goods or services¹² (emphasis added).”

¹¹ <http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/tacode.pdf>.

¹² http://licensing.ofcom.org.uk/binaries/tv/tlcs_guidance.pdf.

Because the products and services being promoted in the programmes were provided by third parties and not by the Licensee, we considered that the material in question did not meet the definition of self-promotional content.

Accordingly, and in light of the above, we were satisfied that the product placement rules applied in relation to these programmes.

Ofcom therefore went on to consider whether the references to OK Smokey, ePuffer, the various golf clubs, Cornwall Disc Golf and Leger Holidays complied with the relevant product placement rules in the Code.

Rule 9.9

This rule requires that references to placed products, services and trade marks are not promotional.

We noted the Licensee's contention that the material in the programmes consisted of "informational content that falls short of promotion" on the grounds that the: "references to products etc in the programme are not promotional in the sense... that they are not designed to encourage sales." We disagreed.

The term "informational" is not included in the Code, the Act or the AVMS Directive. As discussed above, the fact that content may be "informational" does not necessarily preclude it from also being promotional in nature, or exempt it from Rule 9.9. Ofcom's guidance accompanying Section Nine of the Code makes clear that a breach of Rule 9.9 is likely to occur:

"where a clear promotional statement about a placed product is made (e.g. a comment about the superlative nature of a product) or where repeated implicit promotional content is broadcast (e.g. multiple references to a product that cannot be justified by the editorial requirements of the programme)".

The guidance also sets out that factors that are likely to be considered promotional also include advertising claims; price or availability information; references (either explicit or implicit) to the positive attributes or benefits of the placed product, service or trade mark; and endorsements (either explicit or implicit).

It is a fundamental tenet of the Code that there must be a clear distinction between editorial content and advertising. The dependence of a programme's concept on promotional material does not represent sufficient editorial justification for the inclusion of placed material.

Ofcom went onto consider whether the references to the placed products, services and trademarks in the four programmes were promotional.

Golf in Cornwall

Ofcom noted this programme focussed on a number of golf clubs, their facilities and the services provided by Cornwall Disc Golf. This included a focus on various positive features as well as information on offers available to existing and new members (e.g. "[e]ach new member receives 12 free group lessons in the first year of membership", "to date [image of hotel room] seven hotel rooms have been completed to a high standard..." and "there is a spacious bar that can cater for up to 100 guests"). We noted also that website references for each business featured in the programme were included at the end of relevant programme segments.

In Ofcom's view, the overall tone of the programme portrayed the clubs and golf-related activities in a positive light by: including promotional references to the clubs and golf-related activities; providing contact details for viewers to obtain prices and availability information; and including content more akin to advertising claims. We considered these references were clearly promotional statements and therefore found the programme in breach of Rule 9.9.

How to...Plan for your retirement

Ofcom noted this programme focussed entirely on the services provided by Leger Holidays and was aimed at retirees and those approaching retirement who wanted to travel within the UK and abroad. We noted also that the programme included various interviews with members of staff from Leger Holidays and testimonials from customers.

We considered the overall tone of the programme portrayed Leger Holidays and its services in a positive light. In particular, we noted that the programme contained detailed information about services offered by the company (e.g. *"ice-breaker events"*, *"a special programme of single traveller holidays"*) and a number of positive statements about its tours (e.g. *"good value for money"*, *"You know more or less door to door you haven't got any hassle..."*). In our view this material contained several clearly promotional statements and we therefore found the programme in breach of Rule 9.9.

Tobacco Kills...Give It Up

Ofcom noted the first part of both programmes explored the dangers associated with smoking tobacco products and the impact of smoking tobacco-related products on the body and NHS resources. The second part of each programme went on to focus entirely on OK Smokey and ePuffer electronic cigarette products.

In Ofcom's view the overall tone of the programmes portrayed the products in a positive light. The first programme included detailed descriptions of OK Smokey products (e.g. *"OK Smokey high quality e-cig kits [image shown of OK Smokey kits] contain all the essential content, such as the battery, cartridges, atomiser, chargers and a manual"*) as well as claims about price (*"we think our prices are very competitive"*) as well as a number of implied claims about the benefits of OK Smokey products with tobacco. For example an employee of OK Smokey noted that the products contained *"no carcinogens"* or *"other harmful substances"*, and claimed they were *"ideal for places like pubs clubs, bars, aeroplanes even hospitals"*.

The second programme contained similar material about ePuffer. The programme featured a range of positive comments from the Managing Director of ePuffer about the company, which he described as an *"electronic cigarette market pioneer"* with *"a variety of products to pretty much cover every possible smoker out there"* that were *"unique"*. Another director of the company was also given the opportunity to claim that customers who had started to use ePuffer products had got *"their health back to them"*, were able to exercise more easily and were less breathless. He also referred to customers who were happy to be able to smoke indoors, particularly if they had young children.

In both cases we noted that viewers were informed about the range of products available from the manufacturers, as well as a number of claims being made about value for money, ease of purchase, use and the health benefits associated with electronic products when compared to tobacco products. In our view the programmes

contained explicit promotional references, more akin to advertising. We found both programmes in breach of Rule 9.9.

Rule 9.13

The Act explicitly prohibits the product placement of electronic cigarettes¹³, a requirement which is reflected in Rule 9.13 of the Code. Given both programmes were sponsored by OK Smokey and ePuffer and the Licensee's implicit acceptance of the existence of product placement, we considered the references to the OK Smokey and ePuffer products constituted product placement. We therefore found both programmes in breach of Rule 9.13.

The Code and guidance clearly state that where a sponsor's products or services are included in a programme, the references will be treated as product placement. We noted the Licensee stated that it had "overlooked the fact that the rule extended to electronic cigarettes" and apologised for the error. However, given the explicit prohibition on the product placement of such products, we considered this represented a serious compliance failure on the part of the Licensee.

Rule 9.10

This rule requires broadcasters to ensure references to placed products are not unduly prominent.

In its response to Ofcom, the Licensee described these programmes, and the material on its services more generally, as "informational content" which consisted of "information about an organisation, or its activities, with editorial justification for references to the organisation". However, Ofcom's guidance states:

"...Editorial justification is one of the fundamental tests by which undue prominence will be assessed. In particular, storylines, themes and narratives that appear to have been constructed for the purpose of giving exposure to or featuring placed products, services or trade marks, with a lack or absence of sufficient editorial justification will be more difficult to justify as duly prominent".

Therefore, for material to be compliant with Rule 9.10, a programme's editorial concept can neither be justified by, nor dependent on, the inclusion of the product placement.

We went on to consider whether the references to the placed products, services and trademarks in the programmes subject to this Preliminary View complied with Rule 9.10.

Golf in Cornwall

We noted this programme contained consistent and detailed references to services provided by the companies featured in the programme. Although the programme included a segment on golfing news from around the county, including an update on a junior tournament and a competition to win a short golfing holiday, this material constituted only four and a half minutes out of a programme that had a duration of approximately 23 minutes. In our view the programme concept was entirely dependent on the inclusion of references to the sponsor's products and services. We concluded therefore that the programme was in breach of Rule 9.10.

