

# **Ofcom Broadcast Bulletin**

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## Contents

Introduction	3
<b>Standards cases</b>	
<u>In Breach</u>	
<b>Comedy Central Trailers</b> <i>Various times pre-watershed, from December 2014 to May 2015</i>	5
<b>Norkin's List</b> <i>NTV Mir Lithuania, 15 February 2015, 19:20</i>	31
<b>News</b> <i>Bangla TV, 11 June 2015, 09:30</i>	42
<b>Sponsorship credit</b> <i>Live College World Series, BT Sport/ESPN (HD), 6 June 2015, 00:26</i>	44
<u>Resolved</u>	
<b>Ian King Live</b> <i>Sky News, 30 July 2015, 18:30</i>	47
<b>Broadcast Licence Conditions cases</b>	
<u>In Breach</u>	
<b>Provision of licensed service</b> <i>Voice of Africa Radio (Newham), 14 July 2015 to present</i>	49
<b>Provision of information: community radio station finance reports</b> <i>Various community radio licensees, year ending 31 December 2014</i>	51
<b>Investigations Not in Breach</b>	53
<b>Complaints Assessed, Not Investigated</b>	54
<b>Complaints Outside of Remit</b>	61
<b>Investigations List</b>	62

## Introduction

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

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

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

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

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

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

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

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

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

## Standards cases

### In Breach

#### Comedy Central Trailers

*Countdown to Christmas Comedy Trailer, Comedy Central, 24 December 2014, 09:30*

*Drunk History Trailer, Comedy Central, 4 January 2015, 15:45*

*Russell Howard Dingleododies Trailer, Comedy Central, 18 February 2015, 08:48*

*I Live With Models Trailers, Comedy Central and Comedy Central Extra, 18 February 2015, 09:46, and 3 March 2015, 15:45*

*Brickleberry Trailer (Panda), Comedy Central, 4 March 2015, 17:17*

*Brickleberry Trailer (Cat), Comedy Central, 8 March 2015, 10:35*

*Brickleberry Trailer (Horse), Comedy Central, 3 May 2015, 19:30*

*Brickleberry Trailer (Eagle), Comedy Central, 4 May 2015, 18:45*

*The Roast of Justin Bieber Trailer, Comedy Central, 14 March 2015, 08:37*

*John Bishop Live Trailer, Comedy Central and Comedy Central Extra, 27 March 2015, 15:42*

*Walking Dead Trailer, Comedy Central, 25 April 2015, 16:30*

*Russell Howard Trailer, Comedy Central, 30 April 2015, 15:30*

*South Park Erection Special, Comedy Central, 30 April 2015, 19:30*

*Broad City Trailer, Comedy Central, 10 May 2015, 16:59*

*All trailers were also broadcast on other various dates and times*

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#### Introduction

Comedy Central and Comedy Central Extra are channels featuring comedy series and stand-up comedy aimed at a primarily adult audience. The licences for Comedy Central and Comedy Central Extra are held by Paramount UK Partnership (“Paramount UK” or the “Licensee”).

Ofcom received 206 complaints regarding the pre-watershed trailers set out above broadcast on Comedy Central and Comedy Central Extra. Complainants expressed concern that the content of these trailers were adult in tone, humour and language and were not suitable for children to view before the watershed. Some complainants expressed particular concern because the trailers were broadcast around or during back-to-back episodes of *Friends*, which complainants considered was a series likely to attract child viewers.

Full details of the pre-watershed trailers Ofcom investigated are set out below. However, examples of the nature of the complaints Ofcom received about the trailers are detailed below:

- comedian Russell Howard performing a stand-up routine which consisted of him saying “*hmmm, you filthy bitch*” in a trailer broadcast on Christmas Eve at 09:30 during the cartoon series *Penguins of Madagascar*;
- pre-watershed trailers for the post-watershed animation series *Brickleberry* featuring cartoon animals being killed in a variety of different ways, such as a cat being shown falling from a tree into a tree shredder and its blood spurting out of the machine and onto a girl’s face;

- a trailer to promote a *South Park Erection Night Special* with the voiceover saying “On May 7 only South Park can unite the nation around a shared love of knob gags, immigration, education, crime, and vaginas...[a clip from the programme showing an anatomical drawing of the female reproductive system was featured at this point]”; and,
- a pre-watershed trailer featuring comedian Rob Delaney during his stand-up routine saying (while making a hand and finger movement around his groin area): “I want to do a quick commercial for fingering because I’ve just learnt how to do it. My wife pulled me to one side because she said: ‘What are you doing down there? I hate it, I hate you, you’re damaging me’”.

### Ofcom’s investigation

Given the range of complaints, Ofcom viewed a number of trailers and assessed their content and scheduling. We considered that 14 trailers (described in full in the Decision section below) raised potential issues which warranted investigation under Rule 1.3 of the Code. This states that:

“Children must...be protected by appropriate scheduling from material that is unsuitable for them.”

In addition, Ofcom also assessed the *Russell Howard Trailer* broadcast on Comedy Central on 30 April 2015 which featured the edited clip of a stand-up performance by the comedian Rob Delaney against Rule 2.3. We considered this trailer raised potential issues which warranted investigation under both Rule 1.3 (as above) and Rule 2.3, which requires that:

“broadcasters must ensure that material which may cause offence is justified by the context...”.

We therefore asked Paramount UK how the broadcast of these trailers complied with Rule 1.3 and (as regards the 30 April 2015 *Russell Howard Trailer*) Rule 2.3. We also asked the Licensee to provide us with details of when the trailers we were investigating were scheduled on Comedy Central and (as necessary) on Comedy Central Extra.

During the period of this investigation some trailers were broadcast which Ofcom viewed and immediately raised concerns. These were: the *Russell Howard trailer* featuring the Rob Delaney stand-up routine; the *Brickleberry* trailers; and, the *South Park Erection Special* trailer. Ofcom therefore contacted Paramount UK urgently on 6 May 2015 to inform the Licensee of our concerns, that it should consider taking any appropriate and immediate compliance measures in response, and to advise the Licensee that these trailers would also be investigated.

In response, the Licensee notified Ofcom that it had taken certain measures as regards the pre-watershed broadcast of some of the trailers. Paramount UK said that:

- *Brickleberry* trailers would no longer feature content that depicted cartoon animals dying or being killed;
- the *South Park Erection Special* trailer had been moved to post-watershed scheduling; and

- the *Russell Howard* trailer featuring the stand-up routine with Rob Delaney had also been moved to a post-watershed schedule only. The Licensee said it had in fact decided to do this on 5 May 2015 (the day before Ofcom had contacted it) because Paramount UK had received a number of complaints directly from viewers. However Paramount UK confirmed that this decision had not been implemented immediately as a result of a problem with its internal procedures because staff with the necessary rights to amend the schedules were not available to unlock the system. This trailer was therefore removed from the pre-watershed schedules only from the morning of 7 May 2015.

### **Licensee's response: general points**

Before seeing Ofcom's Preliminary View in this case (see below) and in its initial response to Ofcom the Licensee argued that none of the trailers breached Rule 1.3 or (as appropriate) Rule 2.3.

It set out some general points about its overall approach to the compliance of trailers on Comedy Central:

- Comedy Central was "neither intended to appeal to, nor aimed at children" (a point the Licensee said was relevant to each trailer Ofcom had asked Paramount UK to comment on) but nonetheless Paramount UK was aware of its responsibility and obligations under the Code, particularly in relation to protecting under-eighteens;
- the Licensee took its compliance obligations seriously: all teams worked closely together to ensure the channel's "on-air look" was carefully considered, and remained balanced between promoting content on the service and ensuring it remained appropriate for the audience;
- in terms of the Comedy Central schedule, the Licensee described its programming as "edgy". Its on-air look, including its trailers, aimed to reflect this;
- the channel's own research identified that parents who watch Comedy Central with their children considered that the trailers featuring innuendo "went over their children's heads". There was also "an acute awareness" by the Comedy Central audience that the channel was not aimed at children and they did not expect the content to be comparable to channels offering content aimed at families and children;
- Paramount UK therefore worked very hard to include in trailers references and comments that would "go over the heads of the younger viewers watching". The Licensee was confident that the trailers were "fresh and compelling" and could showcase the best of content without offending or concerning parents;
- the Licensee said it considered, overall, that the channel's "new approach" to trailers was "on the right side of the line" in style and content. It argued that this view was "vindicated" by Ofcom's earlier decision published in issue 274 of Ofcom's Broadcast Bulletin (2 March 2015) that a trailer for *I Live With Models* shown on Comedy Central had not warranted investigation and consequently further trailers were commissioned "in a similar vein." Paramount UK said that Comedy Central had therefore been surprised that Ofcom had launched investigations with regard to a number of trailers (as listed above), as they

included trailers that the channel considered Ofcom viewed as compliant with the Code;

- the Licensee stated that it was concerned that the Child Index<sup>1</sup> measurement, previously used by the Licensee to determine the suitability of a programme in terms of the number of children watching, might not be considered by Ofcom “an acceptable way” to make scheduling decisions in daytime and that anything “that is not strictly child friendly must automatically be made post-watershed.” The Licensee suggested that to “no longer be able to rely on children’s index data and to make pre-watershed child proof” restricted its ability to broadcast content in line with its “grown-up comedy channel”;
- the Licensee stated it had no intention to “push the boundaries” with the trailers Comedy Central had broadcast;
- in response specifically to the issue of the delay in stopping the showing of the *Russell Howard Trailer* featuring the stand-up routine by Rob Delaney pre-watershed, Paramount UK accepted that a full review of its internal compliance processes for the classification of and scheduling of trailers was required. Accordingly, it said that the channel had reviewed, changed and strengthened its compliance sign-off processes and had simplified its classification system for trailers to two ratings: post 21:00 and daytime. This was “to remove any potential doubt about suitability”. This new classification system replaced what were previously four categories for scheduling trailers on Comedy Central (Post 21:00, Post 19:00, Ex-kids<sup>2</sup> and Daytime). According to the Licensee, the new system would ensure that trailers could only be classified as “clean” or “post-watershed” with “no grey area”.
- Paramount UK apologised for the “unfortunate sequence of events” which led to the failure to remove the *Russell Howard Trailer* from the pre-watershed schedules earlier. This flaw had “left Comedy Central unwittingly open to a potentially serious breach of...licence obligations” and therefore those processes had been immediately reviewed and changed.

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<sup>1</sup> “Audience Indexing is used to predict whether a programme is likely to appeal particularly to various age groups of children or to children and young people. It allows broadcasters to target scheduling restrictions for certain types of advertising to reduce exposure among those groups [to inappropriate advertising, such as for alcohol or gambling]”. See: BCAP Advertising Guidance Note no.4 on Scheduling and Audience Indexing, page 14, at <https://www.cap.org.uk/~media/Files/CAP/Help%20notes%20new/Guidance%20note%20on%20Scheduling%20%20MASTER%20FINAL.ashx>. Audience Indexing results in an index score for each programme (or programme part in the case of long-form programming). The same Guidance Note states that: “A score of 120 is the threshold index score; an index score of 120 or higher indicates that a programme appeals particularly to children or children and young people, as they are disproportionately represented in the audience for the programme... This is commonly referred to as the ‘120 Index’”.

<sup>2</sup> In its submissions to Ofcom the Licensee explained that its own scheduling definition of ‘Ex-kids’ meant that trailers and advertisements which it classified as ‘Ex-kids’ were not broadcast on Comedy Central and Comedy Central Extra between 16:00 and 19:00 hours on weekdays, and between 08:00 and 12:00 at weekends. This was because Paramount UK considered that children were more likely to be available to view at these times. The Licensee explained that it put no additional ‘Ex-kids’ scheduling restrictions in place during school holidays.

## Licensee's comments on Ofcom's Preliminary View

Ofcom prepared a Preliminary View in this case, which recorded 14 separate breaches of Rule 1.3 as regards pre-watershed trailers, and, in addition, one breach of Rule 2.3, concerning the pre-watershed trailer for *Russell Howard* featuring the comedian Rob Delaney. In response to this Preliminary View, the Licensee said that it: "fully" accepted Ofcom's findings; had launched "a full investigation"; and acknowledged that it had "pushed the boundaries of our compliance practices for promos too far in recent months." Paramount UK said it was "now implementing new processes and practices to ensure it would be fully compliant going forward". The Licensee apologised and welcomed Ofcom's request (as set out in the Preliminary View) to meet Ofcom to discuss these compliance issues further.

## Decision

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

In reaching its decisions, Ofcom must also take into account the broadcaster's and audience's right to freedom of expression. This is set out in Article 10 of the European Convention on Human Rights. Article 10 provides for the right of freedom of expression, which 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 and the requirements of statutory and common law.

Rule 1.3 states that broadcast material which is unsuitable for children must be appropriately scheduled. Whether the content of a trailer is unsuitable for children depends on all the relevant circumstances. Appropriate scheduling is judged by a number of factors including: the nature of the content; the likely number and age range of the audience; the start and finish time of the programme; and likely audience expectations.

When scheduling trailers, particularly pre-watershed, broadcasters have less freedom than with programmes. When scheduling programmes licensees can take account of, for example, the time of the broadcast, any warnings given to viewers, and the audience profile and expectations for the particular programme, such as whether it is well established or likely to appeal to a child audience. With trailers, on the other hand, viewers come across them unawares, and audience expectations of what is appropriate are affected not only by the time and date of the broadcast, but the programming it is scheduled during and around.

