

# **Ofcom Broadcast Bulletin**

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## Introduction

The Broadcast Bulletin reports on the outcome of investigations into alleged breaches of those Ofcom codes which broadcasting licensees are required to comply. These include:

- a) Ofcom's Broadcasting Code ("the Code") which took effect on 25 July 2005 (with the exception of Rule 10.17 which came into effect on 1 July 2005). This Code is used to assess the compliance of all programmes broadcast on or after 25 July 2005. The Broadcasting Code can be found at <http://www.ofcom.org.uk/tv/ifi/codes/bcode/>
- b) the Code on the Scheduling of Television Advertising ("COSTA") which came into effect on 1 September 2008 and contains rules on how much advertising and teleshopping may be scheduled in programmes, how many breaks are allowed and when they may be taken. COSTA can be found at [http://www.ofcom.org.uk/tv/ifi/codes/code\\_adv/tacode.pdf](http://www.ofcom.org.uk/tv/ifi/codes/code_adv/tacode.pdf).
- c) other codes and requirements that may also apply to broadcasters, depending on their circumstances. These include the Code on Television Access Services (which sets out how much subtitling, signing and audio description relevant licensees must provide), the Code on Electronic Programme Guides, the Code on Listed Events, and the Cross Promotion Code. Links to all these codes can be found at <http://www.ofcom.org.uk/tv/ifi/codes/>

From time to time adjudications relating to advertising content may appear in the Bulletin in relation to areas of advertising regulation which remain with Ofcom (including the application of statutory sanctions by Ofcom).

It is Ofcom policy to state the full language used on air by broadcasters who are the subject of a complaint where it is relevant to the case. Some of the language used in Ofcom Broadcast Bulletins may therefore cause offence.

## Sponsorship credit findings

### Introduction to sponsorship credit findings

Broadcast sponsorship, that is on-air sponsorship of programmes and channels, offers organisations an opportunity to be associated with the content they are sponsoring. For reasons of transparency, broadcasters are required to inform the audience when such arrangements are in place. This is usually achieved through the use of sponsor credits that are broadcast around the sponsored material.

Sponsorship credits must comply with Rule 9.13 of the Code which states:

“Sponsorship must be clearly separated from advertising. Sponsor credits must not contain advertising messages or calls to action. In particular, credits must not encourage the purchase or rental of the products or services of the sponsor or a third party”.

This Rule is directly derived from European legislation, the Television Without Frontiers Directive (“TWF Directive”).

The TWF Directive limits the amount of advertising a broadcaster can transmit (Article 18) and requires that advertising is kept separate from other parts of the programme service (Article 10). As sponsorship credits are treated as part of the sponsored content rather than advertising, they do not count towards the amount of airtime a broadcaster is allowed to use for advertising. To prevent credits effectively becoming advertisements, and therefore increasing the amount of advertising transmitted, broadcasters are required to ensure that sponsorship credits do not contain advertising messages.

In addition to the rules on advertising separation and minutage, Rule 9.13 also reflects the requirement of Article 17(1)(c) of the TWF Directive that sponsorship “must not encourage the purchase or rental of the products or services of the sponsor or a third party, in particular by making special promotional references to those products or services”. Guidance issued by the European Commission on the interpretation of this Article states that there should be “no explicit reference to the products or services of the sponsor during the [sponsored] programme, except where the reference serves the *sole purpose* of identifying the sponsor or making explicit the link between the programme and the sponsor”<sup>1</sup> (emphasis added). The Code therefore permits references to the products and services of a sponsor in credits on the basis that they can help identify the sponsor or help associate the sponsor with the sponsored content. We believe Rule 9.13 affords broadcasters the maximum freedom permissible under the European legislation to identify sponsorship in a way that both informs the audience of the sponsorship arrangements and benefits the sponsor.

When judging whether a sponsorship credit is sufficiently distinct from advertising, Ofcom may take into account a number of factors. These include but are not limited to:

- what is the primary focus of the credits? Is the focus of the credits the sponsorship arrangement itself or the sponsor’s product or service?

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<sup>1</sup> Article 17(1)(c) applies to sponsorship credits as they are the means of identifying a sponsorship arrangement.

- what information about the sponsor's products/services is included in the credits? A brief description can help identify the sponsor. Detailed descriptions, references to positive attributes, or claims - particularly those that are capable of objective substantiation - about the sponsor's products/services (e.g. market leadership, health benefits, efficacy) are likely to result in credits breaching the Code.
- do the credits contain content that is likely to encourage the viewer to contact the sponsor? Basic contact details (websites etc.) may be included but invitations to contact the sponsor or purchase goods/services are unacceptable.

Over recent months, Ofcom has noted an apparent increase in the amount of information about sponsors' products/services included in some sponsorship credits. As a result, we conducted a monitoring exercise to assess levels of compliance with Rule 9.13. We monitored in excess of 60 sponsorship campaigns across a wide range of commercial broadcasters. We were reassured that the majority of credits viewed did not breach Rule 9.13.

Those credits found in breach of Rule 9.13 are included in this bulletin. Ofcom acknowledges that in many of the cases listed below, the credits did feature content (characters, scenarios etc) that thematically linked the sponsor to the sponsored programme. However, the credits were generally found in breach of the Code due to the use of promotional language to describe the sponsor's products and/or services, which in Ofcom's opinion amounted to advertising messages. Rule 9.13 permits brief descriptions of the sponsor's products/services on the basis that these can help identify the sponsor. Ofcom has judged that the references in the following cases went beyond the brief descriptions allowed under Rule 9.13.

Ofcom recognises that broadcasters may find further guidance in this area beneficial and intends to provide further information on the interpretation of both Sections 9 and 10 of the Code in regular updates on these Code sections.

We are happy to send these updates to anyone with an interest in these areas of the Code. However, it should be remembered that broadcasters are responsible for compliance with the Code and therefore detailed enquiries from organisations other than broadcasters should always be directed to the broadcaster in the first instance.

If you wish to receive these updates, please send your email contact details to:  
**[lauren.cleverley@ofcom.org.uk](mailto:lauren.cleverley@ofcom.org.uk)**

Ofcom intends to repeat its monitoring exercise of sponsorship campaigns in three months' time. Any credits found to be in breach of Rule 9.13 may be considered for further regulatory action.

## In Breach

### Sponsorship of Big Brother

*Channel 4 and E4, 29 May 2008 to 1 October 2008, various dates & times*

### Sponsorship of 4Homes programming

*Channel 4, More4 and E4, 2 January 2008 to 31 December 2008, various dates & times*

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#### Introduction

##### Big Brother

*Big Brother* was sponsored by Virgin Media (Virgin's TV, broadband, phone and mobile business) and Virgin Mobile (Virgin's mobile phone business).

The sponsorship campaign included a number of credits featuring characters going about their everyday business. In relation to the following two credits, Ofcom sought the broadcaster's comments under Rule 9.13:

Voiceover: *"Ellie and Ruth use their Virgin mobiles to get perks at V Festival without having to flash a roadie like usual".*

Caption: *"Big Brother sponsored by Virgin Mobile. virginmobile.com 0800 052 0444".*

Voiceover: *"Len's fibre optic cable is just like his women, fast and easy".*

Caption: *"Big Brother sponsored by futuristic Fibre Optic Broadband from Virgin Media. virginmedia.com".*

##### 4Homes programming

The 4Homes strand of programming was sponsored by NatWest bank. The credits showed three men in an office discussing absurd ways to promote an anonymous bank's home insurance and mortgage products. The strapline on the credits was either *"sponsored by NatWest Home Insurance"* or *"sponsored by NatWest Mortgages"* and a freephone number was provided.

The voiceovers used at the end of the credits included:

- *"There is another way. NatWest – expert mortgage advice you can understand";*
- *"There is another way. NatWest – mortgages to suit your needs";*
- *"There is another way. NatWest – home insurance without the gimmicks";* and
- *"There is another way. NatWest – expert providers of home insurance".*

Ofcom sought the broadcaster's comments on the credits under Rule 9.13 of the Code.

## Response

### General representations

Channel 4 considered that the sponsor credits complied fully with Rule 9.13. It said that the credits were “clearly distinct from advertising” as they were commissioned specifically as sponsorship credits and did not contain advertising messages or calls to action that encouraged viewers to purchase specific products or services. In particular, it said that the credits: did not provide any specific product information and were linked to the nature and subject matter of the programmes. Channel 4 asserted that the predominant message of the credits was the sponsorship arrangement, not product information.

### Representations on the sponsorship of Big Brother

Channel 4 said that the credits surrounding *Big Brother* had a clear link to the programme as they were “shot from a voyeuristic perspective giving the viewer a peek into the lives the characters featured in the credits just as they view house mates in the Big Brother house”. It added that the credits were “humorous, often meaningless and [did] not contain advertising messages”.

The broadcaster provided specific representations on the following credits:

*“Ellie and Ruth use their Virgin mobiles to get perks at V Festival without having to flash a roadie like usual”*

The broadcaster stated that the only product or sponsor information provided was: “Virgin mobiles”, “To get perks at V Festival”, and the website and telephone number of Virgin Media.

Channel 4 added that the credit “allude[d] to the possibility of getting ‘perks at the V Festival’ but it did not specify what these perks are or how viewers could go about obtaining them” and that the credit did not actively encourage viewers to purchase Virgin mobiles or to contact the sponsor about its services.

*“Len’s fibre optic cable is just like his women, fast and easy”*

The broadcaster stated that the only product or sponsor information provided was: “Fibre optic cable”, “Fast and easy” and “Futuristic fibre optic broadband from Virgin Media”. It considered that this was only a “generic” and “brief description” of the product. Channel 4 added that the reference to “Fast and easy” was only used as a play on words on the type of women the character dated and was “mere puffery” not capable of objective substantiation.

### Representations specific to sponsorship of 4Homes programming

Channel 4 said that the credits surrounding 4Homes programming provided no detailed descriptions of goods or services. It considered that the descriptions used were “vague and unspecific” and were incapable of objective substantiation. The broadcaster added that the credits provided no further information about the services offered or how viewers could obtain the service and that there was no appeal to the viewer to try or purchase the service.



## **Decision**

### Big Brother

As set out in the Ofcom guidance to Rule 9.13, it may be appropriate for a sponsor to include a brief description of its business. However, in this case, Ofcom judged that the reference to being able to get “*perks at the V festival*” was a special promotional reference to the benefits of being a Virgin Mobile customer. Ofcom also judged that the use of promotional language to describe the sponsor’s products (e.g. “*fast and easy*”) went beyond brief descriptions of the sponsor’s business and amounted to advertising messages. The credits were therefore in breach of Rule 9.13.

### 4Homes programming

Ofcom noted that the sponsor credits featured characters that appear in the sponsor’s broadcast advertising. The scenarios featured also resembled those shown in the sponsor’s advertising. We considered that the overall focus of the credits was the sponsor’s business rather than the sponsorship arrangement. The credits contained specific statements about the benefits of the sponsor’s products and services e.g. “*expert providers of home insurance*”, “*mortgages to suit your needs*” which Ofcom considered amounted to advertising messages.

Ofcom judged that the overall effect of the credits was a promotion for the sponsor’s business. The credits were not sufficiently distinct from the sponsor’s advertising and they contained specific sales messages about the benefits of the sponsor’s products and services. The credits were therefore in breach of Rule 9.13.

### **Breach of Rule 9.13**

## In Breach

### Sponsorship of The Gadget Show

*Five and Fiver, 6 October 2008 to 28 December 2008, various dates & times*

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#### Introduction

*The Gadget Show* was sponsored by PC World. The credits featured images of some of the products sold by the sponsor. The credits included the following voiceovers:

- “Any TV big or small, it’s at PC World”
- “A huge range of mp3 and mp4 players at PC World”
- “A wide choice of laptops with mobile broadband at PC World”
- “Take the internet anywhere with mobile broadband at PC World”
- “Any game and console, it’s at PC World”

The end of the credits featured a caption stating: “*The Gadget Show sponsored by*” accompanied by the sponsor’s logo.

Ofcom sought the broadcaster’s comments under Rule 9.13 of the Code.

#### Response

The broadcaster said that, as *The Gadget Show* is a programme which reviews a range of technologies and gadgets, the credits were used to associate the programme with the sponsor’s business.

Five said that the voiceovers were used to provide a brief description of the sponsor’s business. It explained that it was “important both to Five and to PC World that the description of PC World’s business was relevant to its association with the programme which is about much more than PCs”.

The broadcaster believed that the voiceovers were compliant with Ofcom’s guidance on Rule 9.13, as they were not capable of objective substantiation. In the broadcaster’s view the credits were brief descriptions of the sponsor’s business – not lengthy descriptions of the sponsor’s products. Their purpose was to identify the sponsorship arrangement. The credits did not contain any direct appeal to viewers to buy PC World’s goods or services nor to contact the sponsor. Neither did the credits contain the sort of sales propositions which are included in the company’s advertisements.

#### Decision

It is acceptable for brief references to be made to a sponsor’s products and/or services in sponsor credits, as a means of helping to identify the sponsor and/or sponsorship arrangement (see introduction on page 5). However, these brief references should not be used as a means for sponsors to promote the benefits of their products or services.

In this case, the credits consisted of animated shots of the sponsor’s products combined with promotional language to describe the extensive range available, followed by a very brief identification of the sponsorship arrangement.

Ofcom considered that the predominant focus of the credits was on the products and range available from the sponsor, with the identification of the sponsorship arrangement appearing to be secondary. The credits were therefore in breach of Rule 9.13.

**Breach of Rule 9.13**

## In Breach

### Sponsorship of Weather

*Five, September 2008 to date, various dates & times*

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#### Introduction

*Five Weather* is sponsored by the telecommunications provider BT. The sponsor credits feature various weather based animations and the text “*BT sponsors five weather bt.com/betterworld*”. Individual credits include the following voiceovers:

- “*Our education programme helps millions of school children with their communication skills. Doing our bit for the world, come rain or shine*”;
- “*BT have been a proud financial supporter of Childline for over two decades. Doing our bit for a better world, come rain or shine*”; and
- “*The BT cordless phone now uses half the energy no matter how much you love to chat. Doing our bit for a better world, come rain or shine*”.

Ofcom sought the broadcaster’s comments under Rule 9.13 of the Code.

#### Response

Five stated that the purpose of the sponsorship credits was to “deliver a creative message that identified and endorsed BT’s association with the programme”. The intention was to highlight BT’s Better World campaign. Five said that it recognised that it would not be possible to outline the objectives of the campaign in a sponsorship credit and therefore had sought ways that would enable the sponsor to explain its association with the programme without creating a sales proposition or an advertising message.

Five explained that the first two credits are designed to achieve this purpose. The broadcaster stated that it was careful to ensure the credits did not include claims that could be objectively measured. It added that the credits do not encourage the purchase or rental of BT’s products or services and they merely factually describe part of BT’s business in a manner which explains its association with the weather forecast. The credits do not provide specific or detailed descriptions of BT’s businesses or products. Five did not believe that the credits constitute advertising messages when judged against the definitions of, and guidance on, advertising messages published by Ofcom.

With regard to the third credit, Five said its purpose is also to provide a credible link between BT’s business and its sponsorship of the weather forecast, in that energy consumption is widely associated with climate change. The broadcaster stated that although the credit refers to the BT cordless phone, it is not a reference to a specific product. Five explained that BT produces in the region of seventy cordless phones. Five considers that the statement about the phone’s energy consumption is not a specific promotional claim that would require substantiation; it is a general statement that endorses the association between the sponsor and the programme.

## **Decision**

It is acceptable for an organisation to use one element of its business to sponsor programmes. However, Ofcom considered that the statements about the positive outcomes of the BT Better World campaign and the claim about the energy consumption of its cordless phone went beyond brief descriptions of the sponsor's business for the purpose of identifying the sponsor and sponsorship arrangement.

These messages appeared to promote the sponsor's Better World campaign and brand. The credits were therefore in breach of Rule 9.13.

## **Breach of Rule 9.13**

## In Breach

### Sponsorship of GMTV Weather

*GMTV, 29 September 2008 to date, various dates & times*

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#### Introduction

*GMTV Weather* is sponsored by Nestle Cereals. The credits depict a family of animated cereal boxes in various scenarios. Each credit features the strapline “*Whole Grain Guaranteed*”, accompanied by a Nestle logo. Examples of the content of the credits include:

- An animation of the family at the seaside, with the father character standing on a set of scales. This visual is accompanied by a voiceover stating “*GMTV Weather sponsored by Nestle Wholegrain Cereals. Maintain a healthy weight everyday*”.
- An animation of the family running on treadmills, accompanied by the voiceover “*GMTV Weather sponsored by Nestle Wholegrain Cereals. Keep your heart healthy everyday*”.
- An animation of the family around a swimming pool, accompanied by the voiceover “*GMTV Weather sponsored by Nestle Wholegrain Cereals. Keep your family healthy everyday*”.

Ofcom sought the broadcaster’s comments under Rule 9.13 of the Code.

#### Response

GMTV argued that the credits have a strong and clear link to the weather and GMTV being a family channel. It said that the voiceovers relate to the visuals but are “brief and secondary to the sponsorship link”. It added that the second part of the voiceovers is “a statement, an ethos; it is not promotional and is not a description of the sponsor’s product or a promotional reference”.

#### Decision

Ofcom judged that the association of the health statements with the sponsor’s products effectively promoted the benefits of these products. Ofcom considered these claims to be advertising messages. The credits are therefore in breach of Rule 9.13.

#### Breach of Rule 9.13

## In Breach

### Sponsorship of The X Factor

*ITV1, ITV2 and ITV2 +1, 16 August 2008 to 13 December 2008, various dates & times*

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#### Introduction

*The X Factor* was sponsored by Carphone Warehouse. The sponsorship campaign included a number of credits that featured animated characters in audition based scenarios. The majority of these credits raised no Code issues, however others made reference to the products and services offered by the sponsor. Ofcom sought the broadcaster's comments on the following credits in relation to Rule 9.13 of the Code:

- Three monkeys listening to an audition and then giving their marks. This was accompanied by the voiceover *"Need completely impartial advice? Welcome to the Carphone Warehouse"*, the caption *"Carphone Warehouse sponsors of The X Factor"* and the contact information *"carphonewarehouse.com/xfactor"*.
- A 'roadie' struggling to pull a large laptop on-stage. The laptop shrinks and the character can then move it with ease. This was accompanied by the voiceover *"Need a smaller laptop? Welcome to the Carphone Warehouse with a range of netbooks"*, the caption *"Carphone Warehouse sponsors of The X Factor"* and the contact information *"carphonewarehouse.com/xfactor"*.
- Animated characters auditioning on stage accompanied by the voiceover *"We've got a broadband package to suit everyone. Welcome to the Carphone Warehouse"*, the caption *"Carphone Warehouse sponsors of The X Factor"* and the contact information *"carphonewarehouse.com/xfactor"*.
- A shot of a Nokia 5310 mobile phone with *"Nokia comes with music"* displayed on its screen. The phone is shown outside an animated Carphone Warehouse shop and is accompanied by the voiceover *"The Nokia 5310 comes with music – exclusively on pay-as-you-go. Welcome to the Carphone Warehouse"*, the strapline *"Carphone Warehouse sponsors of The X Factor"* and the contact information *"carphonewarehouse.com/xfactor"*.
- Animated characters auditioning on stage around a non-animated image of the Nokia 5310 mobile phone with *"Nokia comes with music"* displayed on its screen. This was accompanied by the voiceover *"The new Nokia 5310 comes with millions of tracks to download and keep. Welcome to the Carphone Warehouse"*, the strapline *"terms and conditions apply. Carphone Warehouse sponsors of The X Factor"* and the contact information *"carphonewarehouse.com/xfactor"*.