¹³ Schedule 11A, paragraph 6(2) of the Communications Act

How to...Plan for your retirement

We noted that although the programme was called *How to...Plan for your retirement*, it focussed entirely on the products and services offered by Leger Holidays: the description of the placed products were integral to the narrative of the programme. While the theme of the programme was, in principle, editorially justified (i.e. a programme that explored the issues facing those about to retire and who have already retired), in reality the programme contained limited information on that subject, except in the context of explaining the benefits associated with travel with Leger Holidays. For example, although the episode examined travelling alone; meeting “*like-minded*” people; having the financial security to travel; and a door to door service that would appeal to those who are potentially more vulnerable or in need of assistance, in each case the programme set out how the products and services provided by Leger Holidays could address those needs. We considered the narrative of the programme had been constructed for the purpose of promoting Leger Holidays and lacked sufficient editorial justification. We concluded therefore that the programme was in breach of Rule 9.10.

Tobacco Kills...Give It Up

Ofcom noted that both the programme featuring OK Smokey and the programme featuring ePuffer were each approximately 11 minutes in duration. Each programme contained approximately five minutes at the start and one minute at the end that focussed on the dangers associated with smoking tobacco products and the impacts that smoking tobacco-related products has on the body and NHS resources. We considered this material clearly constituted a valid public health message, which was not promotional and served simply to inform viewers about the hazards of smoking.

However, we noted that, in both cases the programmes went on to feature extensive references to electronic cigarettes and associated products offered by OK Smokey and ePuffer, lasting approximately four and a half minutes and five and a half minutes respectively. In Ofcom’s view each programme appeared to have been constructed for the purpose of giving exposure to the sponsors’ products, by placing product-specific material within the context of a longer programme about the benefits of stopping smoking. We concluded therefore that the programmes were in breach of Rule 9.10.

Rule 9.14

In cases where a programme is produced or commissioned by the broadcaster or any person connected to the broadcaster, the inclusion of product placement must be signalled to the audience. Rule 9.14 requires that the product placement logo is broadcast at the beginning and end of such programmes and when returning to the programme after any commercial breaks.

As noted above, the Licensee expressed confusion about the scope of the product placement rules and considered it may be necessary to “assume” the rules apply and insert the product placement logo in all or most of its content. We also noted that it welcomed Ofcom’s guidance. We were very concerned that the Licensee seemed to be confused on this point, given that a significant proportion of the Licensee’s output is sponsored and contains product placement.

In relation to *Golf in Cornwall*, while we noted there were full screen slates that referred to product placement at the start and end of the programme, the logo was

not included when the programme recommenced after the first commercial break. This material was therefore in breach of Rule 9.14.

With regard to the broadcasts of *Tobacco Kills...Give It Up* and *How to...Plan for your retirement*, the logo was not broadcast at any of the required points and therefore the audience was not made aware that the programme contained references to companies and products which were included as a result of a commercial arrangement between the company and the programme producer. While we noted the programmes contained brief references to “*paid for presentation[s]*” and the like, such references clearly did not comply with the requirement under Rule 9.14 for the broadcast of the universal neutral logo. This material was therefore in breach of Rule 9.14 of the Code.

Conclusion

In the programmes described above, the Licensee broadcast material promoting the products or services of companies which had paid for those references to appear.

Given that Ofcom had issued clear guidance and warnings to the Licensee about the material it broadcast, including at a meeting and in a letter shortly before the programmes were transmitted, we were concerned that Information TV Limited had failed to ensure its programming was compliant with the rules on product placement. As stated above it is a fundamental tenet of the Code that broadcasters must ensure that there is a clear distinction between editorial content and advertising. In this case, Ofcom considered that references to the placed products were promotional and unduly prominent. The programmes also did not comply with the rules of the Code on prohibited forms of product placement and signalling.

In light of these serious concerns Ofcom puts the Licensee on notice that any further breaches of the Code in this area may lead to Ofcom considering the imposition of a statutory sanction.

***Tobacco Kills...Give It Up* (12:00 and 12:15): Breaches of Rules 9.9, 9.10, 9.13 and 9.14**

***Golf in Cornwall*: Breaches of Rules 9.9, 9.10 and 9.14**

***How to...Plan for your retirement*: Breaches of Rules 9.9, 9.10 and 9.14**

Ofcom takes this opportunity to remind all broadcasters that while Section Nine of the Code provides significant scope for including commercial references in programming, it does not allow broadcasters to transmit editorial material which is effectively advertising. In particular, the rules governing sponsorship and product placement arrangements do not permit the broadcast of content which has been created as a vehicle for the purpose of promoting the funder or placer’s interests.

It is essential that licensees consider how the programmes they broadcast have been funded. In particular, where a programme has been funded by a third party with a view to promoting its products, services, trade marks and/or its activities, the sponsorship rules will apply. Importantly, the promotional benefit a sponsor attains from funding a programme is limited to the identification of the sponsor’s association with the programme (through sponsorship credits). The sponsor cannot promote itself, its products or services during the content of the programme itself.

As set out in the Code, where a reference to a product, services or trade mark appears in a programme as a result of payment (or other valuable consideration) to the programme maker or broadcaster, the product placement rules will be engaged.

Furthermore, with the exception of sponsorship credits, any reference to a sponsor that appears in a sponsored programme as a result of a commercial arrangement with the broadcaster, the programme maker or a connected person will be treated as product placement.

For further details on the application of Section Nine of the Code, broadcasters should refer to the Guidance, which is available here:
<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>.

In Breach

Drivetime

Talksport, 2 June 2014, 16:00

Introduction

Talksport is a national radio station providing a 24-hour speech service that primarily features programming about sport as well as regular news bulletins. The licence for Talksport is held by Talksport Limited (“Talksport Ltd” or “the Licensee”).

A complainant alerted Ofcom to an interview about the World Cup broadcast in *Drivetime* between the presenters, Adrian Durham and Darren Gough, and a representative of the bookmaker, Paddy Power, which also sponsored the programme. The interview included a commercial reference for Paddy Power, which offered new customers who opened an account the opportunity to place a bet of up to £10 on England winning the World Cup at odds of 100 to 1. The commercial reference comprised the following:

- Adrian Durham: *“Have you still got the, that 100 to 1 England possible?”*
- Paddy Power: *“Yes, still possible, still there – it’s just nearly run out now, at this stage but, yeah, it’s still there, so why not, if you haven’t...”*
- Adrian Durham: *“Goughy can’t believe it...”*
- Darren Gough: *“He’s actually doing it?”*
- Adrian Durham: *“Yeah.”*
- Darren Gough: *“He’s going at 100 to 1?”*
- Adrian Durham: *“Yeah, and do you know the percentage I’m getting?”*
- Darren Gough: *“What?”*
- Adrian Durham: *“Zero.”*
- Paddy Power: *“Yeah – Well, we had the idea independently, Goughy!”*
- Adrian Durham: *“Yeah, of course you did, yeah, yeah, yeah...”*
- Darren Gough: *“England – Now, they’re still at 100 to 1?”*
- Paddy Power: *“No, I’ll tell you what it is, though, honestly. There are some slight stipulations, like it’s only if you open a new account you can have up to a tenner on at 100 to 1. So...”*
- Darren Gough: *“Whooooa!”*
- Paddy Power: *“...if it’s restricted or not you can get a sneaky tenner on – you know what I mean?”*

Darren Gough: *“Yeah, it’s worth a cheeky tenner – it’s worth a cheeky tenner!”*

The Licensee told Ofcom that it had not sought clearance from the Radio Advertising Clearance Centre (“the RACC”) for this commercial reference.