Ofcom guidance on the watershed on television includes advice concerning Rule 1.3 and, specifically, the scheduling of trailers<sup>3</sup>. This guidance clearly advises broadcasters that the content of pre-watershed trailers should be appropriate for a pre-watershed audience. This is particularly important where the trailers are promoting post-watershed programming because trailers do not provide any context or warning to viewers in advance about the material they are about to see. Parents

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<sup>3</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/watershed-on-tv.pdf>

and carers should be able to anticipate that any material broadcast pre-watershed, which children are available to view, has been scheduled appropriately for all children under the age of 15. Whether a particular trailer is appropriately scheduled pre-watershed often depends on the context. For example, different considerations may apply when deciding how to schedule a trailer for a programme originally produced for a post-watershed audience, as opposed to a pre-watershed audience, or to broadcast it on a Saturday weekend morning compared to term time, before and after normal school hours, or perhaps at 20:00, when it is likely that there would be a smaller child audience available to view.

Rule 1.3 makes clear that in deciding appropriate scheduling for pre-watershed trailers (and for all pre-watershed programmes), licensees need to take care in assessing the likely number and age range of children in the audience, taking into account school time, weekend and holidays. In making this assessment, Ofcom cautions broadcasters to take care in their use of Audience Indexing (see footnote 1). As the Broadcast Committee of Advertising Practice (“BCAP”) has made clear, Audience Indexing aims to help broadcasters identify programmes that appeal particularly to children so that they can comply with the scheduling rules for broadcast advertising set out in the BCAP Code, and decide where best to place certain categories of advertising<sup>4</sup>. The primary purpose of Audience Indexing is therefore to assist broadcasters in placing advertising and sponsorship credits appropriately, taking into account that broadcast advertising is subject to a number of strict content restrictions set out in the BCAP Code. Audience Indexing is not intended to serve as the basis for compliance decisions involving editorial material, for example in a pre-watershed trailer, which is subject to the different requirements of the Broadcasting Code.

In its general comments (and comments on specific trailers – see below) Paramount UK argued that many of the adult references in the trailers of concern to Ofcom “went over the heads” of children watching. Ofcom disagreed. Many younger children may not have understood the sexual and other references aimed at an adult audience. Ofcom was of the view, however, that a number of older children in the audience would have been likely to have understood a considerable number of the references. The fact that they did so, did not mean either that such references in these pre-watershed trailers were suitable for them to view, or that they were appropriately scheduled. Ofcom noted that a number of the 14 pre-watershed trailers we investigated were watched by significant numbers of children aged ten to 15. For example: the *Drunk History Trailer* was broadcast at a time when 12,300 children aged between ten and 15 were watching Comedy Central (just over 14% of the total audience); 18,200 children in the same age group were in the audience (19.8% of the total number of viewers) at the time the *South Park Trailer* was broadcast; and, *The Walking Dead* trailer was shown at a time when 6,200 children aged ten to 15 were viewing (15% of the total audience).

In the Licensee’s general comments (see above), Paramount UK argued that Comedy Central was “neither intended to appeal to, nor aimed at children”. As already pointed out, we asked the Licensee to provide us with details of when the trailers we were investigating were scheduled on Comedy Central and (as necessary) on Comedy Central Extra. Ofcom carefully assessed this information. It showed clearly that all the trailers we were investigating were broadcast on a number of occasions throughout the day and during the evening pre-watershed on particular days, and on a number of different dates on these channels.

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<sup>4</sup> BCAP Advertising Note no.4, pages 3 and 4. See footnote 1.

We also noted that the majority of the trailers complained about and which we investigated were broadcast during back-to-back episodes of *Friends* scheduled at various times during the day and evening on Comedy Central. In its representations to Ofcom with regard to the *Drunk History Trailer*, broadcast during an episode of *Friends* in January 2015, the Licensee confirmed that this trailer was shown at times when the child viewing audience reached or exceeded the child index (Audience Indexing) threshold of 120<sup>5</sup>. The Licensee therefore acknowledged that “at weekends and early evening week nights, particularly during *Friends*, there will be children available to view”.

We therefore examined BARB audience data for various dates and times between 3 March and 30 April 2015 when *Friends* was shown pre-watershed on Comedy Central and when we knew the trailers we were investigating were broadcast. This BARB viewing data indicated that at certain times pre-watershed significant numbers of children aged under 15 were viewing content on Comedy Central at times when *Friends* was broadcast. We noted that on a weekday evening, for example on 3 March 2015 around 19:30 and 19:45, as many as 20,700 children were viewing *Friends* (27.7% of the total audience), while on a Sunday morning, for example on 8 March 2015 at around 09:40, 8,300 children were viewing *Friends* (18.9% of the audience). In our opinion there would clearly have been children available to view whenever episodes of *Friends* were broadcast during the day or evening pre-watershed on Comedy Central.

The Licensee pointed out that Ofcom had previously considered complaints about certain Comedy Central trailers and concluded these had not raised any issues under the Code. In response, Ofcom underlined that each decision on whether a trailer is appropriately scheduled pre-watershed depended on individual circumstances. Just because Ofcom decided that a specific trailer, when broadcast on a particular time and date pre-watershed, did not raise potential issues on the Code, did not mean that the Licensee could rely on that decision to schedule the same or similar trailer on other occasions pre-watershed and assume that it would also comply with Rule 1.3.

A summary of each trailer, the Licensee’s specific representations with regard to Rule 1.3 and in one case Rule 2.3, and Ofcom’s Decision on each trailer, are detailed below.

### Rule 1.3

Ofcom considered each of the 14 trailers to assess firstly whether they were unsuitable for children, and if so whether they were appropriately scheduled.

#### ***Countdown to Christmas Comedy Trailer, Comedy Central, 24 December 2014, 09:30 (and various other dates and times pre-watershed)***

This trailer featured a “countdown” of the comedy shows on Comedy Central over the Christmas holiday period. It included short edited clips of the various comedians performing stand-up routines or clips from the programmes. One clip featured the comedian Russell Howard performing a stand-up routine which consisted only of him saying: “*hmmm, you filthy bitch*”. This trailer was broadcast at various times pre-watershed during the Christmas and New Year school holidays, including Christmas Eve. Ofcom noted in particular one occasion when it was broadcast on Christmas Eve at 09:30 during the cartoon series *Penguins of Madagascar*.

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<sup>5</sup> See footnote 1.

## Response

In its initial response to Ofcom, the Licensee said that although the word “bitch” had the potential to cause offence, Ofcom’s 2010 offensive language research<sup>6</sup> indicated that audiences considered this word to be of “medium acceptability” and the word was used only once in this trailer. The Licensee acknowledged that trailers come into the home “unawares” but stated that the service had previously broadcast trailers containing “similar language” and, in its view, these had served as a benchmark of audience expectation.

Paramount UK acknowledged that as the trailer was broadcast during the school holidays there were potentially more children available to view, particularly because it was broadcast during *Penguins of Madagascar* which appealed more to children than the channel’s usual content. The Licensee referred to its viewing figures which indicated that 3,700 children viewed the trailer, representing 11% of the audience, and the Child Index was 76.3, significantly below what the Licensee described as its “threshold of 120”. For this reason, and the context, the Licensee argued this trailer did not breach Rule 1.3.

## Decision

Ofcom’s concern here was the use of the word “bitch” in a trailer, where there clearly was very little or no context around the word to justify its use. Clearly the broadcast of offensive language in pre-watershed trailers may be a factor in assessing whether they are unsuitable for children. Ofcom’s 2010 offensive language research<sup>7</sup> indicated that audiences considered this word to be of “medium acceptability”. The research stated that the word “bitch” was grouped with other words like “bastard” and “slag” because “they were thought to be ‘stronger’ swear words”. As a result some participants thought there were some contexts in which these words would be acceptable on television pre-watershed. However, they said “care needed to be taken over their use, based on...particularly whether children were likely to be...watching...”. Ofcom’s view is that licensees must consider with care whether to include the word “bitch” in pre-watershed trailers, especially when used in conjunction with adjectives like “filthy” and on a Christmas holiday morning when considerable numbers of children are available to view. On balance therefore we considered that this material was unsuitable for children when included in this trailer.

We went on to assess whether this trailer was appropriately scheduled. We noted that the Comedy Central channel is not aimed at children nor on the whole likely to appeal to them. Nonetheless, this trailer was broadcast during an episode of *Penguins of Madagascar*, a television series originally broadcast on the children’s channel Nickelodeon and based on the BBFC rated “U” film. This programme was in Ofcom’s opinion clearly aimed at a child audience. Further, it was scheduled on Christmas Eve morning, and so during the school holidays when children were likely to view and when parents could have reasonably expected all material broadcast, including trailers, would be suitable for young viewers. BARB audience figures indicated that a significant number of the viewers of the trailer were children. Between 09:15 and 09:30, about 6,300 children were watching (18.6% of the total of almost 34,000 viewers), and around 5,100 of these were aged 4 to 9 years old. Between 09:30 and 09:45, about 3,900 children were watching (12.4% of 31,400 viewers), all of whom were aged 4 to 9 years old.

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<sup>6</sup> <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>

<sup>7</sup> See Footnote 1.

Ofcom's language research showed that the context in which the word "bitch" is used is important. In the context of this trailer, for the reasons explained above, its use was unsuitable for children. In Ofcom's opinion, by showing this trailer on a date and at the time when it was clearly likely that children would watch (and indeed did watch in considerable numbers), and on other dates and at other times pre-watershed, it was not appropriately scheduled.

Ofcom has welcomed the Licensee's further comments in response to the Preliminary View in which it has "fully" accepted Ofcom's findings and was now taking steps to ensure compliance going forward.

### **Decision: Breach of Rule 1.3**

#### ***Drunk History Trailer, Comedy Central, 4 January 2015, 15:45 (and various other dates and times pre-watershed)***

This trailer featured, at the start, an older man sitting in a library, described by a caption as "A Sober Historian", explaining an "historical" event as: "*Cromwell and his male entourage entered this very library with the young maiden together amongst the books – hence the word 'bookkake'*". The invented word "bookkake" was pronounced as and referred to "bukcake", which is a sex act in which a group of men ejaculate on a woman. The trailer was shown pre-watershed at the weekend and during episodes of *Friends*.

#### *Response*

In its initial response to Ofcom, Paramount UK explained this trailer was a "humorous play on words as opposed to being a graphic description of a sexual practice portrayed in a graphic and salacious manner" with the historian sitting in a library and referring to the sexual practice of "bukcake" as "bookkake". Although the word related to a sexual practice, the Licensee argued it would not have been widely known and would "certainly not be understood by children". In the Licensee's view, although viewers may have come across this trailer unawares, it was not beyond their expectations to hear a word describing a sexual practice when used in a humorous context.

The Licensee acknowledged that at weekends, early evening week nights and "particularly during *Friends*" there "will be children available to view". The Licensee said that "[t]o this end we carefully scrutinise audience data for such time slots to gauge how high our Child Index is." The Licensee said its audience data for 4 January 2015 at 15:45 suggested that 22,300 children viewed the trailer, which represented 19% of the audience and which had a Child Index of 122.9 which was "slightly above our threshold of 120". However, Paramount UK argued this data did not indicate that Comedy Central appealed to children or that they were particularly likely to be viewing this channel. For this reason and, because children would not have understood the term "bukcake", it did not consider this trailer was in breach of Rule 1.3.

#### *Decision*

This trailer included the use of the invented word "bookkake", which was a deliberate play on the word "bukcake". "Bukcake" being an adult term referring to a sexual practice associated with pornography. Ofcom considered that the use of the term in this trailer may not have been understood by younger children, but we were

concerned that a number of older children would already be familiar with the term, or at least curious to find out what the word meant.

We noted that the term was used as a play on words in the trailer based on a fictional historical event in a library – hence the word pronounced as “book-kake”. The term was clearly intended as an innuendo and was an indirect and inexplicit reference to the sexual practice. However, it was also used in the context of a trailer for a post-watershed programme, *Drunk History*, clearly aimed at an adult audience. Comedy Central described the programme on its website as: “top UK comedians relate their favourite historical stories while getting absolutely bladdered on a mixture of beers, wines and spirits. Their slurred versions of history are then acted out, word for word, by a host of well-known actors, celebrities and comedians...”. The trailer for the programme therefore featured a number of contributors drinking alcohol, speaking in a slurred manner and in Ofcom’s view, overall, this trailer had an adult tone and contained adult humour.

For these reasons we considered that this trailer was not suitable for children.

We went on to consider whether the Licensee scheduled this trailer appropriately to protect children. We noted that Comedy Central is not a channel aimed at children nor, generally, likely to appeal to children. However, this trailer was broadcast during episodes of *Friends*, a series which Paramount UK confirmed in its own submissions to Ofcom attracts a child audience. Further, on 4 January it was broadcast on a weekend and during the school holidays when children were available to view and when parents could have reasonably expected all material broadcast, including trailers, to be suitable for young viewers. BARB audience figures indicated that a significant number of viewers at the time this trailer was broadcast were children. Some 19,300 children viewed the trailer when shown on 4 January 2015 at 15:45, which represented 22% of the total audience. Of these 19,300 children, 12,300 were aged 10 to 15 (14.1% of the total audience) and 7,000 were aged 4 to 9 (8% of the total audience)<sup>8</sup>.