#### Response

Channel Television ("Channel TV"), an ITV licence holder, is responsible for compliance of the sponsorship credits on behalf of the ITV network, said "all the sponsor credits [were] thematically connected to each other and...to The X Factor itself in that they [were] all based around 'performance'". They therefore had a clear thematic link to the show and to each other.

Channel TV noted that the Code permits mentions of a sponsor's products or services. The broadcaster argued that: none of the credits contained specific or detailed descriptions of the products or services available at the Carphone Warehouse; there were no overt claims capable of substantiation; all credits had a clear thematic link both to the series and to each other (with a small cast of characters, in a theatrical environment, appearing in all the credits); the straplines used were broadly comparable to those used in other current and previous sponsor credits on all channels; there was no invitation to purchase; and no undue prominence was given to any of the products or services featured.

In relation to the credits featuring the Nokia 5310 mobile phone, Channel TV said that the line "*exclusively on pay-as-you-go*" was simply a statement of fact as this mobile phone was only available on a pay-as-you-go basis from the sponsor. Further, the statement referring to downloading music was a "deliberately vague" reference to the product's features. It cited credits used by other broadcasters that it considered to be similar.

### **Decision**

It is acceptable for brief references to be made to a sponsor's products and/or services in sponsor credits, as a means of helping to identify the sponsor and/or sponsorship arrangement (see introduction page 5). However, these brief references should not be used as a means for sponsors to promote the benefits of their products or services.

In this case, the credits contained specific statements about the benefits of the sponsor's products and services, e.g. "*The new Nokia 5310 comes with millions of tracks to download and keep*", while other credits used promotional language to describe the range of products available from the sponsor, e.g. "*We've got a broadband package to suit everyone*".

Ofcom judged that these statements about the positive attributes of the sponsor's products and services were advertising messages. The credits were therefore in breach of Rule 9.13

### **Breach of Rule 9.13**



## In Breach

### Sponsorship of The Alan Titchmarsh Show

*ITV1, January 2008 to November 2008, various dates & times*

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#### Introduction

*The Alan Titchmarsh Show* was sponsored by Benecol. The sponsorship credits depicted uncontrollable situations, e.g. a woman being splashed by a lorry as it drives through a muddy puddle, a man raking up leaves which are subsequently blown around by a gust of wind.

Some of the credits included the voiceovers *"Some things you can't control but at least you can control your cholesterol. Sponsored by Benecol"* and the caption *"At least you can control your cholesterol. Alan Titchmarsh show sponsored by Benecol"*.

Other credits included the voiceover *"The Alan Titchmarsh Show sponsored by Benecol. Some things you can't control but at least you can control your cholesterol"* and the caption *"Alan Titchmarsh show sponsored by Benecol. At least you can control your cholesterol"*.

The credits also contained the text *"As part of a healthy diet & lifestyle"*, as well as animated pack shots of the sponsor's products. On the majority of the pack shots the printed claim *"Proven to reduce cholesterol"* was clearly visible.

Ofcom sought the broadcaster's comments on both sets of credits under Rule 9.13 of the Code.

#### Response

Channel Television ("Channel TV"), an ITV licence holder, is responsible for compliance of the sponsorship credits on behalf of the ITV network, said that Benecol had been the sponsor of the programme since January 2008 and that the credits had been used throughout 2008.

The broadcaster said that the strapline, *"Some things you can't control, but at least you can control your cholesterol"*, was "not an advertising message but a simple statement of fact". It added that "no overt claims [were] made as to Benecol's virtues". Channel TV added that *"At least you can control your cholesterol"* was not a specific promotional claim about Benecol. It believed that the credits helped link the sponsorship to the programme in that they reflected "the outdoorsy and lighthearted nature of Alan Titchmarsh himself" and considered that the "familiar scenarios depicted in the sponsor credits would resonate with the viewers of this series".

Channel TV said that the sponsor credits were "completely different" from Benecol's advertising campaigns. The broadcaster considered that the "whimsical and amusing credits blend[ed] well with the series" and cited straplines used by other broadcasters for different sponsorship arrangements that it considered comparable.

#### Decision

Ofcom judged that while the comment *"at least you can control your cholesterol"* may be a factual statement, its association with the sponsor's product in these credits was

nevertheless likely to be viewed as a claim about the product's benefits. Further, a specific claim about the product's effectiveness was visible in the pack shots. Where pack shots are featured in credits, broadcasters must take care to ensure that these do not contain information that is incompatible with the requirements of the Code.

Ofcom considered that each of the claims that suggested the product was effective in lowering cholesterol i.e. "*at least you can control your cholesterol*" and "*Proven to reduce cholesterol*", were advertising messages. The credits were therefore in breach of Rule 9.13.

### **Breach of Rule 9.13**

## In Breach

### Sponsorship of daytime programming

*Living, 3 September 2008 to 15 November 2008, various times between 11:00 and 17:00*

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#### Introduction

Lipobind sponsored weekday daytime programmes on Living including *The Steve Wilkos Show*, *Maury Povich*, *Blood Ties*, *Bewitched*, *Charmed*, *Will & Grace* and *Criminal Minds*.

The sponsor credits featured a woman admiring herself in a mirror, accompanied with the voiceover “*Look good and feel great. Lipobind sponsors daytime on Living*” and an image of a pack shot of the product, on which printed claims about the product’s properties were clearly visible stating “*Clinically proven Fat Binder*” and “*Weight Management through dietary fat binding*”.

Ofcom sought the broadcaster’s comments under Rule 9.13 of the Code.

#### Response

Living advised that, as the product is a dietary aid, it did not schedule the credit around programmes that would particularly appeal to children.

The broadcaster explained that the decision to include the pack shot in the credit was made after considering several factors, including the fact that Lipobind has previously sponsored content on other channels.

It noted that on other channels the credit had included the straplines “*manage your weight naturally*” and “*look good, feel great with Lipobind*” both of which Living considered to be advertising messages. Living noted that these credits had not attracted complaints. However, Living acknowledged that the broadcast of similar credits on other channels did not signify that they were compliant and accepted that it was the responsibility of individual broadcasters to ensure the material they transmit complies with the Code.

Living considered that the credit as broadcast did not contain advertising messages. It noted that the pack shot contained two legible descriptions, “*Clinically proven Fat Binder*” and “*Weight Management through dietary fat binding*”. Living said that it was satisfied that these two statements were brief product descriptions and not advertising messages. They were not referred to in the voiceover, nor did they appear as separate text within in the credit. They appeared in situ on the pack shot which appeared on screen for two seconds only.

#### Decision

When sponsor credits feature pack shots, it is important that these do not contain information that is incompatible with the requirements of the Code.

In this case, the product shown in the credits featured visible claims about the product’s efficacy. Ofcom did not agree with the broadcaster that these statements were merely brief product descriptions. We considered that they were clearly health

claims about the product (e.g. *“clinically proven fat binding”* and *“Weight Management through dietary fat binding”*) that were capable of objective substantiation. Ofcom noted that similar claims were the subject of an adjudication of the Advertising Standards Authority (ASA) in May 2008, in which the ASA found that the claims were unproven and therefore misleading.

Ofcom judged that these claims constituted advertising messages and the credits were therefore in breach of Rule 9.13.

**Breach of Rule 9.13**

## In Breach

### Sponsorship of Your Natural World programming

*UKTV Gardens, UKTV Documentary and UKTV History, September 2008 to December 2008, various dates & times*

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#### Introduction

*Your Natural World* programming strand was sponsored by Benecol. The sponsorship credits depicted uncontrollable situations, e.g. a woman being splashed by a lorry as it drives through a muddy puddle, a man raking up leaves which are subsequently blown around by a gust of wind. The credits included the voiceover “*Some things you can’t control but at least you can control your cholesterol. Benecol sponsors Your Natural World*” and the caption “*At least you can control your cholesterol. Benecol sponsors Your Natural World*”.

The credits also contained the text “*As part of a healthy diet & lifestyle*”, as well as animated pack shots that featured line drawings of the sponsor’s products. On the majority of the pack shots the printed claim “*Proven to reduce cholesterol*” was clearly visible.

Ofcom sought the broadcaster’s comments under Rule 9.13 of the Code.

#### Response

UKTV said the credits communicated the sponsorship arrangement of this programme strand in both sound and vision. UKTV believed that the credits contained neither a call to action nor an advertising message. It explained that the creative idea behind Benecol’s association with natural history programming was conceived along the lines of many aspects of life being beyond an individual’s control. This provided a platform on which the sponsor could align itself to environmental and ecological programmes contained in the *Your Natural World* strand of programming.

UKTV noted that the credits were first created for use on *The Alan Titchmarsh Show* on ITV1 and it was not aware of any regulatory intervention in that case.

UKTV stated that it had given careful consideration to whether the line “*Some things you can’t control but at least you can control your cholesterol, Benecol sponsors Your Natural World*” adequately identified the sponsorship. It avoided detailed descriptions of the sponsor’s products. UKTV considered that the credits did not give undue prominence to the sponsor’s products or encourage purchase.

Regarding the strapline “*As part of a healthy diet & lifestyle*” UKTV referred to Rule 9.3 of the Code, which requires sponsorship to comply with advertising content rules. The broadcaster explained that Benecol’s advertising is required to carry the disclaimer about a healthy diet and lifestyle. UKTV therefore considered that it was “duty bound” to include the strapline to comply with the Rule 9.3.

#### Decision

Ofcom judged that while the comment “*at least you can control your cholesterol*” may be a factual statement, its association with the sponsor’s product in these credits was

nevertheless likely to be viewed as a claim about the product's benefits. Further, a specific claim about the product's effectiveness was visible in the pack shots. Where pack shots are featured in credits, broadcasters must take care to ensure that these do not contain information that is incompatible with the requirements of the Code.

Ofcom considered that each of the claims that suggested the product was effective in lowering cholesterol i.e. "*at least you can control your cholesterol*" and "*Proven to reduce cholesterol*", were advertising messages. The credits were therefore in breach of Rule 9.13.

### **Breach of Rule 9.13**

## Note to broadcasters

During the course of recent investigations, Ofcom has noted that licensees, when defending their broadcasts, are increasingly citing material transmitted previously that has not resulted in regulatory intervention. Ofcom reminds broadcasters that when complying material, decisions should be based on the requirements of the Code, with reference to Ofcom published guidance (Code guidance, Ofcom Findings, Notes to broadcasters etc), where necessary. **Compliance decisions should not be based on material previously broadcast - by the licensee or any other licensee - which Ofcom has not considered.**

[Broadcasters should be aware that Ofcom does not monitor all material broadcast on the channels it regulates (over 900). To do so would be disproportionate and contrary to the regulatory principles under which Ofcom operates<sup>1</sup>. We therefore strongly advise broadcasters not to make assumptions about the compliance of their material on the basis that similar content may have already been broadcast.]

It is a requirement of all broadcasting licences that licensees have appropriate procedures in place to ensure that the material they transmit complies with the relevant codes and legislation. If broadcasters require additional guidance on interpreting the Code they may seek advice from the Ofcom Executive. The Executive can provide licensees with general guidance on Code interpretation. However, this is not a substitute for the licensee putting appropriate procedures in place and employing suitability qualified staff/consultants to comply material prior to broadcast. Broadcasters should note that pre-transmission guidance offered by the Executive is non-specific and non-binding.

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<sup>1</sup> Ofcom's regulatory principles can be found at [www.ofcom.org.uk/about/sdrp/](http://www.ofcom.org.uk/about/sdrp/)

## Other Standards cases

### In Breach

#### Promotional material during programming

*DBN, 21 November 2008, 08:30*

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##### Introduction

DBN is a channel aimed at a Christian audience and is in the religious section of Sky's Electronic Programme Guide. A viewer was concerned that during the programme *700 Club*, scroll bars ran across the screen which gave "undue prominence to the commercial aspects of the DBN channel and [were] not connected in any way to the *700 Club* programme".

One scroll bar stated: *"You are invited to a special healing service on Friday 21th [sic] Nov. Venue – GDM 78-94 Ormside Street London SE15 1TF. Time: 10AM – 1PM. There will be a healing service and special prayers for debt cancellation. There will be a special gift of anointing oil that has been blessed by Archbishop Gilbert Deya given to all the first time comers to this service. Come and experience the power and anointing [sic] of God"*.

The other scroll bar stated: *"Notice – DBN would like to inform all our Sky Digital viewers in the UK and Ireland that the channel will be moving to EPG 595 from the 10<sup>th</sup> November. For airtime and advert space contact us on 0106506123 or DBN sales: 07529440801. For prayers and other enquiries call the prayer line on +44 207 358 0303. Thank you for watching DBN"*.

We asked the broadcaster, Kashmir Broadcasting Corporation Limited ("KBC"), for its comments in relation to the following rules:

Rule 10.2 of the Code - Broadcasters must ensure that the advertising and programme elements of a service are kept separate.

Rule 4(a) of the Code on the Scheduling of Television Advertising ("COSTA") – The total allowance for advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes.

##### Response

The licensee, KBC, informed Ofcom that while it holds the licence for the channel, the content is provided and complied by a third party service provider.

When we first contacted KBC about the complaint, it told us that it did not monitor the output of the channel or make compliance recordings, because the contract between it and the service provider stipulates that the provider will ensure that the content complies with the Code. KBC subsequently informed Ofcom that it now makes its own compliance recordings of the content broadcast on DBN and "frequently dip[s] in to DBN's output" to ensure that it is compliant with the Code. It added that it authors the content for the channel's Electronic Programme Guide (EPG), and would contact the third party if it considered that anything in the programming schedule caused concern.



With regard to the scroll bars which appeared during programming, the service provider responded on behalf of the licensee. It said that it had not occurred to it that the scroll bars were advertisements. It confirmed that it had “looked again at the rules” and assured Ofcom that it will no longer scroll advertisements during its programming.

### **Decision**

As a condition of holding an Ofcom licence, broadcasters are required to be responsible for ensuring that the material they broadcast complies with Ofcom codes. It is a matter of concern to Ofcom that at the time of the complaint, the licensee - KBC - was wholly relying on a third party, whose compliance arrangements were clearly inadequate, to ensure that the material broadcast on the channel was compliant with Ofcom's codes.

Throughout this programme and the commercial breaks, two scroll bars ran across the bottom of the screen simultaneously. The scroll bars advertised DBN's airtime and advertising space as well as a religious service which had no connection to the programme. As the scroll bars contained advertising messages which were displayed during programming, the advertising and programme elements of the material were not clearly separated, in breach of Rule 10.2 of the Code.

Ofcom also noted that the advertising messages ran across the bottom of the screen for a period of 58 minutes, in breach of Rule 4(a) of COSTA which limits the amount of advertising in any one hour to 12 minutes.

These are serious breaches which will be held on KBC's record. Ofcom is concerned that KBC appeared to have contracted out its compliance obligations to its service provider with insufficient oversight. We note that KBC has now given assurances that it retains recordings of the channel's output (as required under its licence) and monitors the schedule for programmes which may cause concern. However, Ofcom reminds KBC of its compliance obligations under its Ofcom licence and puts KBC on notice that should any such breaches occur in the future, it will consider taking further regulatory action.

This case also raised further concerns about the operation of this channel. These are currently under investigation by Ofcom's Licensing team.

### **Breach of Code Rule 10.2, 10.3 and 10.4 and COSTA Rule 4(a)**

## In Breach

### Sin Cities

Virgin 1, 8 November 2008, 22:00

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#### Introduction

Ofcom received a complaint about an episode of *Sin Cities*, an observational documentary series, featuring the presenter Ashley Hames. At the start of the programme the presenter describes *Sin Cities* as the “*spiritual enclave of everything that is sinful, depraved and just down right disturbing in the international world of sexual intercourse*”. This episode focussed on the issue of men who are married to actresses who work in the ‘adult’ film industry in the United States.

The complainant expressed concern that the language and images in this episode were offensive, given that the material was broadcast at 22:00 on Virgin 1, which is a general entertainment channel available unencrypted.

Ofcom noted that throughout the majority of the programme there were repeated scenes of two pornography actresses engaged in sexual acts but with the act of penetration and genitalia considerably masked. The first actress was professional and the second amateur. These scenes were interspersed with clips from interviews with the actresses, their husbands and the male pornography actors appearing with them in the films. There were also brief clips from an interview with a Pro-Family activist.

During the interview with the professional pornography actress, Taylor Wayne, and her husband, several clips of the actress engaged in sexual activity while performing in ‘adult’ films were broadcast. Her husband was shown filming some of the scenes, which included oral sex and sexual intercourse. During the second interview with the amateur pornography actress, De’Bella, at least fifteen different scenes of her engaged in sexually explicit acts were shown. These included anal and oral sex in different positions with three male pornography actors. In some scenes, which were filmed at a distance, masked or limited, she was shown with one actor, in others she was engaged in explicit sex acts such as oral sex with all three.

Before the programme started the broadcaster advised viewers with a pre-transmission warning that *Sin Cities* included “*strong language and sexual scenes*”.

Ofcom asked Virgin Media (which complies Virgin 1) for comments under Rule 2.3 (broadcasters must ensure that material which may cause offence is justified by the context).

#### Response

The broadcaster stated that *Sin Cities* was an observational documentary series which focused on ‘adult’ themes, rather than being exclusively about sex, and that it was presented in “a light-hearted yet inquisitive way”. Therefore, the editorial context of the programme was biased towards probing the issue of marriage to women working as pornography actresses, rather than the pornography industry itself. The broadcaster stated “this was a serious question presented with the intent to find a serious answer”.

Therefore, the presenter spoke “at length” to the husbands of the pornography actresses to gain a greater understanding of this largely un-discussed topic. He also conducted an interview with the President of the Pro-Family Law Centre to present an alternative view of the subject. The broadcaster accepted that the programme contained sexually explicit content. It stated, however, this was within context and was carefully framed, appropriately limited and images blurred accordingly.

Virgin Media pointed out that the programme was broadcast at 22:00. This was a full hour after the 21:00 watershed when viewers to Virgin 1, most of whom are male, expect to find material containing ‘adult’ themes. In addition it was preceded by a warning and listings information which provided additional guidance, enabling viewers to make an informed choice as to whether they wished to continue watching. Finally, the broadcaster stated that the total audience represented an audience share of just 0.4% and this ensured it minimised the risk of generating widespread offence.

In summary, the broadcaster argued that the programme did not breach Rule 2.3 because the content of the programme was justified by the context.

### **Decision**

Rule 2.3 makes clear that “in applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context.” “Context” includes a variety of factors such as the editorial content of the programme, the service on which it is broadcast, and the effect of the material on viewers who may come across it unawares.

Ofcom acknowledges that broadcasters can show programmes with content of an ‘adult’ nature unencrypted provided they comply with all the relevant Rules of the Code. In the case of Rule 2.3 this means broadcasters should be able to demonstrate that material which has the potential to cause offence is justified by the context.

In this case, Virgin Media argued that certain factors ensured that the ‘adult’ material complained of was justified by the context and so it had applied generally accepted standards. These factors included that: the programme had a serious editorial purpose; the sexually explicit images were appropriately limited and masked; and the programme was broadcast later in the schedule and well signposted.

In Ofcom’s opinion, however, these factors taken together did not ensure that the potentially offensive material was justified by the context. Ofcom noted that the programme did have some editorial content and purpose, was broadcast at 22:00, the presenter set out at the start of the episode the aim of the programme, and that information about the sexual content was given to viewers before the programme began. This broadcast was also scheduled around complementary programming to some extent.