The complainant told Ofcom that, when he contacted the betting company to open a new account and place a bet on England winning the World Cup at odds of 100 to 1, the offer was no longer available.¹

Ofcom considered the broadcast raised issues warranting investigation under the following Code rules:

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

Rule 10.8: “Commercial references that require confirmation or substantiation prior to broadcast must be cleared for broadcast in the same way as advertisements.”

The advertising content, scheduling and clearance rules that apply to radio broadcasting are set out in the UK Code of Broadcast Advertising (“the BCAP Code”)². Rules 3.1 and 17.1 of the BCAP Code state:

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

BCAP Code Rule 17.1: “Radio Central Copy Clearance – Radio broadcasters must ensure that advertisements for gambling are centrally cleared.”

We therefore asked the Licensee for its comments, and those of Paddy Power, concerning how they considered the commercial reference complied with the above rules.

Response

Talksport Ltd apologised for the broadcast of an offer that had no longer been available, which it said was “a genuine error on the part of the Paddy Power representative”. It also apologised for not obtaining clearance of the script for the commercial reference from the RACC prior to broadcast, which the Licensee said was an oversight for which it took responsibility. It added that Paddy Power had received five similar complaints about the matter and accepted that the commercial reference did not comply with the rules Ofcom had cited.

¹ Talksport subsequently confirmed to Ofcom that this was the only occasion on which the *Drivetime* sponsor’s offer had been promoted on Talksport when it had not been available.

² The Advertising Standards Authority (“ASA”) and Broadcast Committee of Advertising Practice (“BCAP”) regulate the content of broadcast advertising, under a Memorandum of Understanding with Ofcom. Specifically, BCAP supervises and reviews the codes that govern the regulation of broadcast advertising. The regulation of commercial references on radio, including sponsorship credits, remains with Ofcom, as such references form part of radio broadcasters’ editorial content (i.e. they are not spot advertisements).

The Licensee said it had taken “comprehensive measures as a matter of the utmost urgency to ensure that nothing of this nature [happened] again”, adding that, having investigated the matter, Talksport Ltd had implemented “a new compliance policy regarding Betting Promotions in Programming”, a copy of which it provided. It said the policy emphasised the importance of compliance with the Broadcasting and BCAP Codes, adding that it had been “distributed to all applicable talkSPORT staff and betting partners”. The Licensee said policy implementation was being “supported with applicable internal training” and it detailed the seminars it was in the process of providing for its staff. Talksport Ltd also said that any new staff, presenters and betting clients that were to be involved in on-air betting promotions would now be provided with a copy of the policy – which included an RACC clearance template for use in certain promotions – before any such involvement commenced. The Licensee added that it was also revising its betting partner contracts.

Paddy Power did not comment.

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...radio services so as to provide adequate protection for members of the public from the inclusion in such services of...harmful material and “that the inclusion of advertising which may be misleading, harmful or offensive in...radio services is prevented”. These objectives are reflected in the BCAP Code rules in relation to advertising, and in Section Ten of the Ofcom Broadcasting Code in relation to commercial references in radio programming.

To assist radio licensees in ensuring compliance with broadcast advertising rules, the BCAP Code notes that scripts for “special category” radio advertisements – which include gambling products and services – must be approved in advance of broadcast by the RACC³. The requirement for gambling is set out in Rule 17.1 of the BCAP Code. Further, to ensure appropriate consumer protection across similarly promotional material during radio programming, Rule 10.8 of the Broadcasting Code extends the BCAP Code clearance requirements to “special category” commercial references in programming that require confirmation or substantiation prior to broadcast.

In this instance, Ofcom noted that Talksport Ltd failed to obtain script clearance prior to broadcast of a betting offer described in a commercial reference, as required by Rule 17.1 of the BCAP Code. The commercial reference was therefore in breach of Rule 10.8 of the Broadcasting Code.

Ofcom noted Talksport Ltd’s submission that, in this instance, the broadcast of a betting offer that had no longer been available was “a genuine error on the part of the Paddy Power representative”. However, Licensees are responsible for ensuring Code compliance, not third parties. Further, we noted that, in this instance, odds of 100 to 1 for England to win the World Cup, which were no longer available, were promoted by Paddy Power only after a *Drivetime* presenter had queried their availability, as part of the commercial reference.

We considered the commercial reference, which promoted odds that were no longer available, had materially misled both the complainant and other listeners, contrary to

³ Section 1 (Compliance) of the BCAP Code

Rule 3.1 of the BCAP Code. As Ofcom concluded the commercial reference did not comply with the relevant advertising rule, it breached Rule 10.7 of the Code, with reference to Rule 3.1 of the BCAP Code.

Ofcom noted the measures taken by the Licensee to ensure similar breaches will not recur.

Breach of Rule 10.7 of the Code with reference to Rule 3.1 of the BCAP Code
Breach of Rule 10.8 of the Code with reference to Rule 17.1 of the BCAP Code

Fairness and Privacy cases

Upheld in Part

Complaint by Mr E

Granada Reports, ITV, 16 April 2014

Summary

Ofcom has upheld in part Mr E's complaint of unjust or unfair treatment and unwarranted infringement of privacy.

The programme reported on the police investigation into the murder of a pensioner in Hunts Cross, Liverpool. The report in question included footage of the exterior of the complainant's house, and the name of the road on which it is located was disclosed. The report stated that the complainant's house had been "*cordoned off*", but no reason was given to explain its connection to the investigation.

Ofcom found that in the particular circumstances of this case:

- The programme resulted in unfairness to Mr E because the report incorrectly stated that his house had been "*cordoned off*" and that it was likely that some viewers would have reasonably inferred from the report that the house and/or its residents were in some way connected to the murder investigation.
- Mr E did not have a legitimate expectation of privacy in connection with the obtaining, or the subsequent broadcast, of footage of the exterior of the property. Therefore, Mr E's privacy was not unwarrantably infringed in connection with the obtaining of material included in the programme, or in the programme as broadcast.

Introduction and programme summary

On 16 April 2014, ITV broadcast an edition of its regional news programme, *Granada Reports*, which included a report about the murder of a pensioner in Liverpool.

The studio presenter introduced the report as follows:

"A man has been arrested on suspicion of murdering a pensioner from Merseyside. The 78 year old man was found dead at a house in the Hunts Cross area of Liverpool last night".

The news reporter then explained that emergency services were called to: "*this house on Stowe Close in Hunts Cross*". Footage of the outside of a house, with a blue police tent clearly visible next to it, was shown alongside this commentary. The property shown was the house in which the murder victim had lived, i.e. not the complainant's house. The reporter added that the victim had been fatally stabbed and that shortly afterwards a 27 year old man, who was reported to be the son of the victim, had been arrested a quarter of a mile away.

Footage of the front exterior of the complainant's house was then shown for approximately four seconds. The footage showed a police van parked on the road and a police officer standing on the road outside the complainant's house. The report

then included footage of a forensic police officer on the driveway of a property. It was unclear whether or not this was the complainant's driveway. This footage was accompanied by the following commentary:

"The police investigation is still on-going. Another property on [road name] just around the corner also remains cordoned off".