Ofcom disagreed with the Licensee’s argument that the use of the term “bookkake” (when clearly but implicitly referring to a sexual practice associated with pornography) was suitable for children because it would not have been “widely known” nor understood by them, and because it was said in a humorous context. In our opinion, the use of the term in a trailer with adult tone and humour indicated that the Licensee had not sufficiently considered the likelihood of children being in the audience when scheduled around *Friends*.

Ofcom has welcomed the Licensee’s further comments in response to the Preliminary View in which it has “fully” accepted Ofcom’s findings and was now taking steps to ensure compliance going forward.

### **Decision: Breach of Rule 1.3**

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<sup>8</sup> The viewing figures cited by Ofcom differ to those used by the Licensee as Paramount UK refer to “its audience data for 4 January 2015 at 15:45” while Ofcom has sourced the audience data from BARB.

***Russell Howard Dingleododies Trailer, Comedy Central, 18 February 2015, 08:48 (and various other dates and pre-watershed)***

This trailer featured Russell Howard performing a stand-up routine. The on-screen text “*Magic Fanny*” appeared in large letters, and then a clip of the comedian delivering a joke as part of a stand-up routine followed. He said: “*Gig of my life. Wembley Arena. My friends saw my mum, as people are filing into this gig, pointing at her vagina going, ‘That’s where the magic comes from!’*” As Russell Howard told the joke he pointed to his groin to mimic the actions of his mother when she made her comment.

*Response*

In its initial response to Ofcom, the Licensee explained that there was no graphic or sexual description or discussion in the trailer about the vagina of Russell Howard’s mother, and the word “vagina” was used in a non-sexual context which meant it was suitable for daytime. It added that the word “vagina” was used frequently on daytime television, on shows such as *This Morning* which Paramount UK asserted “draw high children’s viewing”. In the context of this trailer, the use of the word “was not intended to offend or make a sexual joke”. Further, there was “no humour being drawn from the word, a sexual act or any description of Russell’s mother’s vagina.” It was obviously a “ridiculous story where the surreal nature draws the humour.”

Regarding the caption, which included the words “Magic Fanny”, the Licensee considered that neither the graphic nor the use of the word “fanny” constituted offensive language. It said it was an extremely mild word, used as an affectionate substitute term or playground description for female genitalia rather than with an offensive or sexual connotation. Therefore the use of the words “vagina” and “fanny” in this context were justified and acceptable for daytime on Comedy Central. Nonetheless, the Licensee said it had classified this trailer as “Ex-kids”, meaning that it was not scheduled between 16:00-19:00 on weekdays. It also said that the ratings, for the date and time when the trailer was shown, (as detailed above) showed a Child Index of zero.

*Decision*

Ofcom’s concern here was the adult tone and humour of this pre-watershed trailer. While the word “vagina” can clearly be suitable for broadcast during the day, Ofcom would normally anticipate that there would be appropriate editorial context for its use. In this case, however, the nature of the trailer provided little or no context. The clip used in this pre-watershed trailer, taken from a live stand-up performance included in a post-watershed broadcast, was clearly aimed at the adult audience who were watching the comedian and were the target audience of the *Russell Howard Dingleododies* programme. In Ofcom’s view this joke contained adult humour and was not suitable for children.

We then assessed whether it was appropriately scheduled. We noted that the Comedy Central channel is not aimed at children nor on the whole likely to appeal to them. Nonetheless this trailer was broadcast on 18 February 2015 in the morning during the school half-term holidays, which meant it was shown at times when children were available to view. Further, Ofcom was aware that this trailer was broadcast on other dates and times pre-watershed during episodes of *Friends*. As demonstrated by BARB audience data for Comedy Central, *Friends* is a programme likely on occasions to attract a significant child audience when shown pre-watershed. Therefore, even though in this case the BARB data indicated a zero child audience, it

was nonetheless scheduled on various dates and at times when children were available and likely to view.

We took into account the clear adult tone and the humour of this trailer which meant that, in our view, the use of the word “vagina” in these circumstances was unsuitable for children. By showing this trailer on dates and at times when children would be watching or were available to view, the Licensee did not schedule it appropriately.

Ofcom has welcomed the Licensee’s further comments in response to the Preliminary View in which it has “fully” accepted Ofcom’s findings and was now taking steps to ensure compliance going forward.

### **Decision: Breach of Rule 1.3**

***I Live With Models Trailer, Comedy Central Extra, 18 February 2015, 09:46, (and various other dates and times pre-watershed on Comedy Central); and I Live With Models Trailer, Comedy Central, 3 March 2015, 15:45 (and various other dates and times pre-watershed)***

The first of the two trailers for the new series *I Live With Models* introduced the male model character Enrique. The trailer included a clip of the male model saying he kept getting “deep feelings” for the model Poppy Delevigne. He then said he wanted to “do her” but also wanted “to talk to her”; he wished to “take her out to dinner” and “do her”; and, “I want to settle down with her and do her”.

The second trailer introduced the main character Tommy who was described by a voiceover as “getting the best hand job” as a hand model. His manager tells him “no jacking off” and Tommy replies, “I can keep it to the weekend”.

#### *Response*

In its initial response to Ofcom, the Licensee said that the “do her” phrase used by Enrique in the first trailer was not a phrase children would understand in a sexual context. However, in any case, it considered that it was a “very mild phrase predominantly used by teens” who would therefore already understand its meaning while younger children would not. The Licensee argued that, as the trailer was not in any way explicit and Enrique’s behaviour was implicitly criticised by the women around him at the time, this trailer was suitable to be shown during the daytime.

With regard to the second trailer referring to Tommy getting “the world’s best hand job”, Paramount UK considered this “playful double entendre”. Its compliance team had agreed that this could be included on the condition that no visuals were added “to add to innuendo”. It was therefore considered “playful enough not to cause offence”. However, given that the Licensee was aware that the reference to “jacking off” may lead to “difficult questions from children”, Paramount UK said it restricted the trailer to its ‘Ex-kids’ schedule<sup>9</sup> so it was not shown between 16:00 and 19:00 on weekdays or on weekend mornings between 08:00 and 12:00.

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<sup>9</sup> See footnote 2.

## Decision

The first of these two trailers included three references to the term “do her” made by the character Enrique. In Ofcom’s view the term “do her”, repeated three times in close succession, clearly meant that the male model wanted to have sex with the female model. In Ofcom’s view this use of the term “do her” to mean “have sex with” in the context of a trailer had a far stronger impact than when used in the programme itself, where the nature of the content and characterisation would have helped provide context. In Ofcom’s view, in this pre-watershed trailer, the repeated and crude references by a man to wanting to have sex with a woman had an obvious adult tone and were not suitable for children.

In the second trailer, Ofcom accepted that the references to the character Tommy getting “the world’s best hand job” and “jacking off” relied on double meaning and innuendo. However these references, when taken together and repeated one after the other within the limited context of a trailer, reinforced their meaning as being about masturbation. In Ofcom’s view the references went beyond simple comic innuendo and, in the context of the adult tone and humour of this second trailer, were also not suitable for the pre-watershed audience.

We went on to assess whether these trailers were appropriately scheduled. We noted that the first trailer was scheduled on Comedy Central and Comedy Central Extra pre-watershed without scheduling restrictions at times during the school holidays, weekend afternoons and when children returned from school so children were available to view. At such times, parents could reasonably have expected all material broadcast, including the trailers, to be suitable for young viewers. Further, on Comedy Central it was broadcast pre-watershed during back-to-back episodes of *Friends*, a series which BARB data has indicated is likely to attract a child audience on occasions when shown pre-watershed on Comedy Central.

We took into account that Paramount UK did restrict the second trailer to its ‘Ex-kids’<sup>10</sup> schedule with the intention that it would not be shown at times when the Licensee considered children were more likely to be viewing. Nonetheless, we noted that it was broadcast on 3 March 2015 on both Comedy Central and Comedy Central Extra pre-watershed at times when children were available to view. The ‘Ex-kids’ restriction as applied by the Licensee on the “jacking off” trailer did not apply to weekend afternoons, school holidays or the period from 19:00 and therefore did not provide appropriate scheduling in this case. As *Friends* was scheduled at these times on Comedy Central, and was likely to attract a child audience, Ofcom considered that this restriction was clearly not sufficient to protect children who may be in the audience.

An ‘Ex-kids’ restriction can be applied to advertisements to help broadcasters schedule them suitably so as to comply with the BCAP Code. As with Audience Indexing, it is not designed as a tool to assist broadcasters to take decisions about when to schedule pre-watershed programming (including trailers). If broadcasters wish to rely to some extent on an ‘Ex-kids’ restriction to schedule pre-watershed trailers appropriately, they must ensure they do not do so in a mechanical way by reference to times of broadcast, but take careful account of the nature of the programmes around which the trailers are being scheduled (such as *Friends*).

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<sup>10</sup> See footnote 2.

Ofcom however did not consider that these factors were sufficient to ensure that these trailers were suitable for children and were appropriately scheduled, for the reasons already set out.

Ofcom has welcomed the Licensee's further comments in response to the Preliminary View in which it has "fully" accepted Ofcom's findings and was now taking steps to ensure compliance going forward.

### **Decision: Breach of Rule 1.3**

***Brickleberry Trailer (Panda)*, Comedy Central, 4 March 2015, 17:17 (and various other dates and times pre-watershed); *Brickleberry Trailer (Cat)*, Comedy Central, 8 March 2015, 10:35 (and various other dates and times pre-watershed); *Brickleberry Trailer (Eagle)*, Comedy Central, 4 May 2015, 18:45 (and various other dates and times pre-watershed); and *Brickleberry Trailer (Horse)*, Comedy Central, 3 May 2015, 19:30 (and various other dates and times pre-watershed)**

These animated trailers for this adult-themed animated series set in an American National Park featured cartoon animals being killed in a variety of different ways:

- the panda trailer showed a baby panda sneezing and the mother panda instantaneously reacting by pulling the baby panda's body apart. The cartoon baby panda was shown in its mother's paws in two pieces with blood spurting from its body;
- the cat trailer featured a cat trapped up a tree being coaxed down by a park ranger who encouraged it to jump. The cat was then shown falling from the tree into a tree shredder and its blood was shown spurting out of the machine and onto a girl's face;
- the eagle trailer featured a bald eagle whose nest of eggs was disturbed by a park ranger so the eggs smashed onto the ground. The eagle then reached into the ranger's holster, removed his gun and shot itself in the head; and
- the horse trailer featured a horse being hanged by its neck by a rope from a tree.

### *Response*

In its initial response to Ofcom, the Licensee said that the popularity of adult-themed animation meant that there was no longer an audience expectation that animation was only aimed at children. The purpose of the trailers was to make clear to the audience that this series was in the style and tone of other adult animation series such as *Family Guy* and it was not a child friendly show. It was agreed that the most effective way of achieving this was to create a sequence of trailers that introduced *Brickleberry* as somewhat idyllic and then reveal its "mature and surreal reality".

In this trailer, Paramount UK said it had continued its approach of using longer and "context-driven" sequences in trailers, as opposed to the out of context "best of" clips format. This was to ensure its suitability for showing pre-watershed and there was no attempt to mislead viewers that these trailers were for a children's cartoon. In the Licensee's view, the trailers therefore required no scheduling restrictions. It said this view was supported by the fact that all broadcasts of this trailer registered a zero or

very low Child Index, well below what the Licensee described as its “acceptable Child Index” of 120.

The Licensee accepted that the “nonsensical” deaths of animals might have caused some viewers to consider these trailers to be in bad taste, but this was “not enough” to warrant a breach of the Code as the animation and scenes were “clearly ridiculous”.

### *Decision*

Ofcom was of the view that because this animation series was clearly aimed at an adult audience, these events were depicted in a way which, although surreal and darkly humorous for some adults, could have been distressing for children. The potential distress was increased by the fact that, in Ofcom’s view, the nature and subject matter of the trailers might have appealed to child viewers: all the trailers featured cartoon animated animals and several also depicted children and animals in a National Park setting. After starting in quite an idyllic style however the trailers rapidly progressed to show the animals being killed or committing suicide in a sudden, dramatic and gory way. For some adults these trailers may well have resulted in surreal humour. However, Ofcom considered that the adult tone and humour of these clips from the animation series clearly made them unsuitable to be included in pre-watershed trailers.

Ofcom went on to consider whether the trailers were scheduled appropriately. The four trailers were broadcast at various times but notably over weekends and on a Bank Holiday Monday when children would have been available to view. We also took into account that the trailers were all scheduled during back-to-back episodes of *Friends*. We noted that the BARB audience figures indicated that on occasions a significant number of children viewed the trailer. For example: on 4 March at 17:15, about 4,500 children were watching (13.3% of the 33,900 total viewers), of whom 4,300 were aged ten to 15; and, on 4 May at 18:45 some 5,300 children were viewing (17.7% of the 30,000 total viewers), all of whom were aged ten to 15.

After being contacted by Ofcom about its potential concerns and before knowing Ofcom’s Preliminary View in this case, the Licensee decided to change the scheduling of trailers for this series from 6 May. *Brickleberry* trailers featuring animals were moved to a post-watershed time and in future no trailers for the series would feature animals dying.

Ofcom’s view was that these trailers clearly contained material unsuitable for children when shown pre-watershed for the reasons set out above, and given that children were widely available to view them when broadcast pre-watershed, they were not appropriately scheduled.