On the other hand, Ofcom had regard to other aspects of the context of the broadcast. As regards editorial content for example, whilst the presenter’s commentary and the interview with the Pro-Family activist offered some editorial focus, the content overall did not, in Ofcom’s opinion, provide adequate editorial context for, or analysis of, what the broadcaster described as “the moral dilemmas of being married to a porn star”.

Instead, at times, the programme lacked editorial distance and a considerable amount of the content concentrated on the detail of the sexual acts the actresses

were undertaking rather than a serious analysis of the subject matter. More importantly, some of the sexual content shown did not appear directly relevant to the subject matter of the programme- in particular, a scene where De'Bella removed an anal plug and placed it in her mouth in a sexual manner, and a sequence in which the narrator made reference to bleeding from an anal tear De'Bella had suffered, as a result of the prolonged anal sex she was engaged in with three pornography actors and the programme showed her wiping herself.

In assessing the context, Ofcom noted that the programme was broadcast on a general entertainment free-to-air channel and not on an encrypted channel. We also took account of the number, nature, repetition and strength of the images of the sexual activities featured in this episode (which included footage of the two adult actresses performing oral sex, receiving oral sex and having vaginal and anal sexual intercourse). In Ofcom's view the frequency and explicitness of these images had the potential to cause considerable offence, especially to viewers who might come across such content unawares.

Overall, we considered that this material exceeded the expectations of the audience for a programme of this type dealing with sexual themes and content but with some serious and observational editorial purpose – even though some viewers may have been familiar with similar 'adult' content broadcast on Virgin 1 at the same time. Ofcom does not consider *Sin Cities* to be a work of sufficient seriousness or rigorous enquiry to attract special latitude in the strength of material it can properly contain.

Ofcom noted that the images of oral sex were cropped and that there was a considerable amount of masking of genitals. However, masking of genitals, acts of penetration and ejaculate does not relieve the broadcaster of its responsibility to ensure that the material meets generally accepted standards. Licensees should consider carefully whether the need to obscure images of sexual activity or intrusive nudity is in fact an indication that the material as a whole is unsuitable for broadcast.

For these reasons, Ofcom concluded that the graphic and frequent sexual images in this programme were not overall justified by the context. The broadcaster therefore did not apply generally accepted standards in this case and Rule 2.3 was breached.

### **Breach of Rule 2.3**

## In Breach

### Chris Moyles

*BBC Radio 1, 20 January 2009 at 08:15*

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#### Introduction

During the broadcast of his breakfast show, Chris Moyles discussed the birthdays of celebrities with his studio team. During the discussion he told listeners that it was the birthday of singer Will Young. He then imitated Will Young by singing alternative versions of two of the singer's well known singles: 'Evergreen' and 'Leave Right Now'. During the imitation the presenter adopted an effeminate and high pitched voice.

When singing his alternative version of 'Evergreen', Chris Moyles broadcast the lyrics: *"It's my birthday, gonna wear my new dress tonight. And I smell nice. I've had a shower and I've shaved my legs. Going out later, might go to Nob-oooh for dinner."*

During the alternative version of 'Leave Right Now', Chris Moyles broadcast the lyrics: *"Oooh Will Young here, mmmmh. I'm here, it's Will's birthday and as the years go by I get more very gay. When you saw me years ago you didn't know, but now I'm the gayest fella you probably know. mmm I like to wear a silly hat, I get camper by the hour, oh would you look at the muck in here. I'm Will Young and I'm gay."*

Ofcom received eight complaints from listeners who were concerned that Chris Moyles ridiculed Will Young because of his sexuality. The complainants also said that the comments were offensive and derogatory towards the gay community.

Ofcom wrote to the BBC for its comments under Rule 2.3 of the Code (material that may cause offence must be justified by the context).

#### Response

The BBC stated that while it was Will Young's sexuality which provided the main theme of the programme's comments, he was not being ridiculed because of his sexuality. It said that regular listeners to the programme will have been aware that Will Young has been a guest on the show a number of times. The audience in general would have been clear that such remarks were not intended to be taken as hostile or derogatory.

However, the BBC acknowledged that Chris Moyles' comments were misjudged and unacceptable. The BBC stated that the Controller of Radio 1 has now spoken to Chris Moyles and his production team about the matter. This was to remind them that "Radio 1 has a wider leadership role with young audiences around acceptance and tolerance towards sexual orientation – and they should be particularly careful not to inadvertently perpetuate certain stereotypes." In addition, the Controller of Radio 1 wrote to Chris Moyles' agent to make clear that the material was unacceptable.

#### Decision

Ofcom recognises that the *Chris Moyles* show is well known for its irreverent style and humour, with satirical sketches, studio banter and discussion making up a key

part of the show. We also acknowledge that Chris Moyles commonly uses celebrities as the target of his humour in this way.

Ofcom notes the BBC's response that the comments made by Chris Moyles about Will Young were not intended to be taken as hostile or derogatory. However, in Ofcom's opinion, the comments were clearly based on the singer's sexuality and therefore capable of giving offence. Ofcom therefore had to decide whether the comments were justified by the context in order to meet the requirements of Rule 2.3 of the Code.

The BBC acknowledged that the comments were unacceptable. Ofcom was also concerned by this material, and in particular the language used and the tone and manner in which the comments were made. In Ofcom's opinion, the language used to imitate Will Young (including "*gonna wear my new dress tonight...I've shaved my legs... Going out later, might go to Nob-oooh for dinner*" and "*I get camper by the hour, oh would you look at the muck in here*") could have reasonably been interpreted by listeners as promoting and condoning certain negative stereotypes based on sexual orientation. Ofcom considered that the presenter's use of an effeminate and high pitched voice would have promoted these stereotypes further. Although no doubt intended to be humorous, comments such as these and the manner in which they were delivered, in Ofcom's view, could reasonably have been perceived as hostile and pejorative. In Ofcom's opinion, the broadcast of this language by Chris Moyles, taking account of both the tone and words, had the potential to cause considerable offence.

Ofcom took account of the fact that Chris Moyles is a well known and influential presenter and that many listeners are familiar with his style and humour. However, we also had regard to the time of broadcast - the weekday breakfast time slot that attracts a young audience, including large numbers of children. Ofcom was therefore particularly concerned that the broadcast of this type of material may have the potential to encourage listeners, especially children, to discriminate against others because of their or perceived sexual orientation. Such material runs the risk of being imitated by children, for instance in the playground, causing unnecessary distress.

In light of these factors, Ofcom concluded that the material was not justified by the context and so went beyond generally accepted standards for this type of programme. While we acknowledge the action taken by the BBC to prevent the future broadcast of similar material, we concluded that the programme breached Rule 2.3.

Ofcom previously published two findings concerning Chris Moyles and the use of discriminatory/offensive language (Bulletin 56, published 20 March 2006, and Bulletin 62, published 12 June 2006). One case was resolved due to the action of the broadcaster and one was in breach of the Code. In light of this, Ofcom would remind the BBC to take particular care to avoid potentially discriminatory treatment or language directed against sections of society. This is particularly important in programmes which children are likely to listen to.

### **Breach of Rule 2.3**

## In Breach

### Chop Shop

*Discovery Channel (including Discovery+1),  
12 October 2008, 12:00 (and repeated on) 13 October 2008, 09:00;  
27 December 2008, 17:00; and  
31 December, 16:00*

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#### Introduction

Discovery Channel is a general entertainment and documentary channel available on satellite and cable platforms. *Chop Shop* is a programme that tracks two car mechanics and their team when they “recustomise” cars. Ofcom initially received three complaints about repeated offensive language in an episode broadcast pre-watershed on 12 October 2008 and repeated on 13 October 2008 (“Programme One”), in which the team were designing a car for the actor Martin Kemp. During its investigation into Programme One, Ofcom received a further eight complaints relating to strong language in editions of *Chop Shop* broadcast before the watershed on 27 December 2008 (“Programme Two”) and 31 December 2008 (“Programme Three”). These programmes showed the team designing cars for the performers Jools Holland and Johnny Vegas respectively. In this finding, all three programmes together are referred to as the Programmes.

Ofcom reviewed recordings of the Programmes provided by Discovery Communications Europe Ltd (“Discovery”), which complies the Discovery Channel. Ofcom noted that the Programmes each contained several uses of “fuck” and “fucking”.

Ofcom wrote to Discovery, asking it to respond under Rule 1.14 (the most offensive language must not be broadcast before the watershed).

#### Response

In its response concerning Programme One, Discovery expressed deep regret for the transmission of offensive language in this programme and apologised. It said that the post-watershed version had been broadcast during the day by mistake. Discovery said that the error had led it to introduce additional compliance procedures.

In its response concerning Programme Two and Programme Three, Discovery said that despite the steps it had taken in the wake of Programme One being broadcast, Discovery had discovered that there were further compliance issues with the programme *Chop Shop*. Due to human error, the post-watershed versions of Programmes Two and Three had been entered into the scheduling system without a scheduling certification. This led to Programmes Two and Three being aired during daytime.

Discovery said that it had broadcast an apology four times in total for the offensive language in the Programmes. It also emphasised the steps it was taking to improve compliance further, including: the installation of a computerised scheduling system that would prevent programmes from being transmitted if they did not have a scheduling certification; the withdrawal of this series of *Chop Shop* from the schedules until the new scheduling system was fully implemented; a check on the scheduling certifications of all commissioned programming from the previous two

years; and the introduction of a policy whereby only a daytime compliant version of each *Chop Shop* programme would exist (i.e. all offensive language would be removed).

### **Decision**

Ofcom's research<sup>1</sup> confirms that most viewers find "fuck" and its derivatives some of the most offensive language. Ofcom welcomes the admission by Discovery of the compliance errors in the three Programmes and that it has progressively tightened up compliance procedures in response.

The repeated uses of the most offensive language before the watershed were, however, clear breaches of Rule 1.14. Ofcom also notes two previous breaches of Rule 1.14 by the Discovery Channel recorded within the past fourteen months – one concerning the same programme<sup>2</sup>. In light of all these contraventions of the Code over a period of fourteen months, Ofcom is concerned by the inadequacy of the channel's compliance arrangements. Its procedures have clearly not been robust enough to prevent multiple breaches of the Code Rules prohibiting the broadcast of the most offensive language before the watershed.

Ofcom is therefore requiring Discovery to attend a meeting with the regulator to discuss its compliance record and arrangements.

### **Breach of Rule 1.14**

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<sup>1</sup> "Language and Sexual Imagery in Broadcasting: A Contextual Investigation", September 2005

<sup>2</sup> See *UK Toughest Jobs*, Bulletin 100, 14 January 2008 and *Chop Shop: London Garage*, Bulletin 102, 11 February 2008.



## In Breach

### Sky News

*Sky News, 18 December 2008, 16:15*

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#### Introduction

Ofcom noted that a sequence on Sky News contained flashing images. They were from a press conference at which Sam Allardyce gave his reaction to being appointed manager of Blackburn Rovers. No warning was broadcast before or during the report about the nature of the images.

Certain types of flashing images present a danger of triggering seizures in viewers who are susceptible to photosensitive epilepsy (“PSE”). Rule 2.13 of the Code states that television broadcasters must take precautions to maintain a low level of risk to viewers who have PSE. Ofcom therefore asked Sky how this broadcast complied with Rule 2.13.

#### Response

Sky said that the live pictures from Sam Allardyce’s press conference were editorially justified. They were the only pictures that could illustrate an important story – that Allardyce was back in a high profile management position. In working very quickly to prepare a report to be shown soon afterwards in a sports bulletin, the producer failed to include a warning about the flash photography as regards the live pictures. Sky agreed that as there was a lot of flashing, and that viewers should have been warned. After the sequence was broadcast for the first time, it was edited within ten minutes to reduce the amount of visible flashing when shown subsequently. No warning accompanied this edited package.

The broadcaster pointed out that the issue of flash photography is a difficult one for rolling news channels like Sky because they cover a number of live events where the level of flashing images cannot be accurately predicted in advance. In this case, Sky agreed there was no reason why a warning could not have been given to viewers before the item was broadcast. As a result of this incident Sky reminded all of its journalists and production staff of the requirements set out in 2.13 of the Code.

#### Decision

An assessment by Ofcom found that the sequence breached Ofcom’s technical guidelines for flashing images.

We expect broadcasters to be always alert to material which poses a risk to viewers subject to PSE and to check whether such content complies with Ofcom’s technical criteria set out in the Guidance. If it does not, then Rule 2.13 requires the broadcaster to take any “reasonably practicable” measures to follow the Guidance and make the material compliant. If it is not reasonably practicable to follow the Guidance but the broadcaster still wishes to transmit such material, it must (a) be able to demonstrate that it is editorially justified to broadcast the non-compliant material; and (b) that it gave an adequate warning or warnings.

In this case Sky has agreed that the flashing images breached Ofcom's technical criteria but there was no warning broadcast, either when the pictures were shown live or when they had been re-edited for the subsequent sports programme. Ofcom does not need in this case to decide whether – if a warning had been broadcast – Sky would have been editorially justified in showing the flashing images. We note in this case that the flashing was from distinct light sources and that this may have reduced the potential for harm and we welcome Sky's assurances that following this complaint it has reminded its staff of the need to observe Rule 2.13. Nevertheless the broadcast of the material without a warning did amount to a breach of Rule 2.13.

### **Breach of Rule 2.13**

## In Breach

### The Breakfast Show

*Vibe 105.3 FM, 7 June 2008*

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#### Introduction

Vibe is a community radio station which broadcasts to Enniskillen in Northern Ireland, it broadcast a number of weekend breakfast shows presented by a volunteer.

Ofcom received a fairness and privacy complaint about programmes broadcast on Vibe 105.3 FM ("Vibe FM") between 20 April and 17 June 2008. As part of its investigation into this complaint, Ofcom asked the broadcaster to provide recordings of three programmes broadcast on 7, 15 and 17 June 2008.

#### Response

The broadcaster provided recordings of the programmes broadcast on 15 and 17 June 2008. However, in relation to the programme of 7 June 2008 the broadcaster informed Ofcom that it had experienced a problem with its programme logging system and that it might not be possible to retrieve the programme. It subsequently confirmed to Ofcom that it was not able to retrieve the recording and so could not provide it.

#### Decision

It is a condition of all local radio licences that the licensee supplies recordings to Ofcom on request when under investigation. While Ofcom recognises that the broadcaster's failure to provide Ofcom with the recording was due to a technical problem with its logging equipment, the broadcaster is legally obliged to ensure that recordings of its output are retained for 42 days.

Ofcom was unable to consider the complaint of fairness and privacy as it related to the edition of the programme broadcast on 7 June as a result of the broadcaster's failure to provide the recording.

This is a serious breach of the broadcaster's licence and entirely unacceptable. It will be held on record. Any similar breaches by Vibe FM will result in the consideration of further regulatory action.

#### Breach of Licence Condition 8 (Part 2 General Conditions)

## Resolved

### **BBC Breakfast**

*BBC1, 16 February 2009, 06:55*

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#### **Introduction**

*BBC Breakfast* is an early morning news and entertainment programme transmitted weekdays on BBC1 (and on satellite and cable on BBC News 24) between 06:00 and 09:15. At 06:55 on Monday 16 February 2009 the programme featured part of a sound clip of the Hollywood actor Christian Bale losing his temper on a film set. The incident, which, when played in full, featured a number of expletives, had been recorded and distributed to the media and was widely reported at the time.

The programme's presenter introduced the Christian Bale item and almost immediately the word "*fucking*" was heard. The clip was immediately stopped and the presenters apologised stating that the clip should have been edited. 16 viewers complained to Ofcom that the word "*fucking*" was broadcast. Ofcom asked the BBC to comment with regard to Rule 1.14 which requires that: "The most offensive language must not be broadcast before the watershed..."

#### **Response**

The BBC said that it accepted that the transmission of the word "*fucking*" before the watershed was in breach of Rule 1.14. It said that the broadcast of this word was the result of human error. Two versions of the item existed in its production database – one containing the most offensive language and one with this language bleeped out for transmission. The original unedited version was played by mistake because the two different versions were not clearly labelled.

The BBC continued that as soon as the word "*fucking*" was heard the programme's director cut the clip so that no more would be heard. The programme then cut back to the presenters who immediately apologised at length for what had occurred. It went on to say that the programme item was dropped from the schedule and a further, full apology was offered at the end of the programme. The BBC said that it had put measures in place to ensure that no material that is unsuitable for broadcast is left in its production database and considered that these measures will prevent any repetition of this incident.

#### **Decision**

Ofcom acknowledged the swift action of the director to take the clip off-air immediately once the first swear word was heard, therefore avoiding any further offence to viewers. We also note the swift steps taken to apologise to viewers for this error and to put in place revised procedures to prevent a recurrence. Ofcom therefore considered the matter was resolved adequately by the broadcaster.

#### **Resolved**

## Not In Breach

### The Qur'an

Channel 4, 14 July 2008, 20:00

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#### Introduction

*The Qur'an* was a two-hour documentary made by the film-maker, Antony Thomas. It was broadcast as part of Channel 4's *Islam Unveiled* season, a week of programmes dealing with Islam. *The Qur'an* examined what the Qur'an itself says on a range of issues such as crime and punishment, violence and conflict, and the treatment of women. The programme attempted to relate present-day Islamic practice and beliefs to the Qur'anic source text.

The programme contained several sequences discussing Shi'a<sup>1</sup> practice and beliefs. In particular, it focussed on "intercession". Intercession is the practice of directing prayers and requests to God through certain members of the family of the Prophet Mohammed. This includes Imam Ali Reza and his descendents, the eighth of the twelve Imams who are perceived by some to be the religious and political successors to the Prophet Mohammed.

Ofcom received 21 complaints from individuals concerning the way the programme treated Shi'a Islam. Ofcom also received a detailed complaint ("the Group Complaint") from 12 organisations representing Shi'a Islam within the UK. The Group Complaint submitted two sets of documentation in support of their points.

In summary the main complaints about the programme were as follows.

- a) Shi'a Islam was portrayed in a negative, unbalanced and irresponsible light, including misrepresenting and inaccurate facts about Shi'a Islam ("Misrepresentation"). In particular, the complainants said that the programme:
  - stated that Shi'a Islam is contrary to the Qur'an and that Shi'as do not follow the Qur'an, and this would incite hatred towards Shi'as ("Shi'a Belief in the Qur'an");
  - asserted that Shi'as believe the Qur'an to be falsified and there is no agreement between Shi'as and Sunnis over the authenticity of the Qur'an ("Falsification");
  - misrepresented the Shi'a position on intercession and the role of priests, stating that Shi'as pray to the Imams rather than to God ("Intercession");
  - said that Shi'a Islam was equated with extreme Iranian political beliefs as well as the Saudi Wahhabist state and footage of a sermon was used out of context ("Extremism"); and
  - mistranslated or inappropriately edited the views of two participants ("Mistranslations").

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<sup>1</sup> Shi'a Islam is the second largest denomination of Islam, after Sunni Islam. Shi'as in particular believe that the family of the prophet Mohammed have a particular spiritual relevance.

- b) The programme risked increasing tensions within the Muslim community between Sunnis and Shi'as, and inspiring violence against Shi'as ("Increased Shi'a/Sunni Tensions").
- c) The broadcaster did not use Shi'a scholars and commentators in the UK and not enough time was given to Shi'a contributors ("Shi'a Contributors").
- d) The programme confused images of Alawite (non-Shi'a) worship with Shi'a Islamic worship ("Mislabelling").