The reporter concluded that: *"Neither the victim or the man who was arrested have been named. Police say they are treating the incident as, in their words, 'a domestic matter'"*.

Summary of the complaint and the broadcaster's response

Unjust or unfair treatment

- a) In summary, Mr E complained that he was treated unjustly or unfairly in the programme as broadcast because it gave the incorrect impression that his house had been *"cordoned off"* by the police because his house and its residents were connected with a murder investigation.

By way of background, Mr E said that the footage included in the programme showed a police presence outside his home, as police were investigating a murder which had occurred in a house in a nearby street. He explained that the police were not investigating his property, but were interested in some rubbish that had been left on the street outside his property as they thought it might be evidence relating to the murder. Mr E added that the police were there to ensure that the potential evidence was not disturbed. Mr E said that his home had not been *"cordoned off"* and that he, his family and his home were not connected to the murder in any way. He added that, as a result of the report, his family had been subjected to a whole day of "negative voyeurism".

In response, ITV acknowledged that incorrect information had been included in the report, i.e. the house being *"cordoned off"*, and said that it had apologised for any distress which the report may have caused to Mr E and his family. However, it did not consider that the error in the report resulted in unfairness to Mr E or that the report created the impression that the residents of the property were involved in the murder or the investigation.

The broadcaster said that Mr E and his family were not identified or referred to in the report and that although the street name was given and the exterior of the house was shown, the full address was not disclosed in the report. Therefore, it said Mr E would not have been identifiable to the vast majority of viewers.

ITV continued that the report did not link the residents of the house with the investigation, nor did it say or imply that Mr E and his family were personally connected to, or suspects in, the murder investigation. Instead, the report showed a police van and police officer outside the complainant's house accompanied by the statement that the *"property on [road name] remains cordoned off"*, which the broadcaster said simply implied that the location was part of the on-going investigation. ITV said that the footage showed that an area in front of the house was being examined by the police and no other details were given in the report.

Further, ITV said that although the report stated that the complainant's house was *"cordoned off"*, no police cordon was actually visible in the footage of Mr E's house. The broadcaster also said that, other than a police officer standing on the

road outside Mr E's house, no other officers were visible in the footage of the complainant's house. ITV added that it was clear from the footage that the forensic officer was at the property on Stowe Close and not on Mr E's driveway because "the brick of the house, the wall, the foliage in the garden and the light were all consistent with the earlier and later shots of the house in Stowe Close". As such, viewers would not have been given the impression that the footage of the forensic police officer was filmed at Mr E's house.

ITV considered that any "negative voyeurism" Mr E and his family may have suffered was due to the police presence outside his property rather than as a consequence of the report. The broadcaster also noted that Mr E's street is quite narrow and the presence of the police van outside the complainant's house may have meant that cars generally had to slow down to negotiate the bend in the road. In response to Mr E's comment that he had received phone calls from individuals who had seen the report (see below), the broadcaster did not accept that these calls were a result of the incorrect statement being included in the report.

In the broadcaster's view, given all the other information that was included in the report concerning the discovery of the body and the subsequent arrest of a man elsewhere than on the road where the complainant's house is located, the reasonable viewer would not have concluded that the residents of the complainant's house were involved in the murder or the investigation and it was unlikely that the incorrect statement regarding the house being "cordoned off" would have, in itself, resulted in viewers coming to any adverse view of Mr E.

Unwarranted infringement of privacy

- b) In summary, Mr E complained that his privacy was unwarrantably infringed in connection with the obtaining of the material included in the programme because his property was filmed without his permission.

In response, ITV said that it did not consider that Mr E had a legitimate expectation of privacy relating to the filming of his house because:

- the house was filmed openly from a public place;
- the full address and exact location of the house were not filmed or disclosed in the report;
- no private information about Mr E was captured in the filming; and,
- no images filmed were private (which might have otherwise meant that prior consent from Mr E was required).

The broadcaster also considered that it was justified to film outside the house without permission because there was a visible police presence which was related to a murder investigation. It added that filming outside the house was a legitimate and essential part of the news gathering process.

However, the broadcaster said that if Ofcom concluded that Mr E did have a legitimate expectation of privacy relating to the filming of the exterior of the house, then ITV considered that the programme makers were warranted to film the police activity outside the house without Mr E's consent. This is because ITV said that there was a strong public interest in broadcasters being able to report on police investigations and operations, especially those in a public place and relating to a serious crime, such as a murder. In the circumstances, ITV said that

the public interest and the audiences' right to receive information outweighed any expectation of privacy Mr E had regarding the filming of the exterior of his house.

- c) In summary, Mr E complained that his privacy was unwarrantably infringed in the programme as broadcast because footage of his house was shown without his permission in a news report about a murder investigation.

By way of background, Mr E said that the filming occurred during the school holidays while his children were at home. He said that, as a result of the report, cars would "slow down to look at our home" and his family were unnecessarily frightened for the whole day. He said that people had seen the report and had called, concerned that he and his family may have been involved in the murder.

ITV did not consider that the inclusion of the footage of Mr E's house in the report resulted in an unwarranted infringement of Mr E's privacy or that his consent was required for the use of the footage.

ITV argued that Mr E did not have a legitimate expectation of privacy in relation to the broadcast of the footage of his house in the report because:

- the house had been filmed openly and in a public place, and in the context of a police presence outside the property as part of an on-going murder investigation;
- the police activity would have been visible and obvious to people passing the house that day;
- it could reasonably be expected that the media would report on any developments in a murder investigation;
- the exact location and address of the house were not disclosed;
- the report did not name or identify Mr E or his family as the residents of the house;
- no personal or private information about Mr E or his family was disclosed during the report; and,
- the programme did not state or imply that Mr E or his family were personally connected to the murder investigation.

ITV acknowledged that it was possible for incorrect information to result in an infringement of privacy, where that incorrect information goes to a private matter. However, in the circumstances of this case, the broadcaster said that it did not believe that the incorrect statement that the house was "*cordoned off*" could be considered to be personal or private information about the family occupying the house, given that the family were not otherwise identified in any way. ITV said that it was no more than an inaccurate statement about a public matter, i.e. the police investigation of the murder.

However, ITV stated that if Ofcom did consider that Mr E had a legitimate expectation of privacy relating to the broadcast of the footage of his house in the report, then this expectation would be limited by the police activity outside the house and by the fact that no private or personal information about Mr E was disclosed in the report. Further, ITV said that the inclusion of the shot of the police activity in front of the house was warranted by the strong public interest in reporting a murder investigation.

Ofcom's Preliminary View

Ofcom prepared a Preliminary View in this case that the complaint of unjust or unfair treatment in the programme as broadcast should be upheld. We provisionally concluded that Mr E's complaint of unwarranted infringement of privacy in connection with the obtaining of material included in the programme, and the subsequent broadcast of that material, should not be upheld.

Both parties were given the opportunity to comment on the Preliminary View. Both made submissions and relevant ones are summarised below.

Mr E's representations

In relation to his complaint of unwarranted infringement of privacy, Mr E did not agree that by not showing his house number the programme made his property more difficult to identify. Mr E said that his property was easily identifiable and that neighbours and friends had identified his property. Mr E provided Ofcom with information about a range of features he considered to distinguish his property from others on the street which he said were featured in the broadcast and therefore enabled his house to be identified. Mr E also said that there was a wooden plaque visible in the report which displayed his house number.