Ofcom has welcomed the Licensee’s further comments in response to the Preliminary View in which it has “fully” accepted Ofcom’s findings and was now taking steps to ensure compliance going forward.

### **Decision: Breach of Rule 1.3**

***The Roast of Justin Bieber Trailer, Comedy Central, 14 March 2015, 08:37 (and various other dates and times pre-watershed)***

This trailer promoted a forthcoming programme about the “roast” of pop celebrity and singer Justin Bieber by referring to four different meanings of “roast” and demonstrating them using a small “Ken” style doll to represent Justin Bieber, accompanied by music clips from his greatest hits.

The various dictionary style meanings for “roast” appeared on-screen in text and were also spoken in a voiceover while being illustrated by means of the “Ken” style Bieber doll. The meanings given in narration and text were: “*roast (verb): to cook by exposure to dry heat*” which featured the doll being grilled on a rotating spit; “*roast (noun): a meal often served on a Sunday or a festive celebration*” which showed the doll trussed up and being served on a platter; “*roast, naughty: an intimate act between three consenting adults who love one another*<sup>11</sup>” which showed the doll on all fours as two other dolls approached it, one towards his rear and the other towards his head; and, finally “*roast Comedy Central: an event in which a guest of honour is torn a new one by their contemporaries*”.

*Response*

In its initial response to Ofcom, the Licensee considered that the decision to use “Ken” style dolls did not make the trailer any more appealing to children. The Licensee said that because Justin Bieber had an appeal to children, it had taken measures to ensure that the trailer was suitable for children and that it was unlikely to be of interest to them. For example, when referring to the third meaning of the word “roast” within the trailer, this appeared as text on-screen as “*roast (spit)*” but the narrator said “*roast, naughty*”, and it was “humorously defined as an act between three consenting adults that love one another”, to describe a sexual activity involving three people male or female.

Paramount UK stated the phrase was carefully chosen to ensure that children would “not be able to understand the sexual connotations.” It considered that adults “would get the reference” but it was “impossible” that children would, unless they were already aware of the sexual act. The Licensee added that the three dolls were not shown making any sexual actions. The Bieber doll was shown clothed on all fours while the two other dolls approached (one towards the doll’s head, the other towards its rear) so that, in the Licensee’s view, only those with a prior understanding of the sexual act would understand the reference.

*Decision*

Ofcom was concerned about the suitability of one of the definitions of “roast” illustrated within the trailer by using a “Ken” doll to represent Justin Bieber and referring to a sexual activity. The voiceover said it meant “*an act between three consenting adults that love one another*”. The dolls shown in this segment of the trailer were not depicted acting out the sexual meaning of the term “roast (spit)”. However, in Ofcom’s view the definition given – taken together with the movement and positioning of the three dolls – clearly implied the nature of the sexual activity, given that the Bieber doll was on all fours and the other two dolls were shown

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<sup>11</sup> The caption on screen (“*roast (spit): naughty, an intimate act between three consenting adults who love one another*”) was slightly different to the spoken words as it included the word “spit” which was not spoken in commentary.

approaching it from behind and towards the head. In addition, this definition of the word was described in the voiceover as “naughty”.

Ofcom did not agree with the Licensee that children would simply be unable “to understand the sexual connotations” or that it was “impossible” that children would understand the sexual reference “unless they were already aware of the sexual act”. As already pointed out, younger children may not have understood the sexual reference, but in Ofcom’s view a number of older children may have. The fact that they were aware did not mean the reference was suitable to include in a pre-watershed trailer. Overall, this segment of the trailer gave it a clear adult tone and in Ofcom’s opinion was unsuitable for children.

Ofcom therefore considered whether the trailer had been appropriately scheduled. We noted it was broadcast pre-watershed on various dates and at various times, during the daytime and over a weekend when children were available to view, and during back-to-back episodes of *Friends*. As demonstrated by BARB audience data for Comedy Central, *Friends* is a programme likely on occasions to attract a significant child audience when shown pre-watershed. Therefore, even though on 14 March at 08:37, the BARB data indicated a zero child audience, it was nonetheless scheduled on other dates and at times when *Friends* was broadcast and therefore when children were available and likely to view. For these reasons, this trailer was not appropriately scheduled.

Ofcom noted the steps which Paramount UK said it took to make this trailer suitable for child viewers, by for example making the reference to the sexual meaning of “roast (spit)” more indirect and less clear. However, our view was that these steps were insufficient.

Ofcom has welcomed the Licensee’s further comments in response to the Preliminary View in which it has “fully” accepted Ofcom’s findings and was now taking steps to ensure compliance going forward.

### **Decision: Breach of Rule 1.3**

#### ***John Bishop Live Trailer, Comedy Central Extra, 27 March 2015, 15:42 (and various other dates and times pre-watershed on Comedy Central)***

This trailer included three jokes delivered by comedian John Bishop to an audience during a recorded stand-up routine. Before each joke was delivered a different caption appeared. The first was: “*John Bishop on Literature*”. The trailer then returned to John Bishop on stage performing a joke in his routine: “*All the women in here who have read Fifty Shades of Grey give me a cheer. [Loud cheers from the adult audience]. Sluts*”. The caption “*John Bishop on Lingerie*” then appeared and the trailer returned to John Bishop on stage: “*The Wonderbra is basically like an Easter egg. Looks like there is loads in there but when you get inside there is not even a mouthful*”. Finally after the caption “*John Bishop on Marriage*”, the trailer cut back to John Bishop on stage again saying: “*Marriage is like a dishwasher to begin with. Then after a while I think it would be quicker and easier to just do it myself.*”

#### *Response*

In its initial response to Ofcom, the Licensee explained that this trailer was intended to introduce the style of the comedian John Bishop and the word “*sluts*” was not unsuitable for children. Paramount UK said the laughter from the venue audience

underlined this and rather than offending the audience, John Bishop was teasing and smiling in his delivery as he tricked the audience into admitting they had read *Fifty Shades of Grey*. The word “*sluts*” was not delivered with any malice and the “playful” nature of the clip meant that, in the Licensee’s view, this trailer was suitable for broadcast during the day and not in breach of Rule 1.3. The Licensee offered no further comments on the other jokes delivered as part of the edited clips of the stand-up routine used in the trailer.

### *Decision*

Ofcom’s concern here was primarily the use of the word “*sluts*” in a trailer where the context was clearly adult humour aimed at the adult audience watching the performance. Ofcom’s 2005 offensive language research stated as regards the word “slut” that “[m]ost women find this moderately to strongly offensive – like all words referring to sexual behaviour”<sup>12</sup>. Ofcom did not specifically research this word in its 2010 offensive language research. In our opinion however it is generally regarded as being akin to “slag”, both in terms of meaning and the level of offence it can cause. The term “slag” was researched in 2010 and audiences found it to be a word of “medium acceptability” like “bitch” (see comments above regarding the *Countdown to Christmas Comedy* trailer)<sup>13</sup>. Ofcom’s view is that broadcasters need to take care when using a word like “*sluts*” in pre-watershed trailers, especially at times when children are available to view.

The word was not used in an aggressive way, but Ofcom did not agree with the Licensee’s other points. The jokes were clearly delivered as part of a stand-up comedy routine, but the routine was performed in front of an adult audience, and the routine (like the programme the trailer was promoting) was clearly intended for, and aimed at, adults. The use of the word “*sluts*” in this joke was used in relation to female members of the audience who might have read the adult book *Fifty Shades of Grey*. The two further jokes that followed were about small breasts in a Wonderbra and masturbation within a long term relationship. In Ofcom’s view all of the jokes in this trailer had a clear adult tone and implied sexual connotations, and some children (especially older ones) would have been capable of understanding this sexual context.

For these reasons, Ofcom considered this material was unsuitable for children.

We went on to consider whether the Licensee had scheduled this trailer appropriately to ensure compliance with Rule 1.3. Paramount UK informed Ofcom that it had given this trailer its ‘Ex-kids’ rating with the aim that it would not be scheduled at certain times when children were more likely to be watching (i.e. between 16:00 and 19:00 weekdays, and 08:00 and 12:00 weekends). We noted however that this trailer was shown at various times outside the Licensee’s ‘Ex-kids’ restrictions when children were available to view. This was most notably on Comedy Central during the afternoon and early evening, pre-watershed and during back-to-back episodes of *Friends*, which is a programme that the BARB data has indicated is likely on occasions to attract a significant child audience. For these reasons this trailer was not appropriately scheduled.

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<sup>12</sup> <http://stakeholders.ofcom.org.uk/binaries/research/radio-research/language.pdf>, p.84.

<sup>13</sup> See 2010 research, p.91 (footnote 2).

Ofcom has welcomed the Licensee's further comments in response to the Preliminary View in which it has "fully" accepted Ofcom's findings and was now taking steps to ensure compliance going forward.

### **Decision: Breach of Rule 1.3**

#### ***Walking Dead Trailer, Comedy Central, 25 April 2015, 16:30 (and various other dates and times pre-watershed)***

This trailer, for the post-watershed programme *Walking Dead* (an American horror series portraying life in a world dominated by zombies) included a montage of short, tightly edited clips from the series accompanied by dramatic music. The clips included: a gagged and bound man about to be hit from behind with a baseball bat; a close up shot of a zombie biting into a lump of flesh; zombie hands grasping at a window; an explosion with bodies flying into the air; a zombie face with the flesh removed so that it resembled a skull; a man on fire; a man about to be hit by a bat from behind; a man about to stamp his foot down aggressively on to body; a person holding a knife over a baby in a cot; and, thick blood running into a plug hole.

#### *Response*

In its initial response to Ofcom, the Licensee said that the trailer introduced new viewers to the apocalyptic world and the fact that the series was "not just about zombies". It featured multiple action shots to "entice" viewers who may have heard of the series but had yet to experience it. Paramount UK considered the trailer "thrilling, not horrific" and the images of the zombies were brief and "not graphic enough to upset children". The Licensee added that there was an implication of violence but none was seen, and the suggestion of horror (cannibalism) was only implied. In the Licensee's view children were "unlikely to understand the inferences".

The Licensee said it had applied its 'Ex-kids' scheduling restriction<sup>14</sup> to this trailer so that it was not scheduled at times when children were likely to view. However, Paramount UK later clarified to Ofcom that an unplanned change in the schedule meant it had mistakenly shown this trailer outside its "Ex-kids" restriction and at times when children were available to view.

#### *Decision*

In Ofcom's view the montage of clips in this trailer, taken from the post-watershed series, were violent and horrific. The audio in the clips included phrases like "*join us or feed us*" and "*they're the butcher, we are the cattle*", interspersed with fast moving images of horrific scenes such as: a skull like zombie; an explosion with bodies flying into the air; a zombie biting into flesh; a person standing menacingly with a knife over a baby in a cot; and, two men tied up and kneeling about to be beaten about the head with clubs.

Ofcom considered that the images and audio taken together ensured that child viewers would have been able to understand the editorial premise of this adult series i.e. a world inhabited by zombies driven by an instinct to bite and eat other living animals, and especially humans. The cumulative effect of these images, the dialogue and the dramatic music resulted in a trailer which was frightening and menacing, and

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<sup>14</sup> See footnote 2.

contained adult themes and images which Ofcom considered were unsuitable for children.

We therefore assessed whether this trailer was appropriately scheduled. The Licensee's representations stated that it had placed its 'Ex kids' scheduling restriction on the trailer and that in its view this measure fulfilled its "obligation to comply with Rule 1.3." Ofcom noted however that this trailer was shown outside of the times of the Licensee's own 'Ex-kids' restriction, for example on weekdays at times when children would have been returning from school, and after midday on a weekend. For example this trailer was shown on Comedy Central on 25 April 2015 (a Saturday) at 16:30 when the channel was broadcasting back-to-back episodes of *Friends*. BARB audience figures indicated that a significant number of children viewed this trailer on this occasion. Between 16:30 and 16:45 about 6,200 children were watching when this trailer was broadcast (15% of the total 40,900 audience). All of the children watching were between the ages of 10-15. In Ofcom view, viewers (and in particular parents and carers) would not have expected a trailer of this nature to be scheduled on a Saturday afternoon during a programme like *Friends* which on occasions attracts a significant child audience when shown pre-watershed on Comedy Central.

Ofcom has welcomed the Licensee's further comments in response to the Preliminary View in which it has "fully" accepted Ofcom's findings and was now taking steps to ensure compliance going forward.

### **Decision: Breach of Rule 1.3**

#### ***South Park Erection Special, 30 April 2015, 19:30 (and various other dates and times pre-watershed)***

This trailer was presented in the style of a spoof election broadcast to promote a *South Park Erection Night Special* (to be broadcast on the night of the UK General Election i.e. 7 May 2015). The voiceover was as follows: "*On May 7 only South Park can unite the nation around a shared love of knob gags, immigration, education, crime, and vaginas...*[a clip from the programme showing an anatomical drawing of the female reproductive system was featured at this point]...*are a bit complicated, where as a knob is easy to understand* [a clip from the programme of a cartoon stick man with a penis was shown]. *And funny.*" The trailer was broadcast during the broadcast back-to-back of episodes of *Friends*.