Ofcom wrote to Channel 4, asking it to respond under the following Rules of the Code:

- 2.2 (factual programmes must not materially mislead);
- 3.1 (broadcasters must not include material likely to encourage the commission of a crime);
- 4.1 (broadcasters must exercise a proper degree of responsibility with respect to religious programmes);
- 4.2 (religious views must not be subject to abusive treatment); and
- 4.3 (identity of religions must be clear to the audience).

## Response

Channel 4 said that the programme "was a very important film" about what has been described as "currently the world's most ideologically influential text". The documentary debated key issues related to the Qur'an, and such debate was absolutely vital in our democracy. The broadcaster added that it was unprecedented for a national broadcaster to devote two hours in peak time to the Qur'an.

According to the broadcaster, the programme aimed to explore what the Qur'an actually says about issues such as crime and punishment, the role of women, the wearing of the veil, and tolerance of other religions. Further, the broadcast aimed to examine the different interpretations of the Qur'anic text and chart how they came about. However, Channel 4 did state that: "The [p]rogramme [did] not set out to take the impossible leap of determining which interpretation is correct. Nor [did] the [p]rogramme seek to invalidate or undermine any religious beliefs and cultural practices which arise in connection to the Qur'an".

Channel 4 said the programme made clear that the views held by different Muslims on fundamental issues, such as punishment and forgiveness, are diverse, for example between the Sunni and Shi'a traditions, but also within those traditions. Consequently, according to the broadcaster, "The emphasis in the [p]rogramme of diversity and difference in the Muslim religious faith and practice and interpretations of the Qur'an [was] evident". The programme concluded by highlighting the guidance and empowerment that the Qur'an offers and the programme stated "It is clear that the Qur'anic text may raise more questions than it may answer and the [p]rogramme mirrors that dichotomy".

In relation to the complaints, Channel 4 made the following points.

- a) Misrepresentation

A great deal of research and preparation had gone into the making of the programme. All facts were sourced from leading academics and historians, and where an opinion was expressed in the programme this was based on appropriate sources, and was appropriately challenged in the commentary or by another contributor. The programme included contributions from a range of participants. For example, in discussing what the Qur'an had to say on violence, the programme sought contributions from Sunnis and Shi'as.

In general, Channel 4 said: "It is contrary to the principles of freedom of expression to suggest that religious faith is abused merely because a programme raises an issue with respect to a religious belief or practice and questions what lies behind that belief or practice. A religious faith is not abused where a programme asks a question and then provides a voice to those who wish to answer it. On the contrary, democratic and free debate is served by a free airing of [a] responsibly and sensitively presented range of views and perspectives in the context of a historical analysis of the key text".

Taking in turn the key elements of complaints concerning misrepresentation, Channel 4 made the following points.

- *Shi'a Belief in the Qur'an*

Complainants alleged that the programme stated that Shi'a Islam is contrary to the Qur'an and that Shi'as do not follow the Qur'an, which could incite hatred towards Shi'as. Channel 4 said that the programme did not vilify Shi'a beliefs or practices or suggest or state that they are contrary to the Qur'an or unIslamic, nor did the programme suggest that Shi'as do not believe in the Qur'an. What the programme actually stated was that certain practices are not expressly specified in the Qur'an.

- *Falsification*

Complainants alleged that the programme asserted that Shi'as believe the Qur'an was falsified and that there is no agreement between Shi'as and Sunnis over the authenticity of the Qur'an. Such an allegation is known as *tahrif*<sup>2</sup>. Channel 4 rejected these complaints. The broadcaster stated that: numerous Shi'a scholars and holy sources have in the historical past accused Sunnis of falsifying the Qur'an; this was made clear in the programme; but the broadcast went on to say that today "*any talk of a falsified Qur'an is out of the question*". Channel 4 noted the Group Complaint had cited various Shi'a scholars on this matter, but without disproving the statement made in the programme about falsification. More generally, the programme did not assert there were differences between Sunnis and Shi'as over the authenticity of the Qur'an.

- *Intercession*

Complainants alleged that the programme misrepresented the Shi'a position on intercession and the role of priests, stating that Shi'as pray to the Imams rather than to God. The broadcaster made the point that numerous reputable sources and contributors it consulted confirmed the view that Shi'as make use of intermediaries, such as the Imam Ali Reza, when praying to God. The programme featured various Shi'a contributors, such as the Grand Ayatollah Saanei, and several Shi'a pilgrims visiting an Iranian shrine<sup>3</sup>, who all highlighted

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<sup>2</sup> Tahrif is considered a sin by most Muslims.

<sup>3</sup> In the city of Mashhad, Iran, where Shi'a pilgrims visit a shrine to Imam Ali Reza.

the key importance of intercession and the Imam Ali Reza in their beliefs. Channel 4 said the point the programme was seeking to make was that the Qur'an states that prayers and supplications should only be directed to God, and that there are no references in the Qur'an to the question of Mohammed's succession or the Imams. Nowhere in the programme was it suggested that the belief in intercession is against Islam.

Channel 4 strongly refuted the contention made by one of the complainants that most of the Sunni world believes in intercession. Rather, all Sunnis interviewed during the making of the programme confirmed the opposite. Channel 4 did concede that some Sunnis may pray to God from the burial places of righteous men and women, or indeed that a minority of Sunnis may break with Sunni beliefs and pray to the deceased. However, Channel 4 was adamant that: "The Sunni do not believe in 'intercession' in the same manner as Shi'a Muslims and this is an indisputable fact".

Channel 4 acknowledged that one contributor (Dr.Taj Hargey, Chairman of the Muslim Educational Centre of Oxford) labelled intercession as a "*sin*" and that such a view would be challenging for some viewers. This was why, following this interview, the last word on the issue of intercession was given to the Grand Ayatollah Saanei (See footnote 6). Channel 4 said: "Not only was this fair but it substantially minimised any potential harm of Dr.Hargey's comments".

Concerning the role of priests, Channel 4 pointed out that it was not saying that Shi'a Islam was the only branch of Islam to make use of priests, as alleged by some complainants. In fact, the programme noted the role of clerics in the Sunni Wahhabist tradition, predominant in Saudi Arabia. However, the programme did allude to the role of Shi'a priests in the context of intercession<sup>4</sup>.

- *Extremism*

Complainants alleged that the programme equated Shi'a Islam with extreme Iranian political beliefs as well as the Sunni Wahhabist state in Saudi Arabia, and that footage of a sermon was used out of context. According to Channel 4, the programme could not be construed as connecting Shi'ia Islam with extremist ideologies such as those represented by Al-Qaeda. Nor did the programme link Shi'a Islam to Sunni Wahhabism, as found in Saudi Arabia; rather the programme said both Shi'a Iran and Wahhabist Saudi Arabia have something in common: a priestly class, which the programme commentary said, was "*contrary to the spirit of the Qur'an*".

At one point in the programme, according to Channel 4, footage of a Shi'a cleric, Ayatollah Tabatabaee, in a sermon espousing violence, was used as part of a discursive section on whether the Qur'an can be used to justify violence. The footage followed contributions of several hard-line Sunni clerics. These various contributions, both Shi'a and Sunni, followed a long section of the programme which stressed the Qur'anic values of peace and tolerance. Channel 4 said: "The footage of the sermon is used to demonstrate the political reality stemming from a hard-line interpretation of the Qur'an – both Sunni and Shi'a – but it is not said to be representative of Shi'a or Sunni Muslims at large".

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<sup>4</sup> In the part of the programme that followed the discussion on the Shi'a approach to intercession, Dr.Taj Hargey said in relation to priests: "*There is no need for an intercessor. You and I have the absolute right to pray and to connect to the divine*".



- *Mistranslations*

Complainants focused on the alleged mistranslation of two Shi'a contributors who featured in the programme. One was a male Shi'a pilgrim, who gave his views on intercession. The second contributor was a senior Iranian cleric, who gave his views, amongst other things, on intercession and crime and punishment.

Male Shi'a Pilgrim:

In discussing intercession, the programme featured clips from interviews with five Shi'a pilgrims visiting the Iranian city of Mashhad. In the programme, the commentary translated the Farsi spoken by one pilgrim as:

*"Imam Reza and the other Imams are our only hope."*

Channel 4 accepted that there was an inadvertent and unfortunate omission from this translation of some of the words spoken by the pilgrim and actually broadcast. The words spoken in Farsi were:

*"We have no one apart from God, the Imams and their descendents. Imam Reza and the other Imams are our only hope"*. [The words omitted from the voice-over translation are underlined]

Channel 4 said the omission resulted from an initial error made by the interpreter present in the interview with the pilgrim. The broadcaster made the following points:

- the filmmaker had engaged two reputable Farsi speaking translators: one ("the First Translator") to act as interpreter in each interview and the second to view the edited interviews to ensure the dialogue was edited accurately and that the voice-over translation was correct;
- an initial error, by the First Translator, in translation of the phrase spoken by the pilgrim was not spotted by the second translator checking the edited version of the interview used in the broadcast. Channel 4 said that this omission was unfortunate and was not the result of irresponsible film-making, but human error;
- Channel 4 maintained that viewers were not materially misled in that the pilgrim, and the other four Shi'a pilgrims featured in this sequence of the programme, still maintained the importance of the Imams as intermediaries. Allied to the fact that there is no mention of intercession and the Imams in the Qur'an, the programme's subsequent commentary remained accurate, which stated:

*"Sentiments like these seem completely contrary to the Qur'anic ideal of a direct personal relationship with God"; and*

- Channel 4 regretted this error and stated that the master-tape of the programme has been edited so that a corrected translation of the pilgrim, including the omitted phrase, is now in the programme for all subsequent screenings. The broadcaster added that the commentary remained unchanged because it is a comment based on what Channel 4 believed to be an indisputable fact, that the specific Shi'a belief in intercession and the Imams has no basis in the Qur'an.

Grand Ayatollah Saanei:

At different points in the programme, excerpts were included of an interview with the leading Shi'a Iranian cleric, the Grand Ayatollah Saanei. During Ofcom's investigation, two issues arose in relation to alleged mistranslations of the interview: firstly, concerning intercession; and second, concerning crime and punishment.

- *Mistranslation – Intercession*

Concerning intercession, the Group Complaint provided Ofcom with a translation ("the Complainants' Translation") of extensive parts of the complete, original interview in Farsi between the programme's maker, Antony Thomas, and the Grand Ayatollah. In an unbroadcast part of the Interview, according to the Complainants' Translation, Antony Thomas asked the Grand Ayatollah about the role of the Imams:

*"Some Sunnis say that the relationship with God should be a direct one and there should not be any intercessor between them".*

According to the Complainants' Translation, the Grand Ayatollah also said the following ("the Missing Phrase"), which was not included in the programme:

*"And there is no general consensus between people of this issue [intercession]".*

The Group Complaint said that the Grand Ayatollah was stating that the issue of intercession is a matter of debate between all Muslims and that, in the Grand Ayatollah's words, it is: *"a theological discussion and should not be a source of difference"*. According to the Group Complaint, the full extent of the Grand Ayatollah's answer was omitted from the programme, leaving the audience to conclude as fact something that is a matter of intra-Islamic debate amongst all Muslims.

In response, Channel 4 described the steps that had been taken before including clips of the Grand Ayatollah's interview in the programme:

- the television production company had engaged through a reputable translation company ("the Company") the services of a highly qualified Farsi speaker to translate the original interview between Antony Thomas and the Grand Ayatollah;
- on the advice of the Company, the television production company engaged another Farsi speaker, who currently works as a journalist on BBC Persia, to produce an original translation ("the Original Translation") of the recorded interview;
- also on the advice of the Company, the television production company had engaged the services of a noted academic to check the editing of the Grand Ayatollah's interview to ensure the editing and voice-over translations were correct; and
- since transmission, Channel 4 commissioned the services of another independent and reputable Farsi translator to check the Original Translation and produce their own translation ("the Second Translation");

Channel 4 said that both the Original and Second Translations did not contain the Missing Phrase, and that the programme accurately reflected the Grand Ayatollah's views on intercession. The broadcaster suggested that the difference between its two translations and the Complainants' Translation seemed to be due to the fact that the Grand Ayatollah: "speaks in a highly specialised manner and provides lengthy and somewhat tangential answers".

The broadcaster strongly refuted the claim that the omission of the phrase was a distortion of the interview. Even if it was assumed that the Missing Phrase had been said by the Grand Ayatollah, Channel 4 said that the meaning, as viewed in the context of the whole text of the Complainants' Translation, would be that there is no general consensus between Sunnis and Shi'as over the issue of intercession. Channel 4 pointed to the fact that the film-maker's question set up the difference of view between Sunnis and Shi'as over the issue of intercession. Furthermore, according to Channel 4, the programme did accurately reflect the Grand Ayatollah's views on intercession<sup>5</sup>.

- *Mistranslation – Crime and Punishment*

During Ofcom's investigation, Channel 4 alerted Ofcom to the fact that whilst producing the Second Translation it became apparent there had been a mistranslation during the making of the programme. The programme implied that the Grand Ayatollah believed the death penalty in Iran was appropriate for homosexual acts (what is referred to in Iran as 'sexual deviation'). However, when translating Antony Thomas' question to the Grand Ayatollah, the translator omitted the reference to sexual deviations<sup>6</sup>. The result was that the film-maker's intended question was not put to the Grand Ayatollah. The film-maker did not know this.

Channel 4 made the following points:

- this omission was only picked up in the Second Translation after the programme had been broadcast. Therefore Antony Thomas had in good faith re-voiced his original question in the edit for inclusion in the programme; and
- the effect of this omission was that the Grand Ayatollah did not suggest that the Iranian Government should be allowed to execute practising homosexuals.

Channel 4 maintained that the omission, whilst unfortunate, did not distort the Grand Ayatollah's interview so as to mislead the audience, or represent an abusive treatment of the Shi'a religion for the following reasons.

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<sup>5</sup> In the programme the translation of what the Grand Ayatollah said on intercession is as follows: "I don't say that I go to Imam Reza so that he can solve my problems. I say that I have a request for God, but my position is not high enough to reach Him. I put Imam Reza as the intermediary so that he – who is very dear to God – asks Him to have mercy on me".

<sup>6</sup> Channel 4 said that in the final programme use of the word "homosexuals" was used in the programme voice-over instead of "people with sexual deviations" to ensure that the programme did not suggest to UK based viewers that homosexuality is considered a "sexual deviation", as it is in Iran. Therefore, Channel 4 maintained that the phrase "sexual deviations" was used according to standard editing practice.

Channel 4 had shown due responsibility by engaging three reputable interpreters at different stages of the programme-making process, but despite these best efforts, none of these interpreters picked up the omission;

- the Grand Ayatollah was speaking not as a member of the Shi'a faith at large but as a member of the Iranian State's religious establishment. He was commenting on the existence of certain laws within Iran; and
- according to independent research commissioned by Channel 4, the Grand Ayatollah and the Iranian Government have the same opinion about the law in relation to homosexuality, as they relate to Sharia law, namely, the State should have the ability to execute men for acts of homosexuality.

However, in light of the omission of the reference to executing homosexuals in the interview with the Grand Ayatollah, Channel 4 said they would: "look at whether the Programme should be re-edited prior to any future broadcast".

#### b) Increased Shi'a/Sunni Tensions

Complainants alleged that the programme risked increasing tensions within the Muslim community between Sunnis and Shi'as, which could inspire violence against Shi'as. Channel 4 said this claim made by the complainants was "clearly speculative and completely without foundation". Although the Group Complaint had supplied details of various reports of Sunni-Shi'a violence, Channel 4 maintained that there was no evidence provided of a causal link between the reported acts and the programme. Whilst some of the language used by contributors featured in the programme was "strong and emotive", Channel 4 said the programme did not condone hard-line interpretations of the Qur'an. Rather, the programme made "it clear that such an interpretation is against the Qur'anic text and has 'tragic' consequences for all mankind".

#### c) Shi'a Contributors:

Complainants alleged that no use was made of Shi'a scholars and commentators in the UK in the programme and not enough time was given to Shi'a contributors. Channel 4 said that the programme was the result of extensive research, including interviews with leading scholars, academics and theologians, including three prominent Shi'as in the UK and four in Iran.

In terms of Shi'a contributors, the programme included contributions from two Ayatollahs, a Dean of a Madrassa<sup>7</sup>, and five Shi'a pilgrims. One of the Ayatollahs, Grand Ayatollah Saanei, was a renowned cleric from the world's leading Shi'a country, Iran. Channel 4 refuted the suggestion that the Shi'a perspective was equated to Grand Ayatollah's views, pointing to the fact that the views of other Shi'as, both clerics and ordinary Shi'as, were included in the programme.

Channel 4 rejected the claim that the programme should have included UK Shi'a contributors, stating that whilst some UK Shi'as had been interviewed at the research stage, these contributions were felt not to be editorially relevant enough to include in the final programme. Channel 4 questioned whether a UK-based religious leader would be more representative of the Shi'a faith than the Grand Ayatollah Saanei, one of the highest Shi'a authorities. Channel 4 also challenged the point made by the Group Complaint that none of the four Muslim scholars used by the programme were

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<sup>7</sup> A Madrassa is a type of Islamic seminary.

Shi'a, saying it was irrelevant because they were advising on the Qur'anic text not on theology.

d) Mis-labelling

Complainants alleged that the programme confused images of Alawite (non-Shi'a) worship with Shi'a Islamic worship. Channel 4 maintained that all religious denominations were clearly labelled in the programme. Furthermore, the broadcaster said that images of Turkish worshippers in front of a portrait of Imam Ali Reza were not Alawites, as alleged by the Group Complaint, but from the Sufi sect, known as Mevlevis. Channel 4 added that later on in the programme, when footage was shown again of this group of worshippers, the commentary pointed out that Sufis draws its followers from across the Sunni/Shi'a divide.

## Decision

In considering whether a documentary, such as *The Qur'an*, breaches the Code Ofcom must be mindful that it should exercise its duties in a way which is compatible with Article 10 of the European Convention of Human Rights. In ensuring that broadcasters apply generally accepted standards, Ofcom must do so in "the manner that best guarantees an appropriate level of freedom of expression".<sup>8</sup> Freedom of expression encompasses the right to hold opinions and to receive and impart information and ideas without interference by public authority. Applied to broadcasting, Article 10 therefore protects the broadcaster's right to transmit material as well as the audience's right to receive it, as long as the broadcaster ensures compliance with the Rules of the Code as well as the law.

Broadcasters should be free to explore a wide range of challenging and provocative subjects. In relation to this, Ofcom notes Channel 4's distinctive remit to provide: "a broad range of high quality and diverse programming which...appeals to the tastes and interests of a culturally diverse society". The programme clearly fell under this remit, being a substantial, investigative documentary. It will be inevitable that such thought-provoking coverage will elicit a range of responses from audiences, but Ofcom considers that such programming is a crucial element of our broadcasting ecology.

Ofcom noted that the programme received a broadly positive response from members of the Muslim community: according to research from the YouGov panel, quoted by Channel 4, only 10 out of 872 Muslims made any negative comment in relation to the portrayal of Islam within the programme.

Nevertheless, the programme raised some concerns amongst some members of the Shi'a community. Given the central importance of the Qur'an to followers of Islam, and the theological debate that surrounds any discussion of sacred texts, it would be surprising if a programme such as this did not attract some complaints. Ofcom's own research<sup>9</sup> has found that audiences considered that "matters of faith will always involve strong feelings, and it will be likely that someone will 'take offence' when none was intended". As a general principle, any programme dealing with a sensitive subject, such as a particular group or people's religious beliefs, is entitled to broadcast content that may be uncomfortable for that community provided the broadcaster complies with the Code.

<sup>8</sup> Section 4(g) of the Communications Act 2003.