Mr E said that he did not agree with ITV's assertion that the news story was of strong public interest, because the report was omitted from the subsequent news bulletin.

ITV's representations

In response to the Preliminary View, ITV said that it did not agree with Ofcom's view that the report resulted in unfairness to Mr E. The broadcaster reiterated that the report had incorrectly stated that Mr E's house was "*cordoned off*", but they did not believe that this resulted in any unfairness to Mr E. ITV accepted that the use of the phrase about Mr E's house that "*another property on [road name] just around the corner also remains cordoned off*" would have "given viewers the impression that the property was in some way involved in the investigation". However, the broadcaster argued that the Preliminary View did not explain how viewers would have understood that the residents of that property were "personally connected to the murder investigation".

In response to Mr E's representations, ITV said that it did not agree with Mr E's assertions about his property being identifiable. The broadcaster said that neither the sharp bend, nor the house number were visible in the report. ITV added that not including the house number "undoubtedly made it more difficult to identify Mr E's house and its residents". The broadcaster added that: "even if Mr E's house is distinctive...Ofcom has already concluded it was likely that some viewers could have identified Mr E's house from the report".

The broadcaster said that there was a "strong public interest in reporting on the murder investigation", and that although the full report from the lunchtime bulletin which featured Mr E's property was not included in the evening bulletin, a short report about the murder which showed the victim's house was included.

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, consistent, and targeted only at cases in which action is needed.

In reaching this Decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and a transcript of the programme as broadcast, both parties' written submissions and supporting material. We also took into account both parties' relevant representations in response to Ofcom's Preliminary View on this complaint (which was to uphold in part).

Unjust or unfair treatment

When considering complaints of unjust or unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals or organisations, as set out in Rule 7.1 of the Code. In assessing this complaint, Ofcom also had regard to Practice 7.9 of the Code which provides that, before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to the individual or organisation.

- a) We first considered Mr E's complaint that he was treated unjustly or unfairly in the programme as broadcast because an ITV television news report gave the incorrect impression that his house had been "*cordoned off*" by the police because his house and its residents were connected with a murder investigation.

Ofcom acknowledges that, while programme makers and broadcasters have editorial control over what material to include in programmes, they should take reasonable care to satisfy themselves that material facts are not presented in a way that is unfair. Therefore, we considered whether or not reasonable care was taken by ITV by including the footage of Mr E's house in the programme, accompanied by the reporter's statement that the "*property on [road name], just around the corner, also remains cordoned off*", and whether this resulted in unfairness to Mr E.

The murder investigation did not involve Mr E's house in any way, apart from the fact that some rubbish discarded on the street outside his property was at the time thought to be potential evidence. The broadcaster has acknowledged that it incorrectly stated that Mr E's house had been "*cordoned off*" as part of the investigation. However, we also noted that Mr E and his family were not explicitly identified in the report as being connected with the house or the murder and its investigation. Further, the programme stated that: the incident had occurred at a different property, the person who had been arrested in connection with the murder was reported to be a 27 year old man who was the "*son of the victim*", and the murder was a "*domestic matter*". Nevertheless, in our view, this additional detail about the incident would not have affected the opinions of viewers who did not know Mr E or his family.

We noted the footage shown of the complainant's house with a police officer and police van visible on the road outside the property, accompanied by the commentary about the property being "*cordoned off*". Ofcom understood that this statement was based on the reporter's recollection at the time which, as it transpired, was mistaken. It was not clear to us that reasonable care was taken by ITV to verify this fact before it was broadcast. In our view this material did have the potential to mislead some viewers into understanding that the property and, potentially the residents of the house, were in some way connected to a very serious criminal incident i.e. a murder. We did not agree with the broadcaster's response that it was: "clear from the footage that the forensic officer was at the property on Stowe Close and not on Mr E's driveway". In Ofcom's view, the footage of the forensic officer shown immediately after the footage of the complainant's house meant it was possible that some viewers may have concluded that the forensic officer was on the driveway of Mr E's property rather than at the property on Stowe Close.

Ofcom recognised that as soon as ITV became aware of its error, it took swift action to ensure that the footage of Mr E's house was not included in the subsequent news bulletin. However, in light of the factors noted above, we concluded that reasonable care had not been exercised by the broadcaster in verifying the facts, resulting in the unjust or unfair impression that the complainant's property and possibly its residents were in some way connected to that investigation.

We considered ITV's representation on the Preliminary View that Ofcom had not explained how viewers would have understood that the residents of the complainant's property were "personally connected to the murder investigation". On this point, Ofcom took the view that, from the footage shown and comments made in the report, and from the reaction Mr E said he and his family had received from friends and neighbours as a result, it was reasonable to conclude that these individuals had taken the view from seeing Mr E's house in the report that Mr E and/or his family – the residents of the house – were potentially connected with the murder investigation. The fact that the programme included other information about the murdered man's son being arrested did not, in Ofcom's opinion, contradict the fact that some viewers would have made the reasonable assumption that those residing in the complainant's house were potentially, in some way, connected with the murder investigation. For this reason, we did not consider ITV's representations altered our view that, in the circumstances of this case, the broadcaster had failed to take reasonable care to satisfy itself that material facts were not presented, disregarded or omitted in a way that did not create unfairness to Mr E.

Ofcom therefore found that Mr E had been treated unfairly in the programme as broadcast.

Unwarranted infringement of privacy

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.

- b) We next assessed Mr E's complaint that his privacy was unwarrantably infringed in connection with the obtaining of the material included in the programme because his property was filmed without his permission.

In assessing this head of complaint, Ofcom had regard to Practices 8.3 and 8.4 of the Code. Practice 8.3 states that when people are caught up in events which are covered by 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. This applies to both the time when these events are taking place and to any later programmes that revisit those events. Practice 8.4 provides that broadcasters should ensure that words, images or actions filmed or recorded in, or broadcast from, a public place, are not so private that prior consent is required before broadcast from the individual or organisation concerned, unless broadcasting without their consent is warranted.

To establish whether or not Mr E's privacy was unwarrantably infringed in connection with the obtaining of the material included in the programme Ofcom first assessed the extent to which he had a legitimate expectation of privacy in the filming of the footage. The Code states that "legitimate expectations of privacy will vary according to the place and nature of the information, activity or condition in question, the extent to which it is in the public domain (if at all) and whether the individual concerned was in the public eye". When considering the extent to which the complainant in this case may have had a legitimate expectation of privacy, Ofcom had regard to a number of factors.

Ofcom reviewed the edited footage that was broadcast in the report¹ and noted that the programme makers filmed only the front exterior of Mr E's house. They did not include any close-up footage of the property, nor did they include footage of Mr E and his family themselves. It was apparent that the filming of Mr E's house had been conducted by the programme makers openly and from a public place, namely a public footpath, to which members of the public had access and could have seen the police activity present outside the property.

We next considered the context in which the footage was filmed. We noted from ITV's statement that it considered that police activity outside a property in relation to a murder investigation is of public interest and that filming outside Mr E's house was therefore a legitimate and essential part of the news gathering process.