#### *Response*

In its initial response to Ofcom, the Licensee stated that this "surreal" trailer was scheduled to be broadcast after 19:00 and therefore the use of the word "knob" "did not seem too strong a word" particularly as Ofcom's research on offensive language considered it as "not offensive/mild". The use of the word "vagina" was similarly inoffensive in the view of Paramount UK and the accompanying drawing on the blackboard was not "pornographic" but typical of a sex education lesson. The picture of the chalk drawn naked man in profile with a penis on a blackboard was "crudely drawn" and was obviously intended for humour and not intended to offend. According to the Licensee therefore when the name of the themed night, *Erection Special*, was revealed it would have been anticipated by the audience. The Licensee considered that the trailer was "so over the top" and that it was "too ridiculous to be taken seriously" for the trailer to be unsuitable for children.

Paramount UK referred again to Audience Indexing data for broadcasts of this trailer. The Licensee said that in the majority of cases when the trailer was broadcast there was a Child Audience Index of zero and the highest rating was 79, which it described as being below the threshold of 120. However, following Ofcom's contact about complaints it had received, the Licensee stated it moved the scheduling from post 19:00 to post 21:00.

### *Decision*

*The South Park Erection Special Trailer* included typical humour from this post-watershed programme with references to “knob gags” and “vaginas”, as well as a chalk sketch of a stick man with a penis on a blackboard (“a knob is easy to understand”). However, as set out in Ofcom's guidance, the Licensee needed to ensure that care was taken to ensure the post-watershed clips used in this pre-watershed trailer were suitable for a pre-watershed audience which was likely to include children.

Ofcom considered that the humour was satirical and to some extent surreal, but that it was also clearly adult in tone. While there is of course no prohibition on words such as “knobs” and “vagina” being used pre-watershed, broadcasters must take care to ensure the context is appropriate to ensure children are protected. This is particularly the case with pre-watershed trailers, where viewers come across them unawares. In this case the adult tone and humour of the post-watershed programme which this trailer was promoting suffused the trailer itself. As a result in Ofcom's opinion it was unsuitable for children.

As regards appropriate scheduling, the Licensee gave this trailer a post 19:00 scheduling restriction to reflect the fact that Paramount UK considered it was “edgier” and more suitable for an evening audience. This was clearly helpful in protecting children to some extent. However, we noted that the trailer was broadcast on Comedy Central during back-to-back episodes of *Friends* in the early evening, and that after 19:00 *Friends* attracted a significant child audience. Between 19:15 and 19:30 on 30 April for example some 18,200 children (19.8% of the 80,000 total audience) were watching *Friends* just before the trailer was broadcast at 19:30. Of these, 10,600 children were aged 10-15, and 5,400 were age 4-9.

We noted that when Ofcom first raised its potential concerns with the Licensee about this trailer on 6 May 2015, Paramount UK immediately moved it to post-watershed scheduling only. However, the language, humour and tone of this trailer was unsuitable for children, and it was not scheduled appropriately when broadcast pre-watershed on Comedy Central over a period of days after 19:00 and during *Friends*.

Ofcom has welcomed the Licensee's further comments in response to the Preliminary View in which it has “fully” accepted Ofcom's findings and was now taking steps to ensure compliance going forward.

### **Decision: Breach of Rule 1.3**

#### ***Broad City Trailer, Comedy Central, 10 May 2015, 16:59 (and various other dates and times pre-watershed)***

This trailer introduced the two main female characters, Abi and Ilana, in a montage of tightly edited clips taken from this post-watershed series. These included:

- a topless Ilana shown from the side with one breast pixelated;
- Abi and Ilana having the following conversation. Ilana: “*I’m like so hard right now.*” Abi: “*Hard?*”, Ilana: “*Yeah, you know you don’t like the word horny*”;
- Abi riding a bike through the streets of Manhattan with her legs open and her genital area pixelated;
- Ilana referring to a naked man’s body (not shown from the waist down) and saying “*...that penis is pink?*”

### *Response*

In its initial response to Ofcom, Paramount UK said that *Broad City* was a post-watershed series containing adult and sexual themes and therefore careful consideration was given to the footage used in the trailer. While the Licensee stated it was of “paramount importance” to comply with the Code, it also considered it was important for Comedy Central to be able to convey “the spirit and nature of the series”.

The Licensee’s view was that the clips used in the trailers struck the right balance between being playful and humorous without being overtly sexual. In particular Paramount UK said: the first scene where the character Ilana was topless was not sexual or suggestive of sexual activity and the shot was entirely pixelated and therefore it was not unsuitable for children; the later scene where Abi was shown riding a bike and her genital area was pixelated displayed nothing sexual or intrinsically adult and the pixelation ensured it was suitable for daytime broadcast; and the comment by Ilana that a man’s penis was pink was “a matter of fact comment” about a part of a man’s anatomy as opposed to any depiction of sexual activity. In the opinion of Paramount UK the word “penis” was not used so as to make this material in the trailer unsuitable for children.

### *Decision*

This trailer introduced viewers to the two female characters, Abi and Ilana, of this new post-watershed series in a montage of tightly edited clips which included images of a pixelated breast, and genitals and sexualised comments. *Broad City* contains adult humour and sexual themes and therefore, as set out in the guidance on the watershed, the Licensee needed to ensure that care was taken to ensure the post-watershed clips used were suitable for a pre-watershed audience. Ofcom considered that the clips which showed pixelated genitals and breast, a reference to a naked man’s “pink” penis and a discussion about feeling “horny” were clearly adult in tone and humour and not suitable for a pre-watershed audience.

Ofcom therefore considered whether Paramount UK had appropriately scheduled this trailer. It was shown on a Sunday afternoon on 10 May 2015 at a time when children were available to view. Further, this trailer was broadcast on this occasion, and on other dates and times pre-watershed, during episodes of *Friends*. As demonstrated by BARB audience data for Comedy Central, *Friends* is a programme likely on occasions to attract a significant child audience when shown pre-watershed. Therefore, even though on 10 May 2015 at 16:49 the BARB data indicated a zero child audience, the trailer was nonetheless scheduled on other dates and at times when children were available and likely to view.

While Ofcom accepted that each individual clip from the series in the trailer was not “overtly sexual”, we considered that they each retained the adult tone and humour of the post-watershed programme. The cumulative impact of the clips (including the

pixelation of bodies, the discussion about feeling “hard” and “horny” and the reference to the penis of a naked man – the lower half of his body was not in shot) resulted in a trailer which was not suitable for children. Further, because this trailer was broadcast pre-watershed at a time when children were available to view, it was not appropriately scheduled.

Ofcom has welcomed the Licensee’s further comments in response to the Preliminary View in which it has “fully” accepted Ofcom’s findings and was now taking steps to ensure compliance going forward.

### **Decision: Breach of Rule 1.3**

#### Rules 1.3 and 2.3

#### **Russell Howard, Comedy Central, 30 April 2015, 15:30 (and various other dates and times pre-watershed)**

This trailer featured Russell Howard doing a stand-up joke and introducing the comedian Rob Delaney. The trailer then included a clip of Rob Delaney delivering the following joke in front of an adult audience as part of his stand-up routine:

*“I want to do a quick commercial for fingering because I’ve just learnt how to do it. My wife pulled me to one side because she said: “What are you doing down there? I hate it, I hate you, you’re damaging me.”*

The comedian then repeatedly imitated the action of sexually stimulating his wife by making a hand and finger movement around his groin area, as he related what his wife said next: *“Here’s the thing – you are working way too hard you know. You just basically have to go into the foyer. It’s more of a lalalalala, lalalala...lalalala.”*

#### *Response*

In its initial response to Ofcom, the Licensee explained that unlike other trailers which included a montage of clips, this trailer featured one continuous clip of Rob Delaney’s act “giving viewers more context than a trailer would usually allow.” The trailer opened with Russell Howard introducing Rob Delaney followed by a clip of his act and this, Paramount UK said, provided the audience with “much more context” than typical taster trailers. Rob Delaney’s routine, framed by Russell Howard’s introduction and Rob Delaney’s own introduction, “did not make the concept of fingering offensive or too graphic for daytime”. There were no graphic or explicit comments, euphemisms were used, and the light-hearted approach with self-deprecating comments did not refer to “fingering” as a sexual act.

The Licensee added that whilst the act was “clearly implied” it would only be known to those “already familiar” with what was being described. Paramount UK argued that the reference to “fingering” was not pornographic in description, and that Rob Delaney did not make any sexual comments or act in an overtly sexual way that “suggested pleasure or other inappropriate response”. Paramount UK considered that the trailer was “edgy” but the Licensee said it was confident that its non-graphic, playful tone would not exceed the expectations of the audience already familiar with the channel’s irreverent style. It added that audience figures suggested that only a small number of children might have been available to view. The Licensee argued that regarding any children who did watch this material, many would not understand a discussion about “fingering” while the remainder would find it “an amusing take on

the act, not something offensive or unsuitable for daytime.” Therefore Paramount UK considered this trailer suitable for broadcast during the daytime.

### *Decision*

#### *Rule 1.3*

Rob Delaney’s opening line in the clip was: “*I want to do a quick commercial for fingering because I’ve just learnt how to do it.*” The comedian then imitated the action of sexually stimulating his wife by repeatedly making a hand movement around his groin. In Ofcom’s view this comedy routine (like the programme the trailer was promoting) was clearly intended for, and aimed at, an adult audience because it involved a discussion about a sexual act between, and understood by, adults. The language used by Rob Delaney in this clip, when taken together with his actions, underlined the adult humour and tone of the routine and Ofcom considered that the subject matter would have been understood by some, and particularly older, children. In the context of a trailer broadcast during the day which viewers would have come across unawares, Ofcom considered this trailer was unsuitable for children.

As regards appropriate scheduling, we noted that Paramount UK considered this trailer was suitable for broadcast at all times pre-watershed without scheduling restrictions. On 30 April however the Licensee broadcast it during back-to-back episodes of *Friends* and at a time when children were returning from school and available to view. BARB audience figures indicated that between 15:15 and 15:30 about 4,100 children were watching *Friends* before this trailer was shown at 15:30. This represented 9.6% of the total audience. All the children viewing at this time were aged ten to 15.

The extended nature of the clip did provide more context than is normal in many trailers, but in Ofcom’s view this underlined its unsuitability for children rather than mitigated it. The subject of sexual stimulation can in principle be broadcast before the watershed but, if doing so, a licensee must take care to schedule it appropriately, and if including it in a trailer needs to take special care. Paramount UK did not take such care in Ofcom’s view in the current case. Further we considered that the subject matter would have understood by some, and particularly older, children, and the fact that it was presented in a light hearted and humorous way was not a sufficient reason to conclude that it was appropriately scheduled.

#### *Rule 2.3*

Under Rule 2.3 broadcasters are required to ensure that material which may cause offence is justified by context. Context takes into account factors such as the editorial content of the material, the time of broadcast, the degree of offence likely to be caused and audience expectations.

Adult viewers of Comedy Central expecting to watch *Friends* in the middle of the afternoon would have come across this trailer unawares. In Ofcom’s view, the clip of Rob Delaney, discussing and illustrating with a hand gesture the sexual stimulation of his wife, when shown before the watershed, was capable of causing offence. We therefore assessed whether it was justified by the context. On balance in our opinion it was not. The clip was clearly part of a comedy routine aimed at an adult audience and in our opinion the content of this trailer would not have been in line with viewers’ expectations, when shown in the middle of the afternoon during *Friends*.

Ofcom has welcomed the Licensee's further comments in response to the Preliminary View in which it has "fully" accepted Ofcom's findings and was now taking steps to ensure compliance going forward.

### **Decision: Breaches of Rules 1.3 and 2.3**

#### Conclusion

These pre-watershed trailers included themes and content aimed at an adult audience. This tone was set by adult comedy, language and innuendo and also by using clips from post-watershed programming which, in Ofcom's view, were clearly unsuitable for a pre-watershed audience. Some of the trailers also included a number of sexual references which were not always explicit but at times, in Ofcom's view, relied on unsuitable sexual innuendo. Many in the audience – and especially parents – would not have expected trailers with this adult and sexual tone and humour to be shown around and in programmes broadcast pre-watershed – a period of time when there is always a likelihood that children, some unaccompanied, would be available to view.

In addition, we noted that in many instances these trailers were broadcast when children were returning from school, and during the weekend, Bank Holidays and school holidays. Further, the trailers were scheduled around and during programmes which with appeal to a child audience, such as *Friends*, and in one case *Penguins of Madagascar*. Ofcom was concerned that the Licensee was aware as early as the beginning of January 2015 when the *Drunk History Trailer* was first broadcast that it was broadcasting *Friends* at times pre-watershed when it knew children were available to view, and on occasions were likely to view in significant numbers. Nonetheless, Paramount UK continued to schedule these trailers with an adult tone and adult language and humour around and during episodes of *Friends* and at weekends and during school holidays.

When deciding the content and scheduling of these items pre-watershed, Ofcom was concerned that the Licensee did not take sufficient account of the potential child audience at particular dates and times, the unsuitability of the content, and of the fact that the material was contained in trailers. The Code requires licensees to protect *all* children under the age of 15 from potentially unsuitable content. Because trailers come into the home unscheduled parents cannot make a decision as to whether they are suitable viewing for their children, whatever their age or level of knowledge or experience.

We noted that in response to potential concerns expressed by Ofcom to the Licensee while investigating these cases, Paramount UK did make changes to the scheduling of a few trailers (e.g. the *Brickleberry* trailers). However, Ofcom was concerned by the number of Code breaches listed in this Decision and the unsatisfactory compliance approach and decisions which lay behind them, including occasions when it appeared the Licensee was unable to ensure decisions of its own internal compliance department were implemented correctly and to make changes to scheduling in a timely way.