<sup>9</sup> "Religious Programmes and the Ofcom Broadcasting Code: A Report of the Key Findings of a Qualitative Research Study" May 2005.

Ofcom considered the programme under various Rules.

### Rule 2.2

Many complaints alleged that the programme was partial, unbalanced, inaccurate and misrepresented the facts in relation to Shi'a Islam. Ofcom can only consider complaints concerning due impartiality when either a broadcast is a news programme, or is a programme dealing with a matter of political or industrial controversy or a matter relating to current public policy. This was not the case in this instance. Further, under legislation Ofcom cannot regulate "due accuracy" in programmes outside of news programmes.

However, Ofcom is required to guard against harmful or offensive material. Broadcasters therefore need to be aware of the actual or potential harm that may result from misleading material in relation to the representation of factual issues. Ofcom is not a fact-finding tribunal: its remit therefore does not include adjudicating on debates over Islamic theology. Whether a programme is "materially" misleading depends on a number of factors such as context, the editorial approach taken in the programme and above all what the potential effect could be in terms of harm or offence.

Ofcom notes that Channel 4 stated that the programme was extensively researched. Controversial views were countered, where appropriate, with points made in the commentary or by other contributors. The tone of the programme was overall, in Ofcom's opinion, measured and considered, and reflected the fact that the Qur'an is a text that has brought comfort and peace to millions. Further, the programme made clear that the Qur'an included references to tolerance and the need for people to live side by side in reasonable harmony, such virtues being practiced by millions of Muslims. As Ofcom's own research on religion has found (see footnote 11), audiences have said that no religious programme could ever be completely "right or wrong".

There were a number of issues that Ofcom considered under Rule 2.2, focusing on allegations that the programme had been inaccurate and misrepresented the Shi'a religion. The thematic backdrop against which Ofcom considered these complaints was whether the programme had created a misleading impression of a division between Sunnis and Shi'as on various issues. After careful consideration, Ofcom concluded that it had not in the following respects.

- *Shi'a Belief in the Qur'an*

Complainants alleged that the programme stated that Shi'a Islam is contrary to the Qur'an and that Shi'as do not follow the Qur'an, which would incite hatred towards Shi'as. In Ofcom's opinion, the programme sought to trace back different forms of Islamic belief and practice to the source-text of the Qur'an. The programme made clear that the Qur'an is central to all Muslims' lives, whether Sunni, Shi'a or any other denomination. At no point did the programme state that Shi'as do not believe in the Qur'an, or that the Qur'an was not a central part of Shi'a worship, or that Shi'a was not a proper form of Islam.

- *Falsification*

Complainants alleged that the programme asserted that Shi'as believe the Qur'an to be falsified and there is no agreement between Shi'as and Sunnis over the

authenticity of the Qur'an. In Ofcom's view, the programme clearly stated that, historically, certain Shi'as had accused Sunnis of falsifying the Qur'an, but that since the nineteenth century this had not been the case. Moreover, in the part of the programme dealing with this issue, a Shi'a Dean of a Madrassa said:

*"There has been no alteration and manipulation in the Qur'an that Muslims have today. All the Qur'ans that Muslims are reading – right across the world – are identical".*

The programme stressed the central importance to all Muslims, whether Sunni or Shi'a, of the Qur'anic text. For example, the programme commentary stated:

*"Muslims believe the Qur'an to be God's final revelation to mankind".*

The programme stated that the Shi'a accusations of falsification of parts of the Qur'an by Sunnis were rooted in the past. The programme did not assert that Shi'as are making such accusations today, nor that there is any divide over the authenticity of the Qur'anic text between Sunnis and Shi'as. This section of the programme dealt legitimately with the debate and allegations around the falsification of the Qur'an and put it into a historical context.

- *Intercession*

Complainants alleged that the programme misrepresented the Shi'a position on intercession and the role of priests, stating that Shi'as pray to the Imams rather than to God. The programme emphasised the importance of God in all Muslims' lives. However, the programme also examined particular differences in Shi'a and Sunni beliefs and ascertained whether these differences can be traced back to the Qur'anic text. The programme did not deny the centrality of God to Shi'a worshippers. Rather it pointed to the view, as stated by all the contributors and sources that the programme-makers had consulted, that Shi'a worshippers use the Imams to intercede on their behalf to God<sup>10</sup>. The programme commentary itself did not say that intercession is unIslamic or wrong, but merely stated that intercession does not "have any substance in The Qur'an". This is not to deny that some of the Qur'anic supplementary texts (or *Hadith*) talk about intercession<sup>11</sup>. The programme was clear that it was attempting to trace current practice back to the source text. Ofcom noted that the Group Complaint had cited the fact that some Shi'a scholars do argue that, notwithstanding that some Qur'anic verses restrict the practice of intercession, there are other verses in their view, which make the practice of intercession permissible.

It is Ofcom's understanding that most commentators would contend that the practice of intercession is indeed a key distinction between the Shi'a and Sunni strands of Islam, and that most sources agree that it is not explicitly allowed for within the Qur'anic text. Furthermore, just because there is a debate as to whether some Sunnis may or may not believe in a form of intercession, as the Group Complaint maintained, this does not negate the overall point, namely, that the majority of Shi'as do believe in intercession to a lesser or greater degree, and

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<sup>10</sup> For example, one of the Shi'a pilgrims featured in the programme said: *"When you want to reach God, you have to speak to the Imams first so that they can mediate for you, and if you do it that way, God will give you a quicker answer to your request. At least, that's how it's been explained to us".*

<sup>11</sup> The *Hadith* are supplementary texts which help interpret the Qur'an.

the majority of Sunnis do not. It was legitimate and within the parameters of the Code, for the broadcaster to explore these religious controversial matters.

Ofcom acknowledges that Dr Hargey's comment that intercession is "a sin" would be upsetting to some viewers. However, Ofcom is not able, and would not wish, to adjudicate on the correctness of any form of religious practice. This comment was a religious opinion, and as such it would not be possible to verify this as being the "correct" position on intercession, and hence whether it was materially misleading. In a programme such as this, it is totally acceptable to include such views, especially given the context that Dr.Hargey's view was countered by what followed: namely, a comment by the senior Shi'a cleric, Grand Ayatollah Saanei, making clear his belief in using Imam Reza as an intermediary (See footnote 6).

On the related issue of the role of priests within Shi'a Islam, the programme did not state that the concept of priesthood is a largely Shi'a phenomenon. The programme was clear that Shi'as use priests only as intermediaries and do not pray directly to priests. The programme alluded to the role of priests as intercessors within Shi'a Islam. Further, the programme stated that the Qur'an is against the concept of a priesthood, and one contributor cited a reference to the Qur'an to that effect<sup>12</sup>. The programme then also pointed to the importance of priests within Wahhabist Islam, a strand of Sunni faith practiced in Saudi Arabia, and said:

*"Though the Iranian Shi'ites<sup>13</sup> are on the opposite side of the religious divide, they have one thing in common with the Saudis – a priestly caste, contrary to the spirit of the Qur'an".*

Ofcom is aware of the view expressed by some scholars that the concept of "priesthood", as understood in Western Christianity, may not have a direct analogy within certain strands of Islamic belief. However, it is Ofcom's understanding that clerics retain a key role, within, for example, the Wahabbist and Shi'a strands of Islam. In Ofcom's view, therefore, the programme made clear that priests are a feature of both the Sunni and Shi'a strands of Islam to some extent.

- *Extremism:*

Complainants alleged that the programme equated Shi'a Islam with extreme Iranian political beliefs as well as the Saudi Wahhabist state, and that footage of a Shi'a sermon was used out of context. Ofcom considered that the programme did not equate Shi'a Islam, in general, with the extremist views held by certain senior clerics within the Iranian theocracy. Nor did the programme equate Shi'a Islam to the Sunni Wahhabist strand of Islam prevalent in Saudi Arabia. The programme aimed to demonstrate that certain clerics with extremist views have considerable influence over the political systems in two Islamic states: one Shi'a (Iran) and one Sunni (Saudi Arabia). The programme did not suggest such views are held by the majority of Sunnis and Shi'as. Rather the programme pointed to countries where the religious establishment, either Sunni or Shi'a, exercises political power, and the state implements what some referred to as extremist policies. For example, the programme stated that Iran, a Shi'a state, executes

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<sup>12</sup> Chapter 9, verse 31. Dr. Hargey cited this verse, saying Islam is against any kind of priesthood, and that it states that one problem of Christianity and Judaism is that those religions took their priests and rabbis as Lords beside God.

<sup>13</sup> "Shi'ite" means the same as "Shi'a".



more people, as a percentage of the population, than any country in the world. Further, a Shi'a cleric, Grand Ayatollah Saanei, was shown supporting the use of execution by the Iranian state. Ofcom considered that these comments were set in context and presented overall as coming from a member of the Iranian religious establishment and clearly not as representative of the views of all Shi'as.

Ofcom noted the inclusion in the programme of part of a sermon by the Grand Ayatollah Tabatabaee, in which this particular Shi'a cleric espoused extreme violence. Ofcom further noted that this excerpt was preceded by the following commentary:

*“And as the anger rises and tone hardens, the voices of those to whom the Qur'an speaks of peace and tolerance are drowned out by those who take the contradictory message”.*

At this point of the programme, no specific link was made between the Grand Ayatollah's sermon and particular Qur'anic references. However, the material was included in a section of the programme which discussed the issue of violence, and showed extreme views being put forward by fundamentalists from both the Sunni and Shi'a strands of Islam. The programme made clear that these views run counter to the Qur'an's message of peace and tolerance. Ofcom therefore considered that the excerpt of the sermon was not used out of context and was not materially misleading.

- *Mistranslations*

Complainants alleged that the views of two participants were mistranslated or inappropriately edited. In relation to whether the participants have been treated unfairly, Ofcom can only consider and adjudicate on such issues where there has been a complaint made by those who participated in the programme or those with a sufficiently direct interest. No such complaints were received.

However, Ofcom considered whether the examples of mistranslation identified by Channel 4 in the programme materially misled the audience so they may cause harm and offence. Taking the two contributors in turn:

Male Shi'a Pilgrim:

Ofcom noted Channel 4's admission that there had been an error in translation of the clip taken from the pilgrim's interview. When providing an English translation in subtitles, the broadcaster omitted the sentence *“We have no one apart from God, the Imams and their descendents”* before the pilgrim then said *“Imam Reza and the other Imams are our only hope”*.

Ofcom considered whether this omission implied that the Pilgrim only looked to Imams and not God. On balance, Ofcom believed that the error did not detract from the central point being made, namely the central importance of Imam Ali Reza and the other Imams in that this pilgrim's beliefs. Indeed, in the programme the pilgrim said that the Imams *“are our only hope”*. The programme also included interviews with four other pilgrims who all stressed the importance of the Imams and intercession to them, in the process of communicating with God. These contributions reinforced the point being made by the programme, namely, the importance of intercession and the Imams to Shi'a worshippers. Ofcom did not believe that the omission was so misleading as to lead to harm or offence.

Grand Ayatollah Saanei:

At different points in the programme, excerpts were broadcast of an interview conducted by the programme-maker Antony Thomas, with the leading Shi'a Iranian cleric, the Grand Ayatollah Saanei. During Ofcom's investigation, Ofcom noted the fact that there were discrepancies between the Complainants' Translation of the interview, and the Second Translation, provided by Channel 4. Two issues arose in relation to alleged mistranslations in the interview: firstly, concerning intercession; and second, concerning crime and punishment.

- *Mistranslation – Intercession*

In the Complainants' Translation, there was the following interchange:

Antony Thomas: "...*Some Sunnis say that the relationship between the Created and God must be a direct relationship and the example I give is the example that Imam Reza and Imams should not stand between them. Some Sunnis say that the relationship with God should be a direct one and there should not be any intercessor between them*".

Grand Ayatollah: "*Yes, this is a discussion about belief and has nothing to do with legal discussions. And there is no general consensus between people on this issue. [the Missing Phrase is underlined]. *This is a theological discussion and should not be a source of difference. They should not say that 'why do the Shi'a Ulema<sup>14</sup> say as such?' nor should the Shi'a scholars in the conditions of today say to them 'why do you say as such?'...*".*

The complainants considered that the omission meant that the audience would not have realised that this issue was a matter of debate. Ofcom considered that even if the Missing Phrase was spoken by the Grand Ayatollah, as maintained by the Group Complaint, given the context of the programme-maker's question and the answer given by the Grand Ayatollah, any reasonable interpretation of the words would be that they referred to the lack of a consensus between Shi'as and Sunnis over the issue of intercession. This is because the Grand Ayatollah refers twice to this issue being a discussion. Further, the overall point being made by the programme, was that there was a division between the two traditions over intercession.

The Group Complaint said that the Grand Ayatollah's comments on intercession, as broadcast, did not fully address the issue even though the Grand Ayatollah had given a full response. However, it is an editorial decision for Channel 4 as to what parts of an interview it included in the programme, so as long as it complied with the Code. Although there are clearly complex theological debates within Islam over the status of intercession, it would be unrealistic to expect a broadcaster to include all the subtle aspects of this debate in a wide-ranging programme such as this. Rather, broadcasters must ensure that the audience was not materially misled. Ofcom noted that the complainants did not dispute the translation of the Grand Ayatollah's comments on intercession actually made in the programme. Taking this into account, and the Grand Ayatollah's interview as a whole, even if the Missing Phrase had been uttered, its omission from the final programme was not materially misleading.

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<sup>14</sup> Ulema is a term for Muslim legal scholars.

- *Mistranslation – Crime and Punishment*

Channel 4 brought to Ofcom's attention a possible issue about a mistranslation of a question to the Grand Ayatollah's during his interview.

In the programme, the Grand Ayatollah is heard to praise the Islamic law of retaliation for murderers. The programme commentary then said:

*"But this is not just murderers who are hanged in this country [Iran]. Homosexuals are put to death. People are executed just for possessing alcohol".*

The Grand Ayatollah is then heard answering:

*"If the government decides that by killing them, it can restore security, it's allowed to do so. This is very rare, but I believe people support it in Islam, and probably in the world. I hope in the future this becomes law not only in the Islamic Republic of Iran, but in the entire world of Islam".*

However, it appears that Antony Thomas' question with regard to capital punishment was not fully translated. In the un-transmitted footage the interviewer is heard asking the following in English:

"The question I want to ask is that many not all of the people who are hanged are murderers. People are hanged for sexual deviation, people are hanged for alcohol possession. It is not only murderers who are hanged."

This was translated, into Farsi, to Grand Ayatollah by the interpreter:

"He says that, when I talk about executions, not everybody has been executed for murder, in some cases it has been for example for drinking alcohol etc.";

In asking the Grand Ayatollah the question, the interpreter omitted to make reference to 'sexual deviation' as a reason for hanging someone. It is therefore arguable that the Grand Ayatollah's acceptance of such practices may not have included punishments for 'sexual deviation'. Ofcom therefore considered whether such an omission was materially misleading so as to cause harm or offence.

While it was clear that the question put to the Grand Ayatollah omitted a direct reference to whether people should be executed for 'sexual deviation', the question did make generic references to other activities (i.e. "drinking alcohol etc"). So while it is was not clear whether the Grand Ayatollah understood the full context of the question, the actual question did refer to the fact that people in Iran would be executed for 'offences' other than murder. Overall it was not misleading to say that the Grand Ayatollah supported the death penalty for 'offences' other than murder. Under these circumstances, Ofcom did not consider the inaccuracy could have materially misled to the audience so as to cause harm and offence.

Ofcom noted that the programme-maker engaged and checked the credentials of three reputable Farsi translators in interviewing and editing various contributions from Shi'a participants in Iran. It is unfortunate that errors arose in translation. Ofcom welcomed the fact that Channel 4 has corrected the omission from the pilgrim's interview in the master-tape of the programme for the purposes of future transmissions. Ofcom also noted that Channel 4 will consider correcting the reference to the punishment of homosexuals in the Grand Ayatollah's interview.

However, Ofcom would remind all broadcasters of the extreme care and attention that needs to be taken in the translation and editing of material from contributors speaking in their mother tongue, on sensitive subjects such as those covered by this programme.

Given all the above, Ofcom considered that the programme was not in breach of Rule 2.2

### Rule 3.1

Complainants alleged that the programme risked increasing tensions within the Muslim community between Sunnis and Shi'as, which could inspire violence against Shi'as. The Group Complaint provided examples of reports of sectarian violence against Shi'a Muslims, but Ofcom noted that the Group Complaint did not provide any evidence of causal links or reasonably likely potential links between the programme and any criminal act. Ofcom considered that it would not be reasonable to allege a link between this investigative documentary and the examples of Sunni-Shi'a violence experienced worldwide. Whilst appreciating the upset some complainants experienced, the programme contained no call, direct or implied, to take violent or criminal action against Shi'as and no reasonable person could reasonably infer a direct causal link between any material in the programme dealing with Shi'as and the commission of a crime.

There was therefore no breach of Rule 3.1.

### Rule 4.1

Complainants alleged that no use was made of Shi'a scholars and commentators in the UK in the programme and not enough time was given to Shi'a contributors. This programme dealt with a matter of religion as its central subject, and as a consequence is regarded as a "religious programme" falling under Section 4 of the Code. Broadcasters can transmit programmes taking a critical view of a particular view of a particular religion, as long as they do so with a proper degree of responsibility. The programme, in Ofcom's opinion, took care to examine the Qur'an in a sensitive and measured manner and its influence on the various strands of Islam. This programme appeared to be extensively researched and sought interviews with a broad range of Muslim scholars, experts and clerics at the formative stage, and included many such contributions within the programme, including a number of Shi'a contributors. Where contributors made particular points these were put in context with alternative views. For example, overt criticism of Shi'a beliefs, made by Dr. Hargey who labelled the belief in intercession as "*a sin*", was contrasted by comments by Grand Ayatollah Saanei.

The Group Complaint highlighted the fact that the programme did not include interviews with any leading UK Shi'as. It is an editorial decision for Channel 4 as to which contributors it included in the programme, so long as the broadcaster did so with the proper degree of responsibility. Just because several leading UK Shi'as were interviewed during research for the programme but were not included as contributors in the final programme does not in itself constitute a breach of the Code. The programme included the views of a range of Shi'as, including an interview with one of the leading Shi'a clerics in Iran, which is the only purely-Shi'a state in the world. Ofcom considered, therefore, that the programme did not breach Rule 4.1.

### Rule 4.2

Any religious programme must not subject a religious denomination to abusive treatment. Ofcom considered that this programme did not subject Shi'a Islam to abusive treatment for a number of reasons.

- The programme did not attack any section of Islam but allowed contributors to express their point of view, and where appropriate pointing to how the Qur'an guides their beliefs. For example, the Shi'a pilgrims featured in the programme stressed the strength of their spiritual beliefs.
- Whilst highlighting the more negative manifestations of religious behaviour and belief by a minority of Muslims, the programme also referred to the Qur'an's positive messages of peace, tolerance and forgiveness. The programme did not state or infer that these themes were absent from Shi'a theology and practices.
- Whilst some of the points of view expressed in the programme would be unsettling to some, the extremist or hard-line views espoused by both the Shi'a Ayatollahs featured in the programme could not be attached to Shi'a Islam in general. For example, the Grand Ayatollah Saanei's support for capital punishment for murder could be seen in the context of a senior member of the Iranian theocracy expressing his opinions. The Grand Ayatollah touched on Qur'anic law and was expressing his personal opinions as to how that law is carried out by the Iranian State. The programme did not state that this view is universally held by all Shi'as.