We took account of the following factors: none of the footage filmed of Mr E's house captured anything that could be considered particularly private to Mr E or his family; none of the footage focused on anything other than the outside of the house itself; and the filming was conducted openly and in a public place. As a result, we considered that in the circumstances of this case, Mr E did not have a legitimate expectation of privacy in relation to the obtaining of the footage of the exterior of his house. It was therefore not necessary for Ofcom to go on to consider whether there was any infringement of Mr E's privacy in the obtaining of this material was warranted.

¹ It was not necessary to consider the unedited footage in this case, as Mr E's complaint referred only to the obtaining of the footage that was subsequently broadcast.

Ofcom found that there was no unwarranted infringement of Mr E's privacy in connection with the obtaining of material included in the programme.

- c) We then considered Mr E's complaint that his privacy was unwarrantably infringed in the programme as broadcast because footage of his house was shown without his permission in a news report about a murder investigation.

In assessing this head of complaint, we had particular regard to Practice 8.6 of the Code. This states that, if the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast unless the infringement of privacy is warranted. We also had regard to Practice 8.2 which states that information that discloses a person's home or family should not be revealed without permission, unless it is warranted.

We first considered the extent to which Mr E had a legitimate expectation of privacy in relation to footage of his house being shown in the programme and information relating to its location being disclosed in the programme as broadcast without his permission. As noted above, the Code makes clear that whether someone has a legitimate expectation of privacy will vary according to the place and nature of the information in question, including the extent to which it is in the public domain.

We examined the footage of Mr E's house in the programme and the context in which it appeared (as set out at head a) above) and noted that the reporter disclosed the street name of Mr E's house and said that the property had been "cordoned off". It was our view that it was likely that some viewers could have identified Mr E's house from the information given in the report. This is because the report revealed the town where Mr E's house was located, the road name, and showed footage of the outside of the property. However, we acknowledged that not revealing the house number may have made this task more difficult.

We considered Mr E's representations on the Preliminary View that in his view his house was easily identifiable from the footage, and the fact that the programme had not revealed his house number had not made the task of identifying his house more difficult. Ofcom noted that a wooden plaque, which displayed Mr E's house number, was visible outside Mr E's property in the footage. However, the house number was not clearly visible in the footage. Also, as regards the other features which Mr E said made his house identifiable, in Ofcom's view either these features were not clear from the footage broadcast, or we had already in preparing the Preliminary View taken account of the fact that some viewers could have identified Mr E's house from the footage. Therefore, Mr E's representations did not alter our opinion set out in the Preliminary View that by not revealing the house number, the programme may have made it more difficult to identify Mr E's house.

Ofcom recognised that the broadcast of footage of a person's home, and information about its location may give rise to a legitimate expectation of privacy. The subject matter of the report was serious in that it related to an on-going murder investigation and Mr E said that people had seen the report and had called him, concerned that he and his family may have been involved in the murder. However, we noted that in the programme as broadcast, neither Mr E nor his family were identified as being connected in any way to the property shown. Further, it appeared that the footage of the property that was broadcast was filmed openly and in a public place, i.e. from a public footpath. In light of these

factors, we took the view that the footage included in the programme did not reveal any sensitive or private information about Mr E or his personal life, nor did it directly identify Mr E to be the owner of, or as someone who was otherwise connected to, the property.

Given the above, we considered that, in the circumstances of this case, Mr E did not have a legitimate expectation of privacy in relation to the broadcast of the footage of his house included in the programme. Therefore, it was not necessary for Ofcom to go on to consider whether there was any infringement of Mr E's privacy.

Ofcom has upheld Mr E's complaint of unjust or unfair treatment in the programme as broadcast. However, Ofcom has not upheld Mr E's complaint of unwarranted infringement of 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 26 August and 8 September 2014 and decided that the broadcaster did not breach Ofcom's codes, licence conditions or other regulatory requirements.

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

Programme	Broadcaster	Transmission date	Categories
Taken Back: Finding Haley	Channel 5	19/05/2014	Scheduling

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

Complaints Assessed, Not Investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 26 August and 8 September 2014 because they did not raise issues warranting investigation.

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

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

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Access	5*	17/08/2014	Generally accepted standards	1
The Dam Busters	5USA	07/09/2014	Race discrimination/offence	1
Al Jazeera News	Al Jazeera	21/08/2014	Outside of remit / other	1
Ambur Radio	Ambur Radio 103.6 FM	17/04/2014	Generally accepted standards	1
Teen Wolf	AXN	15/07/2014	Generally accepted standards	1
A Question of Sport	BBC 1	22/08/2014	Outside of remit / other	1
Animal Saints and Sinners	BBC 1	25/08/2014	Animal welfare	2
BBC News	BBC 1	05/08/2014	Generally accepted standards	1
BBC News	BBC 1	18/08/2014	Due impartiality/bias	1
BBC News	BBC 1	27/08/2014	Due accuracy	1
BBC News	BBC 1	31/08/2014	Outside of remit / other	1
BBC News at Six	BBC 1	03/09/2014	Scheduling	1
BBC News at Six	BBC 1	n/a	Television Access Services	1
BBC News at Ten	BBC 1	02/09/2014	Due impartiality/bias	1
Big School	BBC 1	29/08/2014	Disability discrimination/offence	2
Boomers	BBC 1	15/08/2014	Religious/Beliefs discrimination/offence	1
Britain's Compulsive Shoppers	BBC 1	21/08/2014	Offensive language	1
Casualty	BBC 1	30/08/2014	Generally accepted standards	1
Commonwealth Games Opening Ceremony	BBC 1	23/07/2014	Outside of remit / other	1
Countryfile	BBC 1	24/08/2014	Materially misleading	1
Doctor Who	BBC 1	23/08/2014	Elections/Referendums	1
Doctor Who	BBC 1	23/08/2014	Scheduling	11
Doctor Who	BBC 1	23/08/2014	Sexual orientation discrimination/offence	1
Doctor Who	BBC 1	30/08/2014	Due impartiality/bias	1