Ofcom has welcomed the response from Paramount UK to Ofcom's Preliminary View in this case, in which the Licensee stated that it: "fully" accepted Ofcom's findings; apologised; acknowledged that it had "pushed the boundaries of our compliance practices for promos too far in recent months"; and, said it was "now implementing new processes and practices to ensure it would be fully compliant going forward". It also welcomed (in response to Ofcom's request as originally set out in the

Preliminary View) the opportunity to attend a meeting with Ofcom to discuss the effectiveness of Paramount UK's compliance of pre-watershed trailers broadcast on Comedy Central and Comedy Central Extra. Ofcom intends this meeting to take place as soon as practicable.

However, Ofcom is currently investigating a number of other cases involving pre-watershed trailers broadcast on Comedy Central and Comedy Central Extra. Ofcom will therefore wait until it concludes these other cases, and has met with the Licensee, before deciding on any further appropriate regulatory action.

Ofcom reminds broadcasters that advertising scheduling restrictions and guidance (for example on Audience Indexing) are not intended to serve as the basis for compliance decisions on the scheduling of pre-watershed programme trailers.

### **Breaches of Rule 1.3**

***Countdown to Christmas Comedy Trailer, Comedy Central, 24 December 2014, 09:30***

***Drunk History Trailer, Comedy Central, 4 January 2015, 15:45***

***Russell Howard Dingleberries Trailer, Comedy Central, 18 February 2015, 08:48***

***I Live With Models Trailers, Comedy Central and Comedy Central Extra, 18 February 2015, 09:46, and 3 March 2015, 15:45***

***Brickleberry Trailer (Panda), Comedy Central, 4 March 2015, 17:17***

***Brickleberry Trailer (Cat), Comedy Central, 8 March 2015, 10:35***

***Brickleberry Trailer (Horse), Comedy Central, 3 May 2015, 19:30***

***Brickleberry Trailer (Eagle), Comedy Central, 4 May 2015, 18:45***

***The Roast of Justin Bieber Trailer, Comedy Central, 14 March 2015, 08:37***

***John Bishop Live Trailer, Comedy Central and Comedy Central Extra, 27 March 2015, 15:42***

***Walking Dead Trailer, Comedy Central, 25 April 2015, 16:30***

***Russell Howard Trailer, Comedy Central, 30 April 2015, 15:30***

***South Park Erektion Special, Comedy Central, 30 April 2015, 19:30***

***Broad City Trailer, Comedy Central, 10 May 2015, 16:59***

***All trailers were also broadcast on other various dates and times***

### **Breach of Rule 2.3**

***Russell Howard Trailer, Comedy Central, 30 April 2015, 15:30***

## In Breach

### Norkin's List

NTV Mir Lithuania, 15 February 2015, 19:20

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#### Introduction

NTV Mir Lithuania is a television channel broadcasting to the Russian-speaking community in Lithuania. *Norkin's List* is a weekly current affairs discussion programme of approximately 60 minutes in duration. The licence for NTV Mir Lithuania is held by Baltic Media Alliance Limited ("BMAL" or "the Licensee").

A complainant alerted Ofcom to this programme, stating that the programme incited hatred and crime towards the "Finnish, Baltic, Polish and Ukrainian (ethnic Ukrainian) nations"<sup>1</sup>.

Ofcom obtained an independent translation of the programme from the original Russian to English. We noted that this programme discussed the possibility of there being an enduring peace in south-eastern Ukraine<sup>2</sup>. This programme featured the presenter Andrey Norkin asking questions to two main guests, the Russian politician, Vladimir Zhirinovskiy<sup>3</sup>, and the Russian journalist, Alexey Venediktov<sup>4</sup>. The programme also featured a number of other guest contributors speaking from the studio audience. At the beginning and the end of the programme the presenter asked the studio audience to vote by electronic handsets to express their views on the following question: "*Do you want the current truce to transform into stable peace in Ukraine?*"

Towards the beginning of the programme, we noted the following exchange between Vladimir Zhirinovskiy ("VZ"), Alexey Venediktov ("AV") and the presenter, Andrey Norkin ("AN"):

AV: *"Is our interest that Donbass<sup>5</sup> becomes a part of Russia?"*

VZ: *"If these were Finns, or Baltic<sup>6</sup> nations, or Poles involved in that war that is being waged now in Donbass, I would say: 'Beat them, mash them down – choke them away!' This is who I am! Look, I am being honest here-".*

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<sup>1</sup> On assessment, Ofcom did not consider this programme raised any issues under Rule 3.1 of the Code, which states: "Material likely to encourage or incite the commission of crime or to lead to disorder must not be included in television or radio services". However, after assessment, we considered there were potential issues raised under Rule 2.3.

<sup>2</sup> South-eastern Ukraine is made up of the two regions of Donetsk and Lugansk. The region is also known as the Donbass. This area has been the scene of an extended conflict between pro-Russian separatists and armed forces of the Ukrainian Government.

<sup>3</sup> Vladimir Zhirinovskiy is an elected member of the Russia Parliament (Duma), and leader of the Liberal Democratic Party, which is a far right wing party in Russia.

<sup>4</sup> Alexey Venediktov is a Russian journalist and Editor-in-Chief of the Russian radio station Echo of Moscow.

<sup>5</sup> See footnote 2.

<sup>6</sup> i.e. Estonia, Latvia and Lithuania.

- AV: *“But there are none of them”.*
- VZ: *“But there are Russians there, and that is why I am saying, ‘Take that, Kiev!’ We will wipe out Kiev! We will burn Kiev down! We will napalm<sup>7</sup> them out!”*
- AV: *“So, are you saying ‘Tanks, ahead, to Kiev’?”*
- VZ: *“Not tanks, but napalm. From a distance. From Donetsk<sup>8</sup>. Burn Kiev down! That way, Mr Alexey Alekseyevich”.*
- AV: *“Andrey, let’s vote<sup>9</sup> now!”*
- VZ: *“It’s because this is about Russians there. They wage their war against Russians. They batter Donbass, because they are yet afraid of battering Belgorod<sup>10</sup>, or Kursk<sup>11</sup>, or Moscow”.*
- AV: *“A half of the Kiev’s population is Russians”.*
- AN: *“Quiet please”.*
- AV: *“Vladimir Volfovich, half of the Kiev’s population is Russians! Will you napalm them too?”*
- VZ: *“Let them stand up and fight for Russia in Kreschatik<sup>12</sup> then! Instead of [Inaudible]”*
- AN: *“Gentlemen, please, hold on”.*
- VZ: *“We will burn down only the governmental institutions – only where the government sits. Using surgical precision strikes. We won’t touch the population”.*
- AV: *“Gentlemen, please, calm down a bit. I now ask the audience to vote, answering the question, ‘Do you want the current truce to transform into stable peace in Ukraine?’”*

Shortly afterwards Vladimir Zhirinovsky made a further comment:

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<sup>7</sup> Napalm is a flammable liquid used in warfare, including as an anti-personnel weapon, which sticks to skin and causes severe burns when on fire.

<sup>8</sup> See footnote 2.

<sup>9</sup> As explained above, at the beginning and the end of the programme the presenter asked the studio audience to vote by electronic handsets to express their view about the following question: *“Do you want the current truce to transform into stable peace in Ukraine?”*

<sup>10</sup> A Russian city 25 miles from the border with Ukraine.

<sup>11</sup> A Russian city 100 miles from the border with Ukraine.

<sup>12</sup> One of the main streets of the Ukrainian capital, Kiev.

*“When I say that we should napalm down a city in Ukraine, they say that I am an aggressor! But America insolently declare, ‘We will supply the weapons that will kill all Russians there’. What is this? This is a whole country, not just one man, committing itself to sending deadly weapons to Ukraine. This is the most terrifying”.*

Ofcom considered the above content raised issues warranting investigation under Rule 2.3 of the Code:

“In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...”.

Ofcom asked the Licensee to provide comments on how the programme complied with the above rule.

## **Response**

BMAL considered that the content complied with Rule 2.3 of the Code.

The Licensee said that in order to understand the context of the comments in this case, it was necessary to “fully understand who in reality Vladimir Zhirinovskiy is”. It added that: “Technically, he is the leader of the right-liberal party and the member of the Russia’s Parliament. In reality, he is the harlequin of Russian politics, whose performances in media are more frequent than his sitting in the Parliament”. BMAL also said that Vladimir Zhirinovskiy “often makes radical populist and shocking affirmations; By way of illustration, the Licensee described one of Vladimir Zhirinovskiy’s statements<sup>13</sup> as being “Grotesque, bravado and intentional exaggeration of knowingly unrealizable goals. All of it is obvious to a knowledgeable viewer”.

BMAL argued that “all audiences, including the audience in Lithuania (especially, the Russian-speaking viewers), have clear understanding of who Zhirinovskiy is and do not take his escapades otherwise than with irony”. However, BMAL did not deny that “due to the odium of Zhirinovskiy’s personality he can sometimes make statements that are on the verge of what is permissible”. But it added that “the entire Russian-speaking TV audience understands it too” which was “precisely why during the Programme other participants undertook some attempts” to lessen the potential offence. Therefore, according to the Licensee, the journalist Alexey Venediktov carried “Zhirinovskiy’s statements to the point of evident absurdity” and made “provocative and mocking retort[s]<sup>14</sup>...aimed at emphasizing the absurdness” of Vladimir Zhirinovskiy’s statements. In addition, “the host openly call[ed] Zhirinovskiy to calm down”.

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<sup>13</sup> “We will burn down only the governmental institutions – only where the government sits. Using surgical precision strikes. We won’t touch the population”.

<sup>14</sup> The Licensee cited the following statements made by Alexey Venediktov:

- “So, are you saying ‘Tanks, ahead, to Kiev’?”
- “Vladimir Volfovich, half of the Kiev’s population is Russians! Will you napalm them too?”

BMAL also provided background to the following statement by Vladimir Zhirinovskiy:

*“When I say that we should napalm down a city in Ukraine, they say that I am an aggressor! But America insolently declares, ‘We will supply the weapons that will kill all Russians there’. What is this?”*

The Licensee stated that Vladimir Zhirinovskiy was referring to a speech by a retired general Robert Scales, adviser to the U.S. Department of Defense, who it said had made a statement<sup>15</sup> on the Fox News TV channel which had “received a highly negative response in Russia”.

BMAL also provided background to the following statement by Vladimir Zhirinovskiy:

*“This is a whole country, not just one man, committing itself to sending deadly weapons to Ukraine. This is the most terrifying”.*

The Licensee said that this statement was based on the fact that on 11 December 2014 the US House of Representatives representing “the [US] nation (their electorate)” had unanimously approved the “Ukraine Freedom Support Act of 2014 that warranted the provision of “lethal armaments to Ukraine and defines Ukraine as a special military partner of the USA outside NATO””. BMAL added that: “Zhirinovskiy is just stating the fact, which in itself should not offend anyone”.

The Licensee referred to the wording of Rule 2.3 and stated that: “The Programme contained no offensive language neither lexically, nor tonally even considering all the peculiar features of the Russian language”. It also cited the various categories<sup>16</sup> of offence listed in the wording of Rule 2.3 and argued that none of these categories was relevant in this case. BMAL also argued that “no party has informed” either BMAL, or Ofcom about “any actual negative effect (harm and offence) it had experienced”.

In its representations, the Licensee also referred to various contextual factors which it argued helped to justify any offence. By way of example, BMAL argued relevant contextual factors included that the programme was: typical of the prime time output of NTV Mir Lithuania and focuses on “the most topical issues of the foreign or home policy of Russia”; “contained both criticism and support of the Minsk agreements<sup>17</sup>”.

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<sup>15</sup> The Licensee referred to a Youtube recording of a Fox News programme originally broadcast on 10 March 2015 (see <https://www.youtube.com/watch?v=3EJLi23fTPg>), in which Robert Scales had said the following: “*The only way the United States can have any effect in this region and turn the tide is start killing Russians. Killing Russians by... Killing so many Russians that even Putin’s media can’t hide the fact that Russians are returning to their motherland in body bags*”.

<sup>16</sup> Rule 2.3 states as follows in full (with the categories for potential offence cited by the Licensee underlined): “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender, race, religion, beliefs and sexual orientation). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence”.

<sup>17</sup> The Minsk Agreements were the two agreements reached in September 2014 and February 2015 involving the leaders of Ukraine, Russia, France, and Germany containing various measures leading to cessation of hostilities in south-eastern Ukraine.

and Ukraine's authorities"; and broadcast on a Sunday at 19:10 and the programme's audience was not high.

In summary, in arguing that there were sufficient contextual factors to justify the potential offence, the Licensee stressed the importance of:

- the audience's expectations given that the programme used "language likely to be shared by people in the ethnic Russian community" in Lithuania which makes up the majority (about 75%) of NTV Mir Lithuania's audience, BMAL added that the Russian-speaking community makes up eight per cent of the Lithuanian population. According to the Licensee "It is common knowledge that Russian-speaking residents of Lithuania have opinions that differ from the official public view on a great deal of domestic and foreign issues" and "traditionally oppose" the Lithuanian Government "pro-Ukrainian" stance. It also argued that: "In addition, a "noticeable part of Lithuanians desire alternative sources of information besides pro-official and mainstream media" and will watch NTV Mir Lithuania. In the Licensee's view, the audience data showed that the programme "had a very qualified and devoted audience, and...both the channel and the Programme had insignificant effect on the general audience".
- participants in the programme expressing a number of opinions "alternative to beliefs of the majority of the Programme's audience"; and
- freedom of expression, including the audience's right to receive information and ideas, which BMAL said "was especially important in a case such as this, dealing with modern and significant events in political history".