Broadcasters can transmit views concerning religious beliefs and practices, as long as they comply with the Code. To do otherwise would be an unacceptable and unwelcome limitation on the broadcaster's right to freedom of expression. This programme included contributions from a Shi'a perspective that may have been challenging for some viewers, but nowhere in the programme were these views equated with Shi'a Islam in general. As a consequence, Ofcom considered that the programme was not in breach of Rule 4.2.

### Rule 4.3

Complainants alleged that the programme confused images of Alawite (non-Shi'a) worship with Shi'a Islamic worship. The programme twice featured Turkish Sufi followers worshipping in front of a portrait of the Imam Ali Reza. In the second sequence, the programme commentary clearly states over the footage that these worshippers are from the Sufi sect, who draw their membership from both the Sunni and Shi'a traditions of Islam. Further, it is Ofcom's understanding that some Sufis hold as important elements and religious symbols of Shi'a worship, including images of Imam Ali Reza. Hence, the appearance of Ali Reza's portrait within the Turkish Sufi Mosque would not be surprising, given that the worshippers<sup>15</sup> featured in those parts of the programme do follow elements of Shi'ism. As a consequence, Ofcom considered there was no breach of Rule 4.3.

### **Conclusion**

In conclusion, Ofcom considers that this programme dealt with the subject of Shi'a belief and practices in a responsible and fair manner. The programme sought to explore a number of views and debates, but was careful to put the discussion in

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<sup>15</sup> Mevlevi Sufis.

proper context. The programme did not materially mislead the audience concerning the subject of Shi'a Islam, nor could it be argued to be likely to inspire violence against Shi'as. Furthermore, Channel 4 exercised a proper degree of responsibility when making the programme and did not subject Shi'a Islam to abusive treatment.

**Not in Breach**

## Advertising scheduling

### Resolved

#### FA Cup Live 4<sup>th</sup> Round Replay: Everton v Liverpool

*ITV1, 4 February 2009, 20:00*

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#### Introduction

During live coverage of the FA Cup fourth round replay between Everton and Liverpool on ITV1, an unscheduled advertising break interrupted coverage of the match.

This break occurred 18 seconds before Everton scored the winning goal of the match. Services to ITV's Northern regions (Granada, Border, Yorkshire, Tyne Tees and Central North) were restored within 13 seconds and services to ITV's Southern regions (London, Anglia, Meridian, ITV West, ITV Wales and Central South) were restored after 31 seconds. This meant that viewers in the Southern regions did not see the live goal being scored.

Ofcom received 201 complaints from viewers who were disappointed to have missed the winning goal of the match.

Ofcom asked the broadcaster to comment on how it thought their scheduling of the advertising break complied with Section 9 of the Code on the Scheduling of Television Advertising ("COSTA"), which states: "Where advertising or telesshopping is inserted during programmes, television broadcasters must ensure that the integrity of the programme is not prejudiced, having regard to the nature and duration of the programme, and where natural breaks occur."

#### Response

ITV Broadcasting Limited ("ITV Broadcasting") is responsible for the compliance of the programme on behalf of the ITV network (ITV1).

It said it regretted the unplanned transmission of the advertising break during live coverage of this FA Cup match and that it took its duty to comply with section 9 of COSTA seriously. The broadcaster agreed that in this instance ITV1 had not complied with this rule.

ITV plc went on to explain that the incident had been due to an operational human error and was in no way pre-meditated. It stated that the broadcast of live sporting events are among the most technically complex of their broadcasts as the events themselves can overrun or be cancelled with little notice. ITV plc said that contingency schedules are prepared in advance to use if such overruns occur. However, on this occasion a mistake was made during the execution of one of these contingency schedules which meant that the unscheduled break cut into the transmission, interrupting the live action.

Following the incident, ITV plc carried out a review of its operating procedures relating to the use of contingency schedules, and staff levels during complex live programming. This led to the introduction of an additional check when processing any live programme that involves the use of contingency schedules (ITV plc said this

check was put in place within 24 hours of this incident). The review also led ITV plc to increase the amount of staff available during transmission of live sports programmes. In future, there will be separation between those staff responsible for ensuring accurate schedules for live events and those staff focusing on the accuracy of the programme itself being transmitted.

ITV plc went on to explain that an urgent review of their transmission operating systems was underway. Future improvements included putting early warning systems in place, and changes to the way the contingency schedules were prepared.

### **Decision**

Ofcom understands how important it is for sports fans to be able to receive reliable broadcasts of their favourite live events. The inclusion of the unplanned advertising break on this occasion was particularly disruptive and frustrating to viewers as it unfortunately occurred during the most crucial point of the match.

Ofcom noted ITV plc's acknowledgement of this error and that shortly after the unplanned advertising break it broadcast an apology on-air. It was also aware that the broadcaster later issued a statement sincerely apologising to its viewers and customers.

Ofcom acknowledged the broadcaster's swift action in identifying the cause of the error, and its extensive plans to make changes to its operating procedures and systems to prevent such a mistake occurring in the future. In light of this Ofcom considers the matter resolved.

### **Resolved**



## Fairness and Privacy Cases

### Not Upheld

#### Complaint by Portuguese immigrants in the UK made on their behalf by The Portuguese Embassy

*Dispatches – Immigration: The Inconvenient Truth, Channel 4, 1 October 2007*

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**Summary:** Ofcom has not upheld this complaint of unfair treatment by Portuguese immigrants in the UK made on their behalf by The Portuguese Embassy.

This edition of *Dispatches* examined the results of a report by the Institute for Public Policy Research (“IPPR”), which had analysed UK immigrant groups across 25 nationalities. The programme provided statistics from the report and interviewed UK immigrants of various nationalities. It aimed “*to put political correctness to one side and look at some of the uncomfortable facts about immigration in the UK*”. One section of the programme focused on Portuguese immigrants, who the programme stated were the only group of immigrants from Europe who “*consistently appeared in the bottom third of the report’s tables*”.

The Portuguese Embassy complained that Portuguese immigrants in the UK were unfairly portrayed in a negative way in the programme as broadcast.

In summary Ofcom found the following:

- Ofcom found that Portuguese immigrants in the UK were not portrayed unfairly. It considered that it was reasonable for Channel 4 to have relied upon the IPPR report and that the programme discussed this report (including in relation to Portuguese immigrants in the UK) in an objective way. Ofcom also considered that it was reasonable for Channel 4 to use footage of a single Portuguese immigrant family to illustrate the results of the IPPR report. It did not consider that viewers would have surmised that Portuguese immigrants in the UK were not hard-working from the inclusion of this footage, or that viewers would have concluded that the entire UK Portuguese immigrant community was similar to the single family featured.

#### Introduction

On 1 October 2007, Channel 4 broadcast an edition of its current affairs programme, *Dispatches*, entitled *Immigration: The Inconvenient Truth*. The programme said it aimed to “*put political correctness to one side and look at some of the uncomfortable facts about immigration*” in the UK.

The programme examined the results of a research report that had been commissioned by Channel 4 and conducted by the Institute for Public Policy Research (“IPPR”). This report analysed UK immigrant groups across 25 nationalities by looking at characteristics such as income, tax paid, level of education, dependence on benefits, health and hours spent at work. The programme provided statistics from the report and interviewed UK immigrants of various nationalities.

One section of the programme focused on Portuguese immigrants. The programme stated that Portuguese immigrants were the only group of immigrants from Europe

who “consistently appeared in the bottom third of the report’s tables”. This segment of the programme contained an interview with a Portuguese-born family who lived in Boston, Lincolnshire. The family of three shared one room in a house which they shared with five other immigrant workers. According to the IPPR report, Portuguese immigrants in the UK were one of the groups who paid the least tax and spent the fewest years in full time education. In addition, the report found that 26 per cent of Portuguese immigrants in the UK lived in social housing and that a higher proportion claimed income support than people born in the UK.

Ofcom received a complaint from the Portuguese Embassy (the “Embassy”). The Embassy complained that Portuguese immigrants in the UK were treated unfairly in the programme as broadcast.

## **The Complaint**

### **Portuguese immigrants’ case**

In summary, the Embassy complained that Portuguese immigrants in the UK were treated unfairly in the programme as broadcast in that they had been unfairly portrayed in a negative way. The Embassy said that, by interviewing a single family (who were from Boston, Lincolnshire, which was home to a very recent Portuguese immigrant community that was not fully integrated into the British society), the programme sent the message to viewers that the entire UK Portuguese immigrant community was similar to this family. The Embassy said that though some problems did exist, the great majority of the Portuguese community were hard-working people who had given a very positive contribution to the UK economy.

### **Channel 4’s case**

Channel 4 said that the programme concerned the economic profile of immigrant groups in the UK. It had not been solely devoted to the Portuguese community and their experience as immigrants, but had been based on analysis by the IPPR, a respected think tank. Channel 4 said that the programme presented and examined the results of the IPPR’s independent research into immigrant groups in the UK, which was based on available Government statistics. Twenty-five nationalities had been examined by the IPPR, by reference to certain key indicators: income, tax paid, level of education, dependence on benefit, health and hours spent at work. The IPPR had reported that the Portuguese appeared in the bottom third of most of the “key indicator” tables. Immigrant groups were discussed in the programme by reference to the outcome of the IPPR’s research generally and with reference to specific nationalities. From these immigrant groups, the programme showed interviews with individuals who had come to the UK from Somalia, Zimbabwe, Nigeria, the USA, Poland, Pakistan, India and Portugal.

Channel 4 said that the programme made clear that it was concerned with the economic contribution of legal immigrants, who were defined as people who now lived in the UK but who were born outside the UK. Neither the IPPR report nor the programme examined cultural or other benefits of immigration.

Channel 4 stated that, given the IPPR’s findings, it was hard to understand how the Portuguese Embassy could argue that the programme had unfairly portrayed Portuguese immigrants in a negative way. It said that, whilst it was no doubt true that many Portuguese immigrants were hard-working and made a positive contribution to the economy, the IPPR report set out statistics in relation to Portuguese immigrants that were economically concerning for the community. Channel 4 said that, although

there were individual success stories, the programme had set out these concerning statistics accurately. The programme had not said that Portuguese immigrants were not hard-working or that their contribution to the UK economy was negative.

Channel 4 said that the inclusion of footage of the Portuguese immigrant family interviewed in the programme fairly represented the position of Portuguese immigrants in the IPPR report's league tables, relative to other immigrant communities. It said that the family (Antonio, Isabel and Bruno) was shown in the programme in a sympathetic light, highlighting how much they had to pay in rent and how little they got for it. Channel 4 stated that Antonio and Isabel spoke "with the authority of experience" about the relative conditions facing them in the UK compared with Portugal. Channel 4 said that, from the way they spoke, they certainly did not seem to consider themselves or their circumstances unique.

Channel 4 said that the programme had stated accurately that it was getting harder for Antonio to find work because of competition from Polish immigrants. In addition, it said that the Portuguese contribution to the UK economy was contrasted with a previous sequence in the programme that revealed the unwillingness of some native Bostonians to work in the agricultural sector. Antonio was shown in the programme as someone who worked eight-hour days and was content to do so. He also stated that he thought that Portuguese people did not want to compete with Polish immigrants in working longer hours. Channel 4 said that the programme had not suggested that this attitude was wrong, or that his view was anything other than his own opinion.

Channel 4 said that, although the family's experience was illustrative of some of the statistical averages in relation to Portuguese immigrants in the IPPR report, their experience was, in fact, better than many. It said, by way of example, that Antonio was not shown as being on Income Support and the family was not in social housing. Channel 4 said that the programme did not state that all Portuguese families were like the family shown in the programme. It said that the idea that all immigrant Portuguese families were like the family shown in the programme was simply erroneous.

In conclusion, Channel 4 stated that it did not accept that the programme was unfair to Portuguese immigrants in the UK. It said that it was important that immigration was a topic for reasoned broadcast debate and, in its view, the programme set out the findings of the IPPR report in a fair and accurate manner.

## **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 unfair treatment and unwarranted infringement of privacy in, or in the making of, programmes included in such services.

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

The complaint by Portuguese immigrants in the UK made on their behalf by The Portuguese Embassy was considered by Ofcom's Executive Fairness Group. In reaching its decision, Ofcom carefully considered all the relevant material provided

by both parties. This included a recording of the programme as broadcast, a transcript of the section of the programme that related to Portuguese immigrants and both parties' written submissions to Ofcom.

In considering this complaint, Ofcom took account of Rule 7.1 of the Code, which states that broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes. It also took account of Practice 7.9 of the Code, which states: "Before broadcasting a factual programme...broadcasters should take reasonable care to satisfy themselves that: material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation; and anyone whose omission could be unfair to an individual or organisation has been offered an opportunity to contribute."

Ofcom first considered the nature and purpose of the programme. Ofcom noted that the programme was part of Channel 4's current affairs *Dispatches* series. Ofcom further noted that the broad premise of the programme was to examine the economic profile of immigrant groups in the UK, not to look at the cultural or other benefits of immigration. The programme reported on the results of research that Channel 4 had commissioned from the IPPR. This was made clear to viewers by the programme's presenter, Jon Snow, who stated at the beginning of the programme:

*"...we're going to show how the real debate has moved beyond being pro- or anti- immigration. We can do this because Channel 4 has commissioned the Institute for Public Policy Research to create the first ever comprehensive report on the contribution Britain's different legal immigrant communities make to the economy. Their rigorous analysis of the best statistical information available means we can now reveal the hard facts about key characteristics of immigrant groups. Everything from the tax they pay to the benefits they claim. This report reveals the immigrant groups who get more from Britain than they put in, but it also shows those immigrant groups who benefit this country, like the Nigerians who are amongst the most highly educated new arrivals, or the Americans and Poles, who work longer hours than anyone else. But what this report really shows is that economic success in Britain has absolutely nothing to do with the colour of your skin."*

In this context, Ofcom then considered the complaint that Portuguese immigrants were unfairly portrayed in a negative way in the programme as broadcast. Ofcom was of the view that the presenter's commentary during the section of the programme that looked at Portuguese immigrants in the UK made clear to viewers that this section of the programme, as with the programme as a whole, reported on the results of the IPPR's research. In Ofcom's view, it was reasonable for Channel 4 to rely on the IPPR report and Ofcom considered that the programme reported on the results of the IPPR's research (including in relation to Portuguese immigrants in the UK) in an objective way. Therefore, Ofcom found no unfairness to Portuguese immigrants in the UK in this respect.

Ofcom considered that the decision as to whether to illustrate the results of the IPPR's research using extracts of interviews with individual immigrants who had come to the UK was a matter of editorial discretion for the programme makers. However, in including extracts of such interviews in the programme as broadcast, it was incumbent on Channel 4 to take reasonable care to satisfy itself that material facts were not presented, disregarded or omitted in a way that was unfair to an individual or organisation.

Ofcom noted that the accompanying commentary in the section of the programme in which the single Portuguese family featured stated that Portuguese immigrants in the UK were *“the only group from within Europe that consistently appear in the bottom third of the Report’s tables.”* The programme made clear how much the family had to pay in rent and how little they got for it. Antonio and Isabel were shown speaking about the conditions facing them in the UK, compared with those they would face in Portugal. The presenter stated that it had become more difficult for them to get work in Boston because of competition from workers from Poland and the Baltic states. This was illustrated by Antonio, who said that he thought that employers preferred Polish immigrants because they would work longer hours. Whilst he was content to work eight hours a day, he thought that Portuguese people did not wish to compete with Polish immigrants in working longer hours. The programme went on to look at the issue of funding and resource at schools that had large numbers of pupils for whom English was not their first language. A teacher at a school in Lincolnshire stated:

*“We’ve noticed that the Eastern European children...have a very good work ethos...They really value education. Some of the others perhaps don’t have that quite as much, and that can bring with it some problems.”*

This was followed by the presenter’s commentary that:

*“Of the immigrant groups in our Report, those born in Portugal have spent the fewest years in full-time education. And their children are now the worst performers in English schools – 32% below the average.”*

In Ofcom’s view, it was reasonable for the programme makers to use footage of the family featured in the programme to illustrate the results of the IPPR report, which indicated that there were a number of difficulties experienced by average Portuguese immigrants in the UK. Ofcom noted that the IPPR report placed Portuguese immigrants in the bottom third of most of its tables, indicating that, on average, Portuguese immigrants in the UK faced, amongst other economic issues, high unemployment, fewer years in full time education, low hourly pay and low annual earnings. As noted above, it was made clear at the beginning of the programme that the programme was based on the IPPR report. Therefore, Ofcom found no unfairness to Portuguese immigrants in the UK in this respect.

Ofcom considered that there was no suggestion in the programme that Portuguese immigrants in the UK were not hard-working: Antonio’s comments made clear that he was content to work eight-hour days. In light of this, Ofcom did not consider that viewers would have surmised from the programme that Portuguese immigrants in the UK were not hard-working and, therefore, it found no unfairness in this respect.

Finally, Ofcom did not consider that viewers would have surmised from the programme that the entire UK Portuguese immigrant community was similar to the single family who were featured in the programme. In Ofcom’s view, it was clear from the outset of the programme that the programme would report on the results of the IPPR’s research and that it would be looking at the economic positions of average immigrants of various nationalities in the UK. Therefore, Ofcom found no unfairness to Portuguese immigrants in the UK in this respect.

**Accordingly Ofcom has not upheld this complaint of unfair treatment in the broadcast of the programme by Portuguese immigrants in the UK made on their behalf by The Portuguese Embassy.**

## Not Upheld

### Complaint by Mr Terence Millard made on his behalf by Mr John Osman (Solicitor)

*Five News, Five, 2 July 2008*

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**Summary:** Ofcom has not upheld this complaint of unfair treatment and unwarranted infringement of privacy made by Mr Millard.

The programme investigated the alleged failure of Mr Millard's farm to meet the animal welfare standards required under the Freedom Food accreditation scheme. Footage of the conditions inside Mr Millard's chicken shed was secretly filmed and included in the report. The reporter said that the farmer had admitted that standards had slipped and the charity that endorsed the scheme was shown announcing that the farm had been suspended. Mr Millard complained that he was treated unfairly in the programme as broadcast because the programme made untrue statements that suggested his chickens were living in appalling conditions and suffering from neglect. Mr Millard also complained that his privacy was unwarrantably infringed by the making and broadcast of the programme as footage was secretly filmed inside his chicken shed and broadcast without his consent.

In summary Ofcom found the following:

- The allegations made about conditions at Mr Millard's farm were appropriately supported by a range of material and did not result in an unfair portrayal of the farm.
- The infringement of Mr Millard's privacy arising from the filming and broadcast of secret footage of the chicken shed was warranted by significant public interest in the material gathered and broadcast.

### Introduction

On 2 July 2008 the 5pm edition of *Five News* led with a report by Jason Farrell on its "exclusive" investigation into the RSPCA's Freedom Food scheme. Freedom Food is a UK farm assurance and food labelling scheme dedicated to improving farm animal welfare. The report called the operation of the scheme into question, arguing that the conditions found on two Freedom Food accredited farms contravened the scheme's rules.

The report focused on footage filmed from inside the chicken shed at Mr Terence Millard's farm. Mr Millard was not named in the programme but his farm was identified by the reporter as "*Double Gate Farm in Somerset*". It was reported that the RSPCA had "*suspended [Double Gate Farm] from the scheme*" after being shown the *Five News* footage. The report showed the reporter Mr Farrell entering the chicken shed and commenting on the conditions whilst crouched down on the floor inside the shed.