Doctor Who	BBC 1	30/08/2014	Product placement	2
F1: Grand Prix	BBC 1	07/09/2014	Violence and dangerous behaviour	1
F1: Grand Prix	BBC 1	07/09/2014	Violence and dangerous behaviour	1
Our Zoo	BBC 1	03/09/2014	Generally accepted standards	1
Pointless	BBC 1	23/08/2014	Generally accepted standards	1
Scrappers	BBC 1	05/09/2014	Violence and dangerous behaviour	1
The Hairy Bikers' Everyday Gourmets	BBC 1	21/08/2014	Animal welfare	1
The Royal Edinburgh Military Tattoo 2014	BBC 1	25/08/2014	Nudity	3
Who Do You Think You Are?	BBC 1	28/08/2014	Generally accepted standards	1
BBC News at 10 and BBC Radio Today	BBC 1 and BBC Radio 4	21/08/2014	Due impartiality/bias	1
Referendum Debate	BBC 1 Scotland	03/09/2014	Due impartiality/bias	1
Reporting Scotland	BBC 1 Scotland	19/08/2014	Race discrimination/offence	1
Scotland Decides	BBC 1 Scotland	25/08/2014	Due impartiality/bias	2
Scotland Decides	BBC 1 Scotland	25/08/2014	Elections/Referendums	1
Athletics	BBC 2	07/09/2014	Outside of remit / other	1
Doctor Who	BBC 2	28/08/2014	Sexual orientation discrimination/offence	1
Dragons' Den	BBC 2	24/08/2014	Offensive language	2
Food and Drink	BBC 2	11/08/2014	Materially misleading	1
Horizon	BBC 2	20/08/2014	Animal welfare	1
Scotland Decides	BBC 2	25/08/2014	Elections/Referendums	1
The Hairy Bikers' Asian Adventure	BBC 2	07/08/2014	Animal welfare	1
Top Gear	BBC 2	02/03/2014	Generally accepted standards	1
Comedy Fest Live	BBC 3	30/07/2014	Generally accepted standards	1
Our World War	BBC 3	07/08/2014	Materially misleading	1
BBC News	BBC News Channel	22/08/2014	Television Access Services	1
BBC News	BBC News Channel	25/08/2014	Elections/Referendums	1
BBC News	BBC News Channel	31/08/2014	Due accuracy	1
BBC News	BBC Radio 4	Various	Due impartiality/bias	1
Broadcasting House	BBC Radio 4	31/08/2014	Due impartiality/bias	1
The Brig Society	BBC Radio 4	29/08/2014	Religious/Beliefs discrimination/offence	2
The Brig Society	BBC Radio 4	30/08/2014	Religious/Beliefs discrimination/offence	1
Today	BBC Radio 4	22/08/2014	Due impartiality/bias	1
Today	BBC Radio 4	27/08/2014	Generally accepted standards	4
Woman's Hour	BBC Radio 4	07/08/2014	Transgender discrimination/offence	1

Test Match Special	BBC Radio 5 Live Sports Extra	07/08/2014	Gender discrimination/offence	2
Good Morning Scotland	BBC Radio Scotland	29/08/2014	Elections/Referendums	1
Iain Lee on BBC WM	BBC WM 95.6	16/08/2014	Generally accepted standards	1
Mystery & Mayhem Weekends (trailer)	Boomerang +1	21/08/2014	Offensive language	1
Live UFC PreLims	BT Sport 1	17/08/2014	Outside of remit / other	1
Horrible Histories	CBBC	04/08/2014	Generally accepted standards	1
Unsolved Mysteries	CBS Reality	11/08/2014	Scheduling	1
Family Fortunes	Challenge	17/08/2014	Generally accepted standards	1
8 Out of 10 Cats Does Countdown	Channel 4	25/08/2014	Generally accepted standards	1
Advertising	Channel 4	26/08/2014	Advertising content	1
Channel 4 News	Channel 4	15/08/2014	Due impartiality/bias	1
Channel 4 News	Channel 4	20/08/2014	Outside of remit / other	1
Channel 4 News	Channel 4	n/a	Due impartiality/bias	1
Come Dine with Me	Channel 4	20/08/2014	Generally accepted standards	1
Educating the East End (trailer)	Channel 4	31/08/2014	Gender discrimination/offence	1
First Time Farmers	Channel 4	21/08/2014	Animal welfare	1
Hollyoaks	Channel 4	02/09/2014	Generally accepted standards	1
Jimmy Carr: Telling Jokes	Channel 4	05/09/2014	Religious/Beliefs discrimination/offence	1
Jimmy Carr: Telling Jokes	Channel 4	05/09/2014	Sexual orientation discrimination/offence	1
Sarah Beeny's Double Your House for Half the Money	Channel 4	20/08/2014	Product placement	1
The Last Leg	Channel 4	05/09/2014	Generally accepted standards	1
The Mill	Channel 4	03/08/2014	Sexual material	2
The Million Pound Drop	Channel 4	29/08/2014	Materially misleading	1
The Restoration Man	Channel 4	23/08/2014	Offensive language	1
Water for Elephants	Channel 4	17/08/2014	Scheduling	1
Advertising	Channel 5	22/08/2014	Outside of remit / other	1
Cowboy Builders	Channel 5	26/08/2014	Race discrimination/offence	1
Dallas (trailer)	Channel 5	21/08/2014	Scheduling	1
Extreme Fishing with Robson Green	Channel 5	n/a	Animal welfare	1
On the Yorkshire Buses	Channel 5	15/08/2014	Scheduling	1
On the Yorkshire Buses	Channel 5	22/08/2014	Generally accepted standards	1
Suspects	Channel 5	20/08/2014	Disability discrimination/offence	1
The Dog Rescuers	Channel 5	08/09/2014	Offensive language	1

The Walking Dead (trailer)	Channel 5	06/09/2014	Scheduling	1
The Wright Stuff	Channel 5	05/08/2014	Due impartiality/bias	1
The Wright Stuff	Channel 5	05/08/2014	Generally accepted standards	1
Programming	Chorley FM	28/08/2014	Generally accepted standards	1
Impractical Jokers (trailer)	Comedy Central	Various	Scheduling	1
Impractical Jokers / Big Bad World (trailers)	Comedy Central	18/08/2014	Scheduling	1
Alan Davies: As Yet Untitled	Dave	16/08/2014	Generally accepted standards	1
Alpen's sponsorship	Dave	14/01/2014	Sponsorship	1
The Bill	Drama	26/08/2014	Offensive language	1
Advertising	E4	25/08/2014	Advertising content	1
Channel ident	E4	16/08/2014	Drugs, smoking, solvents or alcohol	1
Glue (trailer)	E4	21/08/2014	Scheduling	1
Hollyoaks	E4	22/08/2014	Generally accepted standards	1
Hollyoaks	E4	29/08/2014	Outside of remit / other	1
Airplane!	Film 4	25/08/2014	Nudity	3
Breakfast Show	Fire Radio	04/09/2014	Generally accepted standards	1
Ching's Restaurant Redemption	Food Network	24/08/2014	Offensive language	1
Mystery Diners	Food Network	02/09/2014	Materially misleading	1
Late Night Comedy on Fox (trailer)	Fox	07/08/2014	Scheduling	1
Adult Channels	Freeview	n/a	Outside of remit / other	1
Who's on Heart competition	Heart FM	02/09/2014	Competitions	1
Advertising	ITV	24/08/2014	Outside of remit / other	1
Advertising	ITV	26/08/2014	Advertising content	1
Advertising	ITV	31/08/2014	Advertising content	1
All Star Family Fortunes	ITV	23/08/2014	Generally accepted standards	1
All Star Family Fortunes	ITV	23/08/2014	Race discrimination/offence	1
Chasing Shadows (trailer)	ITV	30/08/2014	Scheduling	1
Chowder	ITV	16/08/2014	Violence and dangerous behaviour	1
Compare the Market sponsorship of Coronation Street	ITV	01/09/2014	Sponsorship	1
Comparethemarket.com's sponsorship of Coronation Street	ITV	01/09/2014	Generally accepted standards	1
Competitions	ITV	n/a	Competitions	1
Coronation Street	ITV	18/08/2014	Drugs, smoking, solvents or alcohol	1
Coronation Street	ITV	18/08/2014	Product placement	1