#### The Licensee's comments on Ofcom's Preliminary View

BMAL made a number of comments on Ofcom's Preliminary View in this case (which was to record a breach of Rule 2.3). Firstly, the Licensee said that there was "nothing" in Vladimir Zhirinovskiy's statements that "clearly indicates he speaks of violent or military actions by Russia". It added that Mr Zhirinovskiy's "loud declamations might as well refer to [pro-Russian] separatists who are party to the conflict" in Ukraine. BMAL said that Vladimir Zhirinovskiy's words "*From Donetsk*"<sup>18</sup> which "is not [in] Russian territory can substantiate this opinion". Further, the Licensee said that Mr Zhirinovskiy's status as a party leader and Deputy in the Russian Parliament "does not automatically make him the voice of the official Russian policy nor states the fact that he expresses any other more weighty or competent opinion than his own". BMAL therefore argued that given Vladimir Zhirinovskiy "does not in the least speak of Russia's involvement...whether Russia is at state of war<sup>19</sup> with any of the countries mentioned in the Programme or not...becomes pointless".

Second, BMAL reiterated its argument that Mr Zhirinovskiy's statements had been "partly provoked and triggered" by the statement<sup>20</sup> made by retired US general

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<sup>18</sup> These words were in Mr Zhirinovskiy's statement "*Not tanks, but napalm. From a distance. From Donetsk. Burn Kiev down! That way, Mr Alexey Alekseyevich*".

<sup>19</sup> The Licensee had objected to Ofcom's statement in the Preliminary View that: "The level of offence would, in our view, have been likely to have been increased given no state of war exists between Russia and any of those countries referred to by Vladimir Zhirinovskiy".

Robert Scales while speaking on the Fox News TV channel and said that this issue had been “disregarded” by Ofcom in its Preliminary View.

Third, the Licensee reiterated that the inclusion of potentially offensive material in this case “was limited by and fully justified by contextual factors”. It added that contextual factors taken separately did not “outweigh and justify the potential offence. Nor should they be considered separately. But their sum total...provides a powerful circumstance not to be ignored”. Specifically, in relation to context BMAL argued that “Ofcom lacks real-life experience in Lithuania...and has no practical option to make certain of the actual impact of contextual factors”. For example, the Licensee said that “Ofcom is unable to verify...audience-related factors” but “being totally involved in its operative environment, BMAL possesses full knowledge of its audience and other contextual factors”.

## Decision

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

Under Rule 2.3, broadcasters must ensure that potentially offensive material (including offensive and discriminatory language) is justified by its context. This means that although there is significant room for innovation, creativity and challenging material within programming, broadcasters do not have *unlimited* licence to include offensive material in programmes.

In reaching a Decision in this case, Ofcom has taken account of the broadcaster’s and audience’s right to freedom of expression. This is set out in Article 10 of the European Convention on Human Rights. Article 10 provides for the right of freedom of expression, which encompasses the right to hold opinions and to receive and impart information and ideas without undue interference by public authority. Therefore, Ofcom must seek an appropriate balance between ensuring members of the public are adequately protected from material which may be considered offensive on one hand and audience’s right to freedom of expression on the other.

In this case, Ofcom considered firstly whether Vladimir Zhirinovsky’s comments had the potential to cause offence.

BMAL argued that “no party has informed” either BMAL or Ofcom about “any actual negative effect (harm and offence) it had experienced”. In applying Rule 2.3 Ofcom does not have to prove that any harm and offence has actually been caused. Rule 2.3 is concerned only with “material which **may** cause offence” [emphasis added].

This case involved a discussion about the current crisis in south-eastern Ukraine, where pro-Russian separatists have been in conflict with the armed forces of the Ukrainian Government. On being asked whether this area of Ukraine (“Donbass”) should become part of Russia, Vladimir Zhirinovsky said that if people of certain nationalities (Finland, Estonia, Latvia, Lithuania and Poland) were involved in the conflict in south-eastern Ukraine, then, in Ofcom’s opinion, he implied that Russia should “*Beat them, mash them down – choke them away!*” He added that because there are ethnic Russians in south-eastern Ukraine then Russia should take the

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<sup>20</sup> See footnote 15.

following action against the Ukrainian capital, Kiev: “*Take that, Kiev! We will wipe out Kiev! We will burn Kiev down! We will napalm<sup>21</sup> them out!*”

In Ofcom’s opinion, in these comments Vladimir Zhirinovskiy was appearing to exhort the Russian Government, in certain circumstances, to take extreme, violent action against inhabitants of certain nations (Finland, Estonia, Latvia, Lithuania and Poland) for no other reason than their nationality. He was further appearing to encourage the Russian Government to destroy the Ukrainian capital Kiev and attack its population by using the controversial<sup>22</sup> weapon napalm. In our view, these statements were capable of causing significant offence, in particular to citizens of Estonia, Finland, Latvia, Lithuania, Poland and Ukraine.

BMAL also cited the various categories<sup>23</sup> for potential offence listed in Rule 2.3 (such as violence, sex, and sexual violence) and argued that none of these categories was relevant in this case. In response to this point, Ofcom underlined that the categories of potential offence listed under Rule 2.3 make up a non-exhaustive<sup>24</sup> list. In our view, as discussed above, Vladimir Zhirinovskiy’s words were clearly capable of offence within the meaning of Rule 2.3.

We therefore went on to consider whether the broadcast of these potentially offensive statements was justified by the context. Context includes: the editorial content of the programme, the service on which the material was broadcast, the time of broadcast, what other programmes are scheduled before and after, the degree of harm or offence likely to be caused, likely audience expectations, warnings given to viewers and the effect on viewers who may come across the material unawares.

We assessed first the editorial context in which Vladimir Zhirinovskiy made his comments. This edition of the current affairs programme *Norkin’s List* discussed the possibility of an enduring peace in south-eastern Ukraine. Given that this conflict has been taking place in one of the countries neighbouring Russia and in particular involves pro-Russian separatists, it was not surprising that this would be a matter for discussion on a channel targeting Russophone viewers. However, we took into account that Russia is not officially involved in the conflict in south-eastern Ukraine, and at the time of broadcast there was a substantive truce in place between Ukrainian forces and pro-Russian separatists in south-eastern Ukraine. We therefore considered that Vladimir Zhirinovskiy’s exhortation of the Russian Government to take extreme, violent action against citizens of a number of the countries neighbouring Russia to have been capable of causing considerable offence. The level of offence

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<sup>21</sup> Napalm is a flammable liquid used in warfare, including as an anti-personnel weapon, which sticks to skin and causes severe burns when on fire.

<sup>22</sup> Under Protocol III of the “UN Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects”, nation states that have ratified the treaty may not target civilians with a “weapon or munition which is primarily designed to set fire to objects or to cause burn injury to persons through the action of flame, heat, or a combination thereof, produced by a chemical reaction of a substance delivered on the target” (see [http://disarmament.un.org/treaties/t/ccwc\\_p3/text](http://disarmament.un.org/treaties/t/ccwc_p3/text)). It is Ofcom’s understanding that the use of napalm on civilians is therefore banned.

<sup>23</sup> See footnote 16.

<sup>24</sup> Rule 2.3 states that offensive material “may include, but is not limited to” the various potential categories of offence listed under the rule.

would, in our view, have been likely to have been increased given no state of war exists between Russia and any of those countries referred to by Vladimir Zhirinovskiy.

We noted BMAL's argument that there was "nothing" in Vladimir Zhirinovskiy's statement that "clearly indicates he speaks of violent or military actions by Russia", and that Mr Zhirinovskiy's status as a party leader and Deputy in the Russian Parliament "does not automatically make him the voice of the official Russian policy". We agreed that Vladimir Zhirinovskiy was not speaking as an official representative of the Russian Government. However, we considered that his use of the pronoun "we" (in the statement "*We will wipe out Kiev! We will burn Kiev down! We will napalm them out!*") would have been likely to have been perceived by viewers as Vladimir Zhirinovskiy appearing to exhort the Russian Government, in certain circumstances, to take extreme, violent action against inhabitants of certain nations for no other reason than their nationality.

We also took account of the Licensee's argument that Mr Zhirinovskiy's "loud declamations might as well refer to [pro-Russian] separatists who are party to the conflict" in Ukraine, because he said that napalm should be used "*From Donetsk*"<sup>25</sup> which "is not [in] Russian territory". In our view, however, it was not clear that Vladimir Zhirinovskiy was referring to pro-Russian separatists, who had been fighting the Ukrainian Government in the Donetsk area of south-eastern Ukraine. In any case, we considered that this would not have lessened the level of offence. This was because Mr Zhirinovskiy appeared to be exhorting one side of a civil conflict to take extreme and highly violent action against the other side at a time when there was a truce in place between Ukrainian forces and pro-Russian separatists in south-eastern Ukraine.

We considered the various other arguments made by BMAL in relation to editorial context. The Licensee pointed to the controversial nature of Vladimir Zhirinovskiy, whom it described to be the "harlequin of Russian politics" who "often makes radical populist and shocking affirmations". In particular, BMAL conceded that "due to the odium of Zhirinovskiy's personality he can sometimes make statements that are on the verge of what is permissible". But it added that "the entire Russian-speaking TV audience understands it too". We acknowledged that Russian speakers in NTV Mir Lithuania's audience were likely to have been familiar with Vladimir Zhirinovskiy's often controversial style and public statements. However, just because this section of NTV Mir Lithuania's audience was familiar with this particular politician did not mean they would not have been offended by his statements in the case. BMAL also argued that: "It is common knowledge that Russian-speaking residents of Lithuania have opinions that differ from the official public view on a great deal of domestic and foreign issues". Similarly in our view, this did not mean that many Russian speaking viewers would not have been offended by Vladimir Zhirinovskiy's comments.

The Licensee in particular referred to the following statement by Mr Zhirinovskiy:

*"When I say that we should napalm down a city in Ukraine, they say that I am an aggressor! But America insolently declares, 'We will supply the weapons that will kill all Russians there'. What is this?"*

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<sup>25</sup> These words come from Mr Zhirinovskiy's statement "*Not tanks, but napalm. From a distance. From Donetsk. Burn Kiev down! That way, Mr Alexey Alekseyevich*".

BMAL said that in saying these words Vladimir Zhirinovsky had been “partly provoked and triggered” by a statement<sup>26</sup> made by retired US general Robert Scales while speaking on the Fox News TV channel. According to BMAL, this statement had “received a highly negative response in Russia”. In our view, the statement by Robert Scales gave a partial explanation as to why Vladimir Zhirinovsky was referring to the US at this point in the programme. However, this explanation did not mitigate the high level of offence caused by Vladimir Zhirinovsky stating that napalm should be used in south-eastern Ukraine or violent action taken against various countries on Russia’s western borders.

We also noted the Licensee’s argument that “Ofcom lacks real-life experience in Lithuania...and has no practical option to make certain of the actual impact of contextual factors”. BMAL said that “Ofcom is unable to verify...audience-related factors” but “[the Licensee] possesses full knowledge of its audience and other contextual factors”. We disagreed. In this case, we reached our assessment of likely audience expectations in part based on information that had been provided by the Licensee. Furthermore, it was open to BMAL to provide any other relevant contextual information (for example about its audience) if it felt this was relevant to Ofcom’s decision but it did not do so. Based on the information that was provided to us, we were conscious of the fact, as noted by BMAL, that approximately a quarter of NTV Mir Lithuania’s audience was Lithuanian. Given that Vladimir Zhirinovsky said that, in relation to citizens of the “*Baltic nations*” (which includes Lithuania), Russia should “*Beat them, mash them down – choke them away!*”, we considered that this statement would have been particularly offensive to the appreciable number of Lithuanians in NTV Mir Lithuania’s audience. This is because Vladimir Zhirinovsky appeared to advocate violent action against the citizens of Lithuania on a channel broadcast to the Lithuanian population.

A further argument made by the Licensee was that the programme would not have exceeded audience expectations because it was “clearly articulating...language likely to be shared by people in the ethnic Russian community” which makes up the majority of NTV Mir Lithuania’s audience. We disagreed. We acknowledge the majority of statements made by Vladimir Zhirinovsky in the programme may well have been familiar to or consistent with the expectations of Russophone viewers. However, we considered that some of the statements made by Vladimir Zhirinovsky were so offensive that they were likely to have exceeded expectations of the audience to this programme.

BMAL said that during the programme “other participants undertook some attempts” to lessen the potential offence. For example, according to the Licensee, the journalist Alexey Venediktov carried “Zhirinovsky’s statements to the point of evident absurdity” and made “provocative and mocking retort[s]...aimed at emphasizing the absurdness” of Vladimir Zhirinovsky’s statements. In addition, “the host openly call[ed] Zhirinovsky to calm down”. We noted that Alexey Venediktov did say the following to Mr Zhirinovsky:

*“So, are you saying ‘Tanks, ahead, to Kiev’?”*

*“Vladimir Volfovich, half of the Kiev’s population is Russians! Will you napalm them too?”*

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<sup>26</sup> See footnote 15.