When the presenter, Natasha Kaplinsky, introduced the report she warned the audience that it included "*disturbing images*". The reporter described a lame chicken attempting to feed as "*one of many birds here suffering unacceptable neglect*". Images of this lame chicken, a smaller chicken and a "*painfully thin twisted bird*" were shown as a counterpoint to rules from the Freedom Food code about regular inspection and immediate slaughter of lame birds. The reporter contended that the

rules were not being adhered to and the farm was not meeting its requirements to provide fresh hay, pecking objects and perches.

Near the end of the report the reporter stated that “*the farmer admits that on this occasion standards had slipped*” and that the meat would not be distributed under the Freedom Food label as a result of the programme’s findings. The report also included comments from Mark Watts, Chief Executive of the RSPCA. He stated that the footage made him “*shocked and angry*” and he was launching a wider investigation into the operation of the Freedom Food scheme.

Mr Millard complained to Ofcom that he was treated unfairly in the programme as broadcast and that his privacy was unwarrantably infringed during the making of the programme and in the programme as broadcast.

### **The Complaint Mr Millard’s case**

In summary, Mr Millard complained that he was treated unfairly in the programme as broadcast in that:

- a) He was portrayed unfairly in that the programme implied that the “chickens at his farm were neglected and kept in appalling conditions”. In particular, the programme included untrue statements about suffering livestock, lack of inspections and lack of food; and did not explain that the reporter had only found one lame chicken and one smaller chicken in an otherwise healthy flock of 30,000 chickens.

In summary, Mr Millard complained that his privacy was unwarrantably infringed during the making of the programme in that:

- b) Footage of the reporter inside Mr Millard’s chicken shed was filmed without seeking permission beforehand and after the reporter “forced entry” into the shed.

In summary, Mr Millard complained that his privacy was unwarrantably infringed in the programme as broadcast in that:

- c) The programme showed footage of the reporter inside Mr Millard’s chicken shed.

### **Five’s case**

By way of background, Five said that the report focused on the Freedom Food scheme, which is a farm animal welfare assurance and food labelling scheme run by the RSPCA. The meat, egg and dairy products of participating farms are marked with the Freedom Food label to assure consumers that the animals have been reared in accordance with the scheme’s evidence-based welfare standards. The broadcaster said that high welfare animal produce has become increasingly popular with consumers and they are prepared to pay a premium for this produce as a result of campaigns by celebrity chefs.

- a) In summary, Five responded to the complaint of unfairness as follows:

Five said that the programme did not present, disregard or omit material facts in a way that was unfair to Mr Millard. It said that Mr Farrell made the following allegations about Mr Millard’s farm, Double Gate Farm in Somerset, in the report, which were supported by evidence from Animal Aid (an animal rights campaign

group) and the conditions witnessed and filmed by Mr Farrell when he visited the farm on 30 June 2008:

- that many of the birds at the farm were suffering unacceptable neglect;
- that some of the birds had suffered too long and the lame birds were smaller because they were unable to feed or drink;
- that there were no bales of hay; and
- there were no pecking objects or accessible perches.

Five said that Mr Millard's assertion that Mr Farrell only found one lame chicken and one smaller chicken was incorrect. The broadcaster said that the report included images of a number of suffering birds that should have been killed according to Freedom Food regulations because they were either lame or disfigured or were starving to death as they were too small to reach food and water. Mr Farrell found 20 suffering birds during his inspection of one fifth of the flock and was therefore entitled to conclude "*many*" birds in the barn were suffering neglect.

The broadcaster stated that the report did not place too much emphasis on images of suffering birds as it included footage that showed the size of the flock and a large number of birds that appeared to be healthy. The report made clear that, under the terms of the Freedom Food scheme, *any* injured bird should be humanely slaughtered rather than be left to die of hunger or thirst, regardless of the size of the flock. Mr Farrell did not imply in the report that the whole 30,000 bird flock was suffering, rather that any suffering bird should have been spotted and removed during inspections in order to comply with the scheme. The presence of suffering birds in the flock was therefore described as "*unacceptable neglect*".

Contrary to Mr Millard's claims, Five said that Mr Farrell did not state that there was a lack of inspections, that there was a "lack of food for livestock" or that "chickens were... starving as food was not put out". The broadcaster said that Mr Farrell stated in the report that under the Freedom Food regulations the flock should be inspected three times a day and any overtly lame bird must be humanely killed immediately. The presence of overtly lame birds in the proportion of the flock investigated by Mr Farrell suggested that either the inspections had not been carried out or that the inspections had occurred but the lame birds had not been killed. Five said that this led Mr Farrell to state that some of the birds had suffered too long and lame birds were smaller than others as they were unable to feed and drink.

Five said that footage included in the report showed that the farm was contravening Freedom Food regulations as there were no hay bales or pecking objects in the barn and the perches were inaccessible as they were stacked in the corner. The Animal Aid footage also showed that lame birds were not being culled immediately and the perches were inaccessible. Although it was not referred to in the report, Animal Aid also told Mr Farrell that the temperature was unacceptably high in the barn on some days, resulting in a greater number of birds dying.

Five said that Mr Farrell contacted Mr Millard the morning after visiting Double Gate Farm and put the following allegations to him:

- the birds were suffering injuries when they should have been humanely slaughtered;



- the Freedom Food enhanced living conditions standards were not being met; and
- Mr Millard was not complying with the regulations set out in the scheme.

The broadcaster said that Mr Millard told Mr Farrell that he did not want to give an interview or to show Mr Farrell around the barn himself. Mr Farrell gave Mr Millard his mobile telephone number in case he changed his mind. According to Mr Farrell, Mr Millard made a throwaway comment towards the end of the conversation along the lines of “I suppose I’m going to get prosecuted am I?”.

Approximately one hour after Mr Farrell’s conversation with Mr Millard, Five said that the press officer for the company which distributed meat reared by Mr Millard contacted Mr Farrell. Acting on Mr Millard’s behalf, Ms Newport asked Mr Farrell to provide the footage he had recorded in Mr Millard’s barn. Mr Farrell arranged for the footage to be sent to her.

Five said that the following day, Ms Newport telephoned Mr Farrell and told him that Mr Millard admitted this barn had not been kept to his usual standards because he had been distracted by an illness in the family. She then emailed Mr Farrell a statement from Hook Two Sisters thanking Five for bringing the matter to their attention, confirming that they had asked the RSPCA to investigate Double Gate Farm and that as a precautionary step, Mr Millard’s birds would not be sold under the Freedom Food label.

On 1 July 2008, Mr Farrell contacted the RSPCA and told them what he had discovered at Mr Millard’s farm. On 2 July 2008, Mr Farrell interviewed the Chief Executive of the RSPCA who told him that Double Gate Farm had been suspended from the Freedom Food scheme. The Chief Executive said that his concern about what Mr Farrell had found had led him to order a review of the entire Freedom Food scheme and said that the reputation of the RSPCA was to some extent at stake. Extracts from the interview were included in the report. On 1 or 2 July 2008, Five said that Mr Farrell was also told by the RSPCA’s press officer that Mr Millard agreed his standards had temporarily slipped.

Mr Farrell spoke to a representative from Freedom Food in mid-September to follow up the story. Freedom Food told Mr Farrell that Double Gate Farm was still suspended from the scheme because the conditions fell far short of the Freedom Food standards. The broadcaster said that the farm remained suspended from the scheme as far as they were aware.

- b) In summary, Five responded to the complaint of unwarranted infringement of privacy in the making of the programme as follows:

Five said that the RSPCA had suspended a farm from the Freedom Food scheme as a result of a previous investigation by Mr Farrell which exposed the farm’s failure to meet the required welfare standards. Following the broadcast of this report on 23 June 2008, Mr Andrew Tyler from Animal Aid contacted Five News with evidence that conditions at Double Gate Farm were also falling short of the Freedom Food standards. He showed Mr Farrell footage of malnourished birds with leg injuries filmed over the course of two visits to the farm. Mr Tyler said that it was apparent that the farm was breaching the Freedom Food regulation that overtly lame birds should be culled immediately and that the farm did not meet the Freedom Food enhanced living conditions standards.

Five said that Mr Farrell regarded the footage as prima facie evidence that Double Gate Farm was not meeting the Freedom Food welfare standards and that the animals were not being kept in the conditions expected by consumers of Freedom Food products. He considered the matter to be of considerable public interest due to the rising consumer focus on animal welfare and the premium they are increasingly willing to pay for produce which meets high welfare standards. As such, he considered it important in the interests of consumers to expose where Freedom Food labelled products were being produced on a farm which did not meet the required standards. Mr Farrell decided to obtain his own independent evidence to corroborate the footage he was shown by Animal Aid.

In accordance with Five News' procedure for obtaining permission to secretly film, Mr Farrell emailed a request for permission from the Head of News Gathering on 30 June 2008. The broadcaster said that the Head of News Gathering granted his permission for filming as he considered that secret filming would be justified under the Broadcasting Code because Mr Millard would be unlikely to consent to filming and there was public interest in the story. He noted that revealing or detecting a crime or exposing misleading claims made by organisations may be considered public interest justifications for an infringement of privacy and suggested that the planned filming could meet this criteria. In light of Practice 8.9 which states that the means of obtaining material must be proportionate, he said that he judged the planned means of obtaining material was proportionate as it could expose that the public was being misled on a matter of public health and public interest. He further stated that he judged that secret filming was warranted and met the criteria listed at Practice 8.13 of the Code as there was prima facie evidence of a story in the public interest and reasonable grounds to suspect that further material evidence could be obtained. Mr Farrell was advised to proceed with caution and in the event of any suggestion or threat of force or violence, vacate the property immediately and contact him for further guidance.

Five said that Mr Farrell attended Double Gate Farm with his cameraman and two Animal Aid representatives at midnight on 30 June 2008. They entered the farm and crossed the fields from behind the barn so as not to be seen. After taking appropriate bio-security measures, Mr Farrell and an Animal Aid representative entered the barn by untying a piece of string and opening the door. According to the broadcaster, the coded lock was not in operation at the time. The others remained outside in order to minimise the risk of unnecessary stress to the birds. The broadcaster said that Mr Farrell did not "break into" the barn or cause any damage when entering.

The broadcaster said that once inside the barn, Mr Farrell and the Animal Aid representative inspected approximately one fifth of the flock. They saw approximately 20 birds that were crippled and therefore small in size as they were unable to reach food and water. The large size of the flock meant that they were unable to inspect the whole flock in the time available to them. Mr Farrell performed the majority of the filming apart from his piece to camera, which was filmed by the Animal Aid representative. They were careful to ensure that they did not cause any damage during their visit or harm the farm the animals.

Five argued that the Animal Aid footage viewed by Mr Farrell before he visited the farm provided evidence that injured birds were apparently starving as they could not reach the feed rather than being killed instantly as required under the Freedom Food scheme. There were therefore reasonable grounds for Mr Farrell to suspect that further material and material could be obtained by entering the

barn. The secret filming was necessary to give the report credibility and authenticity and warranted in the public interest.

- c) In summary, Five responded to the complaint of unwarranted infringement of privacy in the broadcast of the programme as follows:

Five argued that the public health interest in the subject matter of the report outweighed any right to privacy. Mr Millard's actions appeared to breach the Animal Welfare Act 2006 and the Consumer Protection from Unfair Trading Regulations 2008 and therefore offences had potentially been committed. Animal welfare was an important matter of principle for a large number of consumers, especially in the wake of high profile campaigns by celebrity chefs, resulting in increased consumer demand for, and spending on, higher welfare chicken. In light of the premium paid by consumers for chicken which is labelled to indicate it was reared in accordance with the Freedom Food scheme, it was in the public and RSPCA interest that any false and misleading claims that chicken complied with the scheme were exposed.

## 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 unfair treatment and unwarranted infringement of privacy in, or in the making of, programmes included in such services.

Where there appears to have been unfairness in the making of the programme, this will only result in a finding of unfairness, if Ofcom finds that it has resulted in unfairness to the complainant in the programme as broadcast.

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

Mr Millard's complaint was considered by Ofcom's Executive Fairness Group. In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast and submissions by both parties.

- a) Ofcom first considered the complaint that Mr Millard was portrayed unfairly in the programme as broadcast in that it implied that the chickens at his farm were neglected and kept in appalling conditions. In particular, Mr Millard said that the programme included untrue statements about suffering livestock, lack of inspections and lack of food and did not explain that the reporter had only found one lame chicken and one smaller chicken in an otherwise healthy flock of 30,000 chickens.

Ofcom had particular regard to whether the programme makers' actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals, as set out in Rule 7.1 of the Ofcom Broadcasting Code ("the Code"), and whether they had taken reasonable care to satisfy themselves that material facts had not been presented, disregarded or omitted in a way that was unfair to an individual or organisation (as outlined in Practice 7.9 of the Code).

Ofcom noted that the report alleged that the conditions at Mr Millard's farm fell below the standards expected under the RSPCA's Freedom Food scheme. In particular, the report alleged that: many of the birds were suffering unacceptable neglect; some of the birds had suffered too long and the lame birds were smaller because they were unable to feed or drink; there were no bales of hay; and there were no pecking objects or accessible perches. The report made particular reference to the Freedom Food regulations that: overtly lame birds must be killed immediately; and birds must have access to pecking objects, perches and hay.

Ofcom noted that the report included footage filmed by the broadcaster inside Mr Millard's chicken shed which included close-up images of a lame chicken struggling under a feeder, a limping chicken, a small chicken struggling to reach water and a chicken lying on its back in distress. Images of the whole barn were also included in the report and perches were shown stacked in the corner of the barn. Ofcom noted that Five said that it had reviewed evidence from Animal Aid before making the report and that the Animal Aid footage also showed malnourished birds with leg injuries and had been filmed over the course of two visits to the farm.

Ofcom noted that Five contacted Mr Millard the morning after filming inside his chicken shed to give him an opportunity to respond to the allegations about the conditions at his farm. Following this, a press officer for the company which distributed the meat reared at the farm contacted Five on Mr Millard's behalf. After viewing the footage, the company issued a statement admitting that the conditions at the farm had "temporarily fallen below the high standards" set by the Freedom Food scheme. The company stated that they had asked the RSPCA to inspect the farm and the birds would not be sold under the Freedom Food label in the meantime. The statement was reflected in the following commentary included in the programme as broadcast:

*"The farmer admits on this occasion standards have slipped. The group he produces for, Hook Two Sisters, say as a result of our investigation these birds won't be sold as Freedom Food."*

In addition the programme included an interview with the Chief Executive of the RSPCA. He was shown stating that the farm had been suspended from the scheme on the basis of the evidence provided by Five and the RSPCA were launching an investigation into what had gone wrong.

In Ofcom's view, the programme alleged that the conditions at Mr Millard's farm did not meet the standards set out under the Freedom Food scheme and this was appropriately supported by the footage of suffering birds, the statement from the meat distributor itself admitting that the conditions at the farm fell below the required standards and the interview with the RSPCA's Chief Executive in which he said the farm had been suspended from the scheme. On the basis of the footage filmed by Five inside the chicken shed which showed lame and suffering birds, a lack of hay and pecking objects, and inaccessible perches (and the footage provided by Animal Aid), Ofcom considered that it was reasonable for the broadcaster to state that the farm did not meet the Freedom Food rules that overtly lame birds must be killed immediately; and birds must have access to pecking objects, perches and hay. Taking these factors into account, Ofcom found that the programme's allegations (outlined above) were appropriately supported and the presentation of the conditions at Mr Millard's farm did not result in unfairness to him.

- b) Ofcom next considered Mr Millard's complaint that his privacy was unwarrantably infringed in the making of the programme in that footage of the reporter inside Mr Millard's chicken shed was filmed without seeking prior permission and after the reporter "forced entry" into the shed.

In Ofcom's view, the line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. In considering complaints about the unwarranted infringement of privacy both in relation to the making and the broadcast of the programme, Ofcom must consider two distinct questions: First, has there been an infringement of privacy? Secondly, if so, was it warranted? This is in accordance with Rule 8.1 of Ofcom's Broadcasting Code "the Code" which states:

"Any infringement of privacy in programmes or in connection with obtaining material included in programmes, must be warranted".

Ofcom also considered the complaint with reference to Practice 8.5 of the Code which states that any infringement of privacy in the making of a programme should be with a person's consent or be otherwise warranted. Ofcom also had regard to whether the means of obtaining material was proportionate to the circumstances and the subject matter of the programme (as outlined at Practice 8.9 of the Code) and Practice 8.13 of the Code which states:

"Surreptitious filming or recording should only be used where it is warranted. Normally, it will only be warranted if:

- there is prima facie evidence of a story in the public interest; and
- there are reasonable grounds to suspect that further material evidence could be obtained; and
- it is necessary to the credibility and authenticity of the programme."

In considering whether or not there had been an infringement of privacy, Ofcom was first required to consider whether Mr Millard had a legitimate expectation of privacy in relation to the filming of footage inside his chicken shed. Ofcom noted that the chicken shed was on private property, Mr Millard was not informed of an intention to film, and the film crew entered the property and filmed unannounced during the night. Taking these factors into account, it was Ofcom's view that Mr Millard had a legitimate expectation of privacy in relation to the filming of the material. In these circumstances, Ofcom considered that Mr Millard's privacy had been infringed by the filming inside his chicken shed.

Ofcom was next required to consider whether the infringement of privacy was warranted. Ofcom noted that the broadcaster said that it had viewed video evidence from Animal Aid animal rights campaigners before making the report that showed the Freedom Food standards were not being met on Mr Millard's farm. In Ofcom's view, it was reasonable for the broadcaster to suspect that further material evidence could be obtained on the basis of viewing the Animal Aid footage gathered on two separate visits to the farm. Ofcom also took the view that it was reasonable for the broadcaster to consider that filming its own footage of the conditions at Mr Millard's farm was necessary to the credibility and authenticity of the investigative report. Ofcom noted that there was no material to suggest that the broadcaster had forced entry into the chicken shed but in any case noted that the legality of the way the broadcaster gained entry to the shed was outside its remit.

In Ofcom's view there was considerable public interest in the investigation which was based on material suggesting that Mr Millard's farm was failing to comply with the Freedom Food animal welfare standards (a nationally recognised scheme endorsed by the RSPCA, a prominent animal advocacy charity). In Ofcom's view, the story had implications for the reputation and credibility of the scheme and that charity and was of interest to a range of different groups, including consumers who paid a premium for chicken marked with the Freedom Food label; and those concerned with issues of animal welfare. Ofcom also acknowledged that well-publicised television campaigns encouraging consumers to choose high welfare chicken could be considered to have raised the profile and importance of the issue. Taking these factors into account, Ofcom considered that the story was of significant public interest.

In light of these considerations Ofcom found that the infringement of privacy which occurred when the broadcaster filmed secretly inside Mr Millard's chicken shed was warranted by the public interest in gathering the material.

- c) Ofcom lastly considered Mr Millard's complaint that his privacy was unwarrantably infringed in the broadcast of the programme in that the programme showed footage of the reporter inside Mr Millard's chicken shed.

Ofcom considered this complaint with reference to Practice 8.6 of the Code which states that if the broadcast of a programme would infringe a person's privacy, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted. Ofcom also had regard to Practice 8.14 of the Code which states that material gained by surreptitious filming should only be broadcast when it is warranted.

In considering whether or not there had been an infringement of privacy, Ofcom was first required to consider whether Mr Millard had a legitimate expectation of privacy in relation to the footage that was broadcast. Ofcom noted that the report included footage filmed from inside Mr Millard's chicken shed which showed the reporter entering the shed and commenting on the conditions whilst crouched down on the floor. The report featured images of the inside of the barn, the flock, and particular birds identified by the broadcaster as lame or suffering from neglect. Ofcom considered that as the footage was filmed in secret on private property and broadcast without Mr Millard's consent, he had a legitimate expectation of privacy in relation to the material that was broadcast. In these circumstances it was Ofcom's view that Mr Millard's privacy was infringed by the broadcast of footage of Mr Millard's farm in the report.