Coronation Street	ITV	27/08/2014	Generally accepted standards	1
Dangerous Dogs	ITV	20/08/2014	Generally accepted standards	3
Emmerdale	ITV	15/08/2014	Offensive language	1
Emmerdale	ITV	18/08/2014	Generally accepted standards	1
Emmerdale	ITV	18/08/2014	Scheduling	1
Emmerdale	ITV	21/08/2014	Violence and dangerous behaviour	1
Gems TV	ITV	02/09/2014	Fairness	1
Good Morning Britain	ITV	19/08/2014	Competitions	1
ITV News	ITV	31/08/2014	Due impartiality/bias	1
ITV News	ITV	31/08/2014	Outside of remit / other	1
ITV News	ITV	06/09/2014	Due accuracy	1
ITV News at Ten and Weather	ITV	01/09/2014	Generally accepted standards	1
Judge Rinder	ITV	21/08/2014	Materially misleading	1
Judge Rinder	ITV	25/08/2014	Materially misleading	1
Lorraine	ITV	28/08/2014	Competitions	1
Murder, She Wrote: The Last Free Man	ITV	09/08/2014	Offensive language	1
The Jeremy Kyle Show	ITV	08/09/2014	Religious/Beliefs discrimination/offence	1
The Suspicions of Mr Whicher	ITV	07/09/2014	Outside of remit / other	1
The X Factor	ITV	30/08/2014	Materially misleading	1
The X Factor	ITV	30/08/2014	Race discrimination/offence	1
The X Factor	ITV	31/08/2014	Age discrimination/offence	1
The X Factor	ITV	31/08/2014	Generally accepted standards	1
The X Factor	ITV	06/09/2014	Generally accepted standards	1
The X Factor	ITV	06/09/2014	Sexual orientation discrimination/offence	1
The X Factor	ITV	07/09/2014	Religious/Beliefs discrimination/offence	5
This Morning	ITV	22/08/2014	Disability discrimination/offence	1
This Morning	ITV	01/09/2014	Materially misleading	1
Through the Keyhole	ITV	30/08/2014	Generally accepted standards	1
Through the Keyhole	ITV	06/09/2014	Generally accepted standards	1
You've Been Framed and Famous!	ITV	16/08/2014	Generally accepted standards	1
You've Been Framed!	ITV	23/08/2014	Harm	1
You've Been Framed!	ITV	25/08/2014	Generally accepted standards	1
ITV News London	ITV London	26/08/2014	Animal welfare	1
Bridget Jones: The Edge of Reason	ITV2	26/08/2014	Generally accepted standards	1

Happy Gilmore	ITV2	01/09/2014	Generally accepted standards	1
The Only Way is Essex	ITV2	08/09/2014	Offensive language	1
The X Factor	ITV2	31/08/2014	Violence and dangerous behaviour	1
The Xtra Factor	ITV2	30/08/2014	Race discrimination/offence	1
The Xtra Factor	ITV2	31/08/2014	Race discrimination/offence	1
The Xtra Factor	ITV2	06/09/2014	Generally accepted standards	1
The Xtra Factor	ITV2	07/09/2014	Violence and dangerous behaviour	1
Summer Holiday	ITV3	24/08/2014	Generally accepted standards	1
Station ident	Jack FM (Oxfordshire)	21/08/2014	Generally accepted standards	1
James O'Brien	LBC 97.3 FM	01/09/2014	Generally accepted standards	1
The Tube	London Live	13/08/2014	Scheduling	1
Gogglebox	More4	31/08/2014	Materially misleading	1
Masters of Sex (trailer)	More4	12/08/2014	Scheduling	1
Advertising	n/a	31/08/2014	Outside of remit / other	1
Advertising	n/a	01/09/2014	Advertising content	2
Daytime / Adult Chat programming	n/a	n/a	Generally accepted standards	1
Mating Season (trailer)	Nat Geo Wild	01/08/2014	Scheduling	1
Apnar Jiggasha	NTV	27/07/2014	Undue prominence	1
Airline USA	Pick TV	25/08/2014	Outside of remit / other	1
Programming	Red Light 1	03/09/2014	Outside of remit / other	1
Red Light Central	Red Light 1	21/07/2014	Sexual material	1
The Late Show	Revelation TV	13/08/2014	Due impartiality/bias	1
News	Rock FM	26/08/2014	Materially misleading	1
News	RT	16/08/2014	Due impartiality/bias	1
Little Kris Soul Train	Sheppey FM 87.7	13/08/2014	Generally accepted standards	1
50 Ways to Kill Your Mammy (trailer)	Sky News	28/08/2014	Generally accepted standards	1
Sky News	Sky News	09/08/2014	Due impartiality/bias	1
Sky News	Sky News	19/08/2014	Due accuracy	1
Sky News	Sky News	19/08/2014	Generally accepted standards	1
Sky News	Sky News	24/08/2014	Materially misleading	1
Sky News at 6 with Jeremy Thompson	Sky News	28/08/2014	Due impartiality/bias	1
Sky Sports (trailer)	Sky Sports 1	30/08/2014	Crime	1
Advertising	Sky Sports 3	02/09/2014	Advertising content	1
50 Ways to Kill Your Mammy (trailer)	Sky Sports News	21/08/2014	Generally accepted standards	1
50 Ways to Kill Your Mammy (trailer)	Sky1	13/08/2014	Generally accepted standards	1
Got to Dance	Sky1	29/08/2014	Fairness	1

Got to Dance	Sky1	29/08/2014	Voting	1
Road Wars	Sky1	06/09/2014	Offensive language	1
The Simpsons	Sky1	02/09/2014	Generally accepted standards	1
Ye Hai Mohabbatein	Star Plus	08/08/2014	Generally accepted standards	1
Dangerous Dogs	STV	20/08/2014	Generally accepted standards	1
The Debate	STV	05/08/2014	Due impartiality/bias	1
Programming	Sunrise Radio	12/08/2014	Due impartiality/bias	1
Talk Sport Extra Time	Talksport	26/08/2014	Generally accepted standards	1
Advertisements	TCM	20/08/2014	Advertising minutage	1
Most Haunted (trailer)	The Good Food Channel	27/08/2014	Scheduling	1
Law and Order SVU	Universal	16/08/2014	Generally accepted standards	1
Advertising	Various	27/08/2014	Advertising content	1
Subtitling	Various	n/a	Television Access Services	1
Ishtikara Markaz	Venus TV	19/05/2014	Generally accepted standards	1
Advertising	Yesterday	28/08/2014	Advertising content	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/>.

Licensee	Categories
Awaaz Radio Limited	Key Commitments
ALL FM Limited	Key Commitments
Gravity FM CIC	Key Commitments
Community Voice FM Ltd	Key Commitments
Radio Sherborne Community Interest Company	Key Commitments

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 28 August and 10 September 2014.

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

Programme	Broadcaster	Transmission date
Advertisement by Pakistan Tehreek e Insaaf	ARY News	2 August 2014
Blinging Up Baby	Channel 5	28 July 2014
News	RT	20 August 2014
Suspects (trailer)	Channel 5	Various

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

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

Investigations launched under the Procedures for the consideration and adjudication of Fairness and Privacy complaints

Programme	Broadcaster	Transmission date
Call the Council	BBC 2	22 May 2014

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/>.

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

Licensee	Licensed Service
North Manchester FM Community Interest Company	North Manchester FM
South West Sound Limited	Westsound FM

For more information about how Ofcom assesses complaints and conducts investigations about broadcast licences, go to:
<http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/general-procedures/>.