Ofcom considered that there was significant public interest in broadcasting footage that demonstrated the failure of a Freedom Food accredited farm to comply with the required animal welfare standards. In Ofcom's view, the footage broadcast showed that there was evidence that some of the Freedom Food standards were not being met on Mr Millard's farm. This was further corroborated by the statements from the RSPCA and the company that distributes meat reared at the farm and the fact that the farm was suspended from the scheme. Taking these factors into account, Ofcom found that the infringement of Mr Millard's privacy resulting from the broadcast of the footage was warranted by the public interest in this material.

**Accordingly Ofcom has not upheld Mr Millard's complaint of unfair treatment in the programme as broadcast or his complaints of unwarranted infringement of privacy in the making and the broadcast of the programme.**

## Other Programmes Not in Breach/Resolved

Up to 17 March 2009

Programme	Transmission	Channel	Category	Number of complaints
"Daddy's Gone" - Glasvegas	18/02/2009	MTV Two	Offensive Language	1
10 Years Younger (Trailer)	04/02/2009	Channel 4	Generally Accepted Standards	1
20 Biggest Selling Singles of The Last 10 Years	29/12/2008	Channel 4	Generally Accepted Standards	1
Admission Impossible	07/02/2009	Sky Three	Generally Accepted Standards	1
Afternoon Play: Mole	24/02/2009	BBC Radio 4	Offensive Language	1
Afternoon Play: Monkeyface	05/02/2009	BBC Radio 4	Offensive Language	1
Al Murray's Multiple Personality Disorder	27/02/2009	ITV1	Generally Accepted Standards	13
Al Murray's Multiple Personality Disorder	06/03/2009	ITV1	Generally Accepted Standards	5
Andy Townsend and Mike Parry	04/02/2009	Talksport	Generally Accepted Standards	1
Animals Do The Funniest Things	10/03/2009	ITV2	Animal Welfare	1
Ant & Dec's Saturday Night Takeaway	21/02/2009	ITV1	Dangerous Behaviour	1
BBC News	02/02/2009	BBC1	Offensive Language	1
BBC News	03/02/2009	BBC1	Generally Accepted Standards	3
BBC News	02/02/2009	BBC1	Offensive Language	3
BMIbaby.com sponsorship of ITV Granada Weather	n/a	ITV1 (Granada)	Offensive Language	2
BMIbaby.com sponsorship of of ITV Weather	n/a	ITV1	Offensive Language	1
Bear Behaving Badly	10/02/2009	BBC1	Generally Accepted Standards	3
Beck at Breakfast	19/02/2009	Century Radio	Other	1
Being Human	25/01/2009	BBC Three	Generally Accepted Standards	1
Big Chef Takes on Little Chef	19/01/2009	Channel 4	Commercial References	4
Brainiac	n/a	Sky One	Sex/Nudity	1
Carling Cup Final	01/03/2009	Sky Sports 1	Due Impartiality/Bias	1
Casualty	07/02/2009	BBC1	Generally Accepted Standards	1
Celebrity Come Dine With Me	15/02/2009	Channel 4	Generally Accepted Standards	3
Channel 4 News	03/02/2009	Channel 4	Due Impartiality/Bias	1
Channel 4 News	21/01/2009	Channel 4	Due Impartiality/Bias	2
Channel 4 News	12/02/2009	Channel 4	Offensive Language	1
Channel 4 News	06/02/2009	Channel 4	Offensive Language	3
Charles Darwin and the Tree of Life	01/02/2009	BBC1	Religious Offence	1
Chris Moyles Show	19/02/2009	BBC Radio 1	Sex/Nudity	1
Chris Moyles Show	04/02/2009	BBC Radio 1	Generally Accepted Standards	1
Chris Moyles Show	26/02/2009	BBC Radio 1	Commercial References	1
Christianity: A History	11/01/2009	Channel 4	Generally Accepted Standards	14
Christianity: A History	01/02/2009	Channel 4	Due Impartiality/Bias	1
Christianity: A History	22/02/2009	Channel 4	Due Impartiality/Bias	7
Christianity: A History	22/02/2009	Channel 4	Generally Accepted Standards	1
Christianity: A History	01/02/2009	Channel 4	Religious Issues	1
Citizen Smith	16/02/2009	BBC4	Generally Accepted Standards	1
Citizen Smith	09/02/2009	BBC4	Crime (incite/encourage)	1
Comedy Blue	06/02/2009	Paramount 2	Generally Accepted Standards	1

Comic Relief	13/03/2009	BBC1	Generally Accepted Standards	3
Coronation Street	30/01/2009	ITV1	Violence	3
Coronation Street	09/02/2009	ITV1	Generally Accepted Standards	3
Coronation Street	13/03/2009	ITV1	Generally Accepted Standards	1
Count Arthur Strong's Radio Show	28/01/2009	BBC Radio 4	Offensive Language	1
DFS sponsorship of Dancing on Ice	n/a	ITV1	Generally Accepted Standards	1
Dancing On Ice	15/02/2009	ITV1	Generally Accepted Standards	10
Dancing on Ice	22/02/2009	ITV1	Generally Accepted Standards	3
Dancing on Ice	01/03/2009	ITV1	Advertising	1
Darwin: My Ancestor	10/02/2009	BBC Radio 4	Generally Accepted Standards	1
Den rätte för Linda Rosing	24/02/2009	Kanal 5	Substance Abuse	1
Dickinson's Real Deal	06/03/2009	ITV1	Use of Premium Rate Numbers	1
Dispatches: The Problem Princes	23/02/2009	Channel 4	Due Impartiality/Bias	4
Doctors and Nurses at War	03/02/2009	ITV1	Generally Accepted Standards	4
Drivetime	04/02/2009	Talksport	Generally Accepted Standards	1
ER	26/02/2009	More4	Violence	1
Early Breakfast	10/02/2009	KMFM	Use of Premium Rate Numbers	1
Eastenders	23/02/2009	BBC1	Generally Accepted Standards	2
Eggheads	03/02/2009	BBC2	Generally Accepted Standards	1
Extraordinary People: The Rainman Twins	12/02/2009	Fiver	Generally Accepted Standards	1
Extreme Fishing with Robson Green	09/03/2009	Five	Animal Welfare	1
Extreme Fishing with Robson Green	02/03/2009	Five	Offensive Language	1
FA Cup Football Highlights	14/02/2009	ITV1	Generally Accepted Standards	1
Five News	12/02/2009	Five	Generally Accepted Standards	1
Five News	09/03/2009	Five	Animal Welfare	1
Five US promo	02/02/2009	Five US	Crime (incite/encourage)	1
Frank Skinner Live at the Birmingham Hippodrome	06/03/2009	Channel 4	Generally Accepted Standards	1
Free Agents	13/02/2009	Channel 4	Offensive Language	16
GMTV	11/03/2009	ITV1	Generally Accepted Standards	1
GMTV	27/01/2009	ITV1	Inaccuracy/Misleading	2
GMTV	10/02/2009	ITV1	Crime (incite/encourage)	1
GMTV	12/02/2009	ITV1	Crime (incite/encourage)	1
GMTV	03/02/2009	ITV1	Inaccuracy/Misleading	1
GMTV	16/02/2009	ITV1	Generally Accepted Standards	1
GMTV	06/02/2009	ITV1	Sex/Nudity	1
Gastronuts	11/02/2009	CBBC	Animal Welfare	1
Gay TV	12/02/2009	Gay TV	Sex/Nudity	1
Geoff Lloyd's Hometown Show	24/02/2009	Absolute Radio	Religious Offence	3
Globo Loco	01/02/2009	CITV	Substance Abuse	1
Gossip Girl	25/01/2009	ITV2	Sex/Nudity	1
Grand Designs	07/02/2009	Channel 4	Offensive Language	4
Hana's Helpline	09/02/2009	Five	Crime (incite/encourage)	1
Harry Hill's TV Burp	13/12/2008	ITV1	Generally Accepted Standards	13
Harveys Sponsorship of Coronation Street	n/a	ITV1	Dangerous Behaviour	1



Have I Got A Bit More News For You	20/12/2008	BBC2	Generally Accepted Standards	1
Have I Got A Bit More News For You	20/12/2008	BBC2	Violence	1
Have I Got News For You	19/12/2008	BBC1	Violence	4
Heart Breakfast	12/02/2009	Heart 100.7	Commercial References	1
Heston's Medieval Feast	10/03/2009	Channel 4	Animal Welfare	1
Heston's Victorian Feast (Trailer)	18/02/2009	Channel 4	Sex/Nudity	1
Hollyoaks	03/02/2009	Channel 4	U18's in Programmes	1
ITV News	09/02/2009	ITV1	Generally Accepted Standards	1
ITV News	08/02/2009	ITV1	U18's in Programmes	3
ITV News	08/02/2009	ITV1	Generally Accepted Standards	1
ITV News	19/02/2009	ITV1	Dangerous Behaviour	1
ITV News	21/01/2009	ITV1	Due Impartiality/Bias	1
ITV News	25/02/2009	ITV1	Inaccuracy/Misleading	1
ITV News	13/02/2009	ITV1	Generally Accepted Standards	1
Ian Collins	03/01/2009	Talksport	Inaccuracy/Misleading	1
In the Line of Fire	17/02/2009	ITV1	Generally Accepted Standards	1
In the Line of Fire	10/02/2009	ITV1	Generally Accepted Standards	1
It Pays to Watch	15/10/2008	Five	Commercial References	1
James May's Big Ideas	01/02/2009	BBC2	Generally Accepted Standards	1
Jamie Saves Our Bacon	29/01/2009	Channel 4	Animal Welfare	7
Jeremy Vine	18/02/2009	BBC Radio 2	Generally Accepted Standards	1
Jo Whaley		BBC Radio 1	Offensive Language	1
KNTV Sex	17/03/2009	Channel 4	Sex/Nudity	2
KNTV Sex	16/03/2009	Channel 4	Sex/Nudity	1
Katy Brand's Big Ass Show	17/02/2009	ITV1	Religious Issues	1
Katy Brand's Big Ass Show	10/02/2009	ITV1	Religious Offence	1
Knorr Ragu sponsorship of Home and Away	02/02/2009	Five	Generally Accepted Standards	1
Ladies Of Letters	15/03/2009	ITV3	Generally Accepted Standards	1
Law & Order UK	23/02/2009	ITV1	Generally Accepted Standards	1
Let's Dance for Comic Relief	21/02/2009	BBC1	Sex/Nudity	1
Live at the Apollo	16/01/2009	BBC1	Generally Accepted Standards	1
London Tonight	05/02/2009	ITV1	Due Impartiality/Bias	3
Loose Women	03/02/2009	ITV1	Generally Accepted Standards	3
Maa	04/02/2009	Zee TV	Violence	1
Margaret	26/02/2009	BBC2	Offensive Language	3
Midsomer Murders	20/02/2009	ITV1	Offensive Language	4
Midsomer Murders	03/02/2009	ITV1	Violence	1
Midsomer Murders	10/02/2009	ITV1	Violence	1
Mock the Week Again	29/10/2008	BBC2	Generally Accepted Standards	15
Morning Extra	10/02/2009	BBC Radio Scotland	Generally Accepted Standards	1
Moses Jones	09/02/2009	BBC2	Violence	5
Moses Jones	02/02/2009	BBC2	Offensive Language	1
New You've Been Framed	21/02/2009	ITV1	Religious Offence	3
News	19/11/2008	BBC News 24	Generally Accepted Standards	1
News	27/02/2009	Geo News	Inaccuracy/Misleading	1
News	07/02/2009	BBC Radio 1	Substance Abuse	1
News	06/02/2009	BBC News 24	Generally Accepted Standards	1
News at Ten	08/02/2009	ITV1	U18's in Programmes	3
News at Ten	29/01/2009	ITV1	Inaccuracy/Misleading	1

News at Ten	19/02/2009	ITV1	Generally Accepted Standards	1
Newsnight	06/02/2009	BBC2	Violence	1
Newsnight	06/02/2009	BBC2	Generally Accepted Standards	1
Nick Ferrari	10/02/2009	LBC 97.3FM	Generally Accepted Standards	1
Noel's HQ	07/02/2009	Sky One	Generally Accepted Standards	5
North Tonight	19/02/2009	STV	Animal Welfare	1
Oops TV	26/02/2009	Sky One	Animal Welfare	1
Panorama	09/03/2009	BBC1	Generally Accepted Standards	1
Pie in the Sky	28/01/2009	ITV3	Generally Accepted Standards	1
Pop Goes The Band (Trailer)	16/02/2009	UKTV Food	Generally Accepted Standards	1
Quiz Call	14/03/2009	Five	Competitions	1
Rab C Nesbitt	23/12/2008	BBC2	Offensive Language	67
Ready, Steady, Cook	26/01/2009	BBC2	Generally Accepted Standards	3
Real Radio	n/a	Real Radio	Commercial References	1
Red Riding	05/03/2009	Channel 4	Offensive Language	7
Red Road	28/02/2009	BBC2	Sex/Nudity	4
Ricki Lake	02/02/2009	ITV2	Animal Welfare	1
Road Wars	25/02/2009	Sky Two	Offensive Language	1
Rogue Traders	19/02/2009	BBC1	Animal Welfare	1
Russell Brand Live	12/01/2009	E4	Religious Offence	3
Sara Cox	12/02/2009	BBC Radio 1	Offensive Language	1
Savers in Trouble: Tonight	06/02/2009	ITV1	Inaccuracy/Misleading	1
Science Fiction Season (Trailer)	23/02/2009	BBC1	Generally Accepted Standards	1
Shameless	10/02/2009	Channel 4	Generally Accepted Standards	4
Sin Cities	08/11/2008	Virgin 1	Sex/Nudity	1
Skins	12/03/2009	E4	Advertising	1
Skins	12/03/2009	E4	Substance Abuse	1
Sky News	22/01/2009	Sky News	Sponsorship	1
Sky News	11/02/2009	Sky News	Generally Accepted Standards	1
Sky News	08/03/2009	Sky News	Inaccuracy/Misleading	1
Sky News	03/02/2009	Sky News	Generally Accepted Standards	1
Sky News Weather	12/02/2009	Sky News	Inaccuracy/Misleading	1
Sky Sports 1	31/01/2009	Sky Sports 1	Offensive Language	1
Squirrel Wars: Red v Grey	06/02/2009	Channel 4	Animal Welfare	1
Squirrel Wars: Red v Grey	06/02/2009	Channel 4	Violence	1
Squirrel Wars: Red v Grey	06/02/2009	Channel 4	Inaccuracy/Misleading	1
Steve Allen	07/01/2009	LBC 97.3FM	Dangerous Behaviour	1
Storyville: Prostitution Behind the Veil	14/02/2009	BBC4	Religious Offence	1
Stylista (Trailer)	n/a	Five	Generally Accepted Standards	1
Sunrise	10/02/2009	Sky News	Generally Accepted Standards	1
Supersize vs Superskinny	03/02/2009	Channel 4	Inaccuracy/Misleading	2
T4	01/02/2009	Channel 4	Sex/Nudity	1
T4	22/02/2009	Channel 4	Sex/Nudity	1
Teen Taboos	02/03/2009	Channel 4	Sex/Nudity	6
The Alan Titchmarsh Show	12/02/2009	ITV1	Generally Accepted Standards	1
The Alan Titchmarsh Show	13/02/2009	ITV1	Regionality	1
The Alan Titchmarsh Show	18/02/2009	ITV1	Offensive Language	1
The Alan Titchmarsh Show	09/02/2009	ITV1	Generally Accepted Standards	1
The Best of You've Been Framed	14/02/2009	ITV1	Animal Welfare	1
The Big Questions	22/02/2009	BBC1	Generally Accepted Standards	1
The Brit Awards 2009	18/02/2009	ITV1	Sex/Nudity	1

The Brit Awards 2009	18/02/2009	ITV1	Use of Premium Rate Numbers	1
The Brit Awards 2009	18/02/2009	ITV1	Generally Accepted Standards	1
The Brit Awards 2009	18/02/2009	ITV1	Crime (incite/encourage)	1
The Brit Awards Live	14/02/2007	ITV1	Generally Accepted Standards	1
The British Academy Film Awards	08/02/2009	BBC1	Offensive Language	1
The Bush and Troy Show	25/02/2009	GWR FM	Generally Accepted Standards	1
The Force	07/03/2009	ITV4	Inaccuracy/Misleading	1
The Gadget Show	09/03/2009	Five	Inaccuracy/Misleading	1
The Gangster and the Pervert Peer	16/02/2009	Channel 4	Generally Accepted Standards	1
The Hits Radio	09/03/2009	The Hits Radio	Offensive Language	1
The Jeremy Kyle Show	06/03/2009	ITV1	Advertising	1
The Jeremy Kyle Show	13/02/2009	ITV1	Generally Accepted Standards	1
The Jerry Springer Show	30/01/2009	Living	Generally Accepted Standards	3
The Moral Maze	04/02/2009	BBC Radio 4	Generally Accepted Standards	1
The News Quiz	14/02/2009	BBC Radio 4	Religious Offence	1
The News Quiz	22/11/2008	BBC Radio 4	Dangerous Behaviour	1
The News Quiz	23/01/2009	BBC Radio 4	Religious Offence	1
The News Quiz	20/02/2009	BBC Radio 4	Crime (incite/encourage)	1
The News Quiz	21/02/2009	BBC Radio 4	Religious Offence	1
The News Quiz	06/02/2009	BBC Radio 4	Religious Offence	1
The ONE Show	04/02/2009	BBC1	Generally Accepted Standards	1
The ONE Show	03/02/2009	BBC1	Religious Offence	4
The Secret of My Success	07/03/2009	ITV3	Sex/Nudity	1
The Simpsons	20/02/2009	Sky One	Religious Offence	1
The Sunday Night Project	08/02/2009	Channel 4	Offensive Language	1
The Sunday Night Project	08/02/2009	Channel 4	Generally Accepted Standards	1
The World's Most Enhanced Woman And Me (Trailer)	03/02/2009	Channel 4	Sex/Nudity	3
The Wright Stuff	25/02/2009	Five	Generally Accepted Standards	3
The Wright Stuff	06/02/2009	Five	Offensive Language	1
The Wright Stuff	06/02/2009	Five	Inaccuracy/Misleading	1
The Wright Stuff	02/02/2009	Five	Offensive Language	2
The Wright Stuff	30/01/2009	Five	Generally Accepted Standards	2
The Wright Stuff	30/01/2009	Five	Generally Accepted Standards	1
This Morning	25/02/2009	ITV1	Inaccuracy/Misleading	1
Tony Horne in the Morning	23/02/2009	Metro Radio	Generally Accepted Standards	1
Top Gear	15/02/2009	BBC2	Dangerous Behaviour	3
Trial and Retribution	06/02/2009	ITV1	Offensive Language	6
Violent Partners: Tonight	09/02/2009	ITV1	Violence	1
Violent Partners: Tonight	09/02/2009	ITV1	Inaccuracy/Misleading	3
Weakest Link	20/02/2009	BBC1	Generally Accepted Standards	2
Weakest Link	16/02/2009	BBC1	Generally Accepted Standards	1
Weakest Link	13/02/2009	BBC1	Generally Accepted Standards	1
Weakest Link	09/02/2009	BBC1	Generally Accepted Standards	1
X-Weighted	22/01/2009	Sky Three	Generally Accepted Standards	1