We considered that these statements did mitigate slightly the effect of Vladimir Zhirinovskiy's words. This is because Alexey Venediktov, using irony, posed rhetorical questions to Vladimir Zhirinovskiy that highlighted the serious ramifications of what the politician was suggesting. However, in our view, these statements did not directly and sufficiently challenge Vladimir Zhirinovskiy's extremely offensive words. Similarly, while the presenter, Andrey Norkin, did make some interventions at this point in the programme ("*Quiet please*" and "*Gentlemen, please, hold on*"), we considered these were general statements aimed at stopping the exchange between the two main programme guests (Vladimir Zhirinovskiy and Alexey Venediktov), rather than directly challenging Vladimir Zhirinovskiy for his extremely offensive statements and/or making clear that what he had said had been unacceptable.

The Licensee provided representations on some of the specific statements made by Vladimir Zhirinovskiy, for example:

*"We will burn down only the governmental institutions – only where the government sits. Using surgical precision strikes. We won't touch the population".*

It said that this statement was "Grotesque, bravado and intentional exaggeration of knowingly unrealizable goals. All of it is obvious to a knowledgeable viewer".

We considered that this statement in the programme did help to qualify slightly Vladimir Zhirinovskiy's suggestion that Russia should indiscriminately use napalm on all citizens in south-eastern Ukraine. However, because Russia is not formally engaged in the conflict in Ukraine (in any official sense), and there was a truce in place in that conflict when this programme was broadcast, we considered it was still highly offensive of Vladimir Zhirinovskiy to make the statements he did about attacking Ukraine and its population.

The Licensee cited various other contextual factors. For example, that this programme: in BMAL's words "contained both criticism and support of the Minsk agreements and Ukraine's authorities"; was broadcast on a Sunday at 19:10; and did not attract a high audience. We were not persuaded that these other factors were sufficient to justify the offence caused by Vladimir Zhirinovskiy's comments.

The Licensee said: "This was especially important in a case such as this, dealing with modern and significant events in political history". In reaching our Decision in this case we had careful regard to the broadcaster's and audience's right to freedom of expression. In particular, we took account of the high level of protection that must be afforded to forms of political speech. The Code requires Ofcom to apply generally accepted standards and therefore necessarily sets limits to freedom of expression. These limits must however be proportionate. Ofcom seeks an appropriate balance between ensuring members of the public are adequately protected from material which may be considered offensive on one hand, and the broadcaster's and audience's right to freedom of expression on the other. Having taken account of all relevant considerations, and proper regard to the broadcaster's and audience's right to freedom of expression, we concluded that Vladimir Zhirinovskiy's comments were not justified by the context.

In conclusion, we noted the Licensee's argument that the "sum total" of contextual factors in this case provided "a powerful circumstance not to be ignored" in relation to justifying the potential offence. Given our analysis of all the contextual factors above, we disagreed. In particular, Ofcom carefully balanced the requirement on the broadcaster to apply generally accepted standards against the broadcaster's and audience's right to freedom of expression. This was not a straightforward exercise,

but on the facts of this case, it was Ofcom's view that the Licensee did not ensure that there was sufficient context in the way Vladimir Zhirinovskiy's words were broadcast to minimise offence. Therefore the programme was in breach of Rule 2.3 of the Code.

**Breach of Rule 2.3**

## In Breach

### News

*Bangla TV, 11 June 2015, 09:30*

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#### Introduction

Bangla TV is a news and general entertainment channel broadcast in Bengali and serving a Bangladeshi audience. The licence for Bangla TV is held by Bangla TV (UK) Limited (“Bangla TV Ltd” or “the Licensee”).

During monitoring, we noted this news programme broadcast at 09:30 on 11 June 2015. The programme included a report about the election taking place that day to select a new Mayor for the London Borough of Tower Hamlets following the forced resignation of Lutfur Rahman for breaching election rules. The programme was shown while polls were open for this election<sup>1</sup>.

The report contained brief clips from various interviews. These included:

- a voter describing the kind of mayor they wanted elected;
- a mayoral candidate claiming that they would build 6,000 new homes, should they be elected;
- a second mayoral candidate claiming they would build 5,500 homes if they were elected.

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

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

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

#### Response

Bangla TV Ltd said that prior to the Mayoral election in Tower Hamlets on 11 June 2015 it “covered election issues in a series of reports”. The Licensee said that this report was “the last of 4 field reports on election candidates” and that it had “covered Labour Party, Conservative Party and Independent candidates” in these prior reports.

The Licensee told Ofcom that the report being investigated by Ofcom was first broadcast on 10 June 2015 at 21:00 and was then repeated the following morning at 09:30. The Licensee said “in this kind of scenario” with election polls open it normally omits “relevant parts of the news”. However, in this case as a result of an error by its News and Transmission Staff the report was not removed from the news programme

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<sup>1</sup> On 11 June 2015, polling stations in Tower Hamlets were open between 07:00 and 22:00.

broadcast on 11 June. Bangla TV Ltd apologised for this mistake and said it had instructed staff “to be more watchful while covering election issues”.

### **Decision**

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

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

As noted above, the report broadcast at 09:30 on Bangla TV included a brief interview with a voter as well as two mayoral candidates describing their respective housing policies while the polls were open to choose a new directly elected mayor for Tower Hamlets. We noted that the news item had been shown the previous evening and was repeated mistakenly. We also noted the actions subsequently taken by the Licensee. However, the broadcast of this report while polling stations were open represented a clear breach of Rule 6.4.

### **Breach of Rule 6.4**

## In Breach

### Sponsorship credit

*Live College World Series, BT Sport/ESPN (HD), 6 June 2015, 00:26*

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#### Introduction

BT Sport/ESPN (HD) is a sports television channel broadcasting a combination of live sports events and sports related programming. The licence for this service is held by British Telecommunications Limited (“BT” or “the Licensee”).

During monitoring, Ofcom noted a sponsorship credit for the programme *Live College World Series*. We noted that the following voiceover during the sponsorship credit identified Quicksilver from Capital One and Seadoo as two of the sponsors of the programme. The credit stated:

*“The NCAA College World Series is presented by Quicksilver from Capital One: Earn unlimited 1.5 per cent cash back, every purchase, every day. And in part by Seadoo: Find the watercraft that’s right for you at [website given].”*

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

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

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

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

#### Response

BT stated the programme provides live coverage of College World Series baseball taken from an American broadcast by ESPN US. It stated that for such live content, a transmission controller in the UK is responsible for replacing the US adverts and sponsorship credits with UK advertising, promotional material and/or an image of a channel logo known as a ‘living hold’. The Licensee noted however that given the nature of live sports events, the programme controllers in the US often cut to an unscheduled advert break which may include a sponsorship credit.

The Licensee stated that on this occasion no advance warning of the sponsorship credit was given by the US programme controllers and “inadvertently, the sponsorship credit for Capital One and Seadoo went to air”.

The Licensee stated that following this incident “when the [UK transmission controller] identifies unannounced US sponsorship credits, they will immediately cut to the living hold to prevent all US sponsorship messages going to air”. They also

stated that UK transmission controllers will in future liaise directly with ESPN US prior to a live event to request notification of the expected sponsorship credits plus verbal warnings during the game.

Additionally the Licensee stated that it did not benefit financially from the inclusion of the sponsorship credit. It apologised for the error.

## Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that “the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”.

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

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

Ofcom’s published guidance<sup>1</sup> on Rule 9.22(a) states that credits that: “focus predominantly on the sponsorship arrangement, rather than the sponsor or its products/services, are more likely to be compliant with the Code.” It also states: “claims about the sponsor’s products/services...are likely to be considered as advertising messages and therefore should not be included in sponsorship credits.”

In the case of the sponsorship credit for Quicksilver by Capital One, Ofcom considered that the voiceover stating that the rate of cash back available was 1.5%, and that this rate was available on “*every purchase, every day*”, constituted a claim about the service offered by the sponsor and was an advertising message.

Ofcom’s guidance also states credits that: “contain direct invitations to the audience to contact the sponsor are likely to breach the Code. However, basic contact details (e.g. websites or telephone numbers) may be given in credits, but these should not be accompanied by language that is likely to be viewed as an invitation to the audience to contact the sponsor.”

In the case of the sponsorship credit for Seadoo, Ofcom considered that the direction to viewers to “*find the watercraft that’s right for you at [website given]*” constituted a call to action.

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

Ofcom noted that this sponsorship credit was broadcast unintentionally. We also took into account that the Licensee has put in place revised procedures following this incident to prevent a recurrence.

However, for the reasons explained above, the broadcast of this sponsorship credit was in breach of Rule 9.22(a).

**Breach of Rule 9.22(a)**

## Resolved

### Ian King Live

Sky News, 30 July 2015, 18:30

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#### Introduction

*Ian King Live* is a business affairs programme that is broadcast daily from Monday to Thursday on Sky News. The licence for Sky News is held by Sky UK Limited (“Sky” or “the Licensee”).

Two complainants alerted Ofcom to the use of offensive language in this programme.

During this programme, at 18:47, the presenter Ian King, in a London studio, commenced a live interview by video link with an American economist, Michelle Meyer, who was in New York, as follows:

*“Well, let’s go live now to New York and to Michelle Myer, who is Deputy Head of Economics at Bank of America Merrill Lynch Global Research. Michelle, thanks for joining us. Growth of 2.3% in the second quarter was still pretty tepid wasn’t it? [Brief pause] Fuck!”*

Michelle Meyer gave an answer lasting approximately 40 seconds, after which Ian King said the following:

*“Okay, Michelle, I must apologise. I said a rude word, one of my leads fell out, I do apologise for that”.*

At just before 19:00, Ian King closed the programme by saying:

*“Apologies again for my swearing earlier”.*

We considered the material raised issues warranting an investigation under Rule 1.14 of the Code:

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

We therefore asked Sky how the programme complied with this rule.

#### Response

The Licensee said that, when Ian King was conducting a live interview with a contributor in the US, “the cable that connected Mr King’s [communications] equipment came out”. Sky also said that Mr King “issued the expletive as an expression of frustration not believing that it would be broadcast”. According to the Licensee, as soon as he became aware of the “inadvertent broadcast of the expletive” Ian King immediately apologised and then apologised again at the end of the programme.

The Licensee said that it would not “intentionally broadcast an expletive in such circumstances”. However, by way of mitigation, it said that this case involved “a pressurised live TV environment and the presenter in question did not believe that his microphone was active”. In addition, it argued that Sky News is a news channel

aimed at an adult audience and as such the child audience is “effectively zero”, especially in the case of this business bulletin.

Sky said that, following this incident, it had discussed the incident in detail with Ian King “who was mortified by his mistake and fully [understood] his obligations” under the Code and “the need to be cautious where technology failures potentially impact on a broadcast”.

## **Decision**

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

Rule 1.14 states that the most offensive language must not be broadcast on television before the watershed. Ofcom’s research on offensive language<sup>1</sup> notes that the word “fuck” or its variations are considered by audiences to be amongst the most offensive language.

In this case, the word “fuck” was broadcast before the watershed. We noted the Licensee’s point that this incident happened during a business bulletin on a news channel aimed at an adult audience and as such the child audience is “effectively zero”. However, Rule 1.14 applies irrespective of the type of channel and genre of programming. Therefore, there was a clear breach of Rule 1.14.

However, we took into account the two apologies that were broadcast immediately and shortly after the incident respectively. We also noted the steps taken by Sky to ensure the presenter was aware of his obligations under the Code in future.

Given all the above, we considered the matter resolved.

## **Resolved**

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

## Broadcast Licence Conditions cases

### In Breach

#### Provision of licensed service

*Voice of Africa Radio (Newham), 14 July 2015 to present*

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#### Introduction

Voice of Africa Radio (“VOAR” or “the Licensee”) is licensed under the Broadcasting Act 1990 to provide a community radio service for the African community in Newham, East London (“the Licensed Service”).

Condition 2(1) of VOAR’s licence requires it to provide the Licensed Service as specified in the Annex to the licence for the duration of the licence period, which expires on 14 August 2017. In providing the community radio service, VOAR is required to meet its ‘Key Commitments’,<sup>1</sup> as set out in the licence Annex. The Key Commitments specify how the station will serve its target community and include a description of the programme service.

On 22 July 2015, an Ofcom engineer established that the Licensed Service was not being broadcast. On the same date, Ofcom received an email from VOAR informing Ofcom that it had not been broadcasting since 14 July 2015 because it said it was renegotiating terms with the transmission site owner. In an email to Ofcom on 5 August 2015, VOAR said that it had not resumed broadcasting but that it would do so “in the next few days”. In the event, it did not resume broadcasting and the Licensed Service remains off the air at the present time.

Ofcom considered that the failure of VOAR to provide its Licensed Service since 14 July 2015 raised issues warranting investigation under Conditions 2(1) and 2(4) contained in Part 2 of the Schedule to VOAR’s licence. These state, respectively:

“The Licensee shall provide the Licensed Service specified in the Annex for the licence period.” (Section 106(2) of the Broadcasting Act 1990); and

“...the Licensee shall ensure that the Licensed Service accords with the proposals set out in the Annex so as to maintain the character of the Licensed Service throughout the licence period.” (Section 106(1) of the Broadcasting Act 1990).

We therefore requested the Licensee’s comments on whether it was fulfilling these licence conditions.

#### Response

VOAR referred to its previous correspondence in which it had explained that it was off air because it was renegotiating terms with the transmission site owner. VOAR explained that it had not been able to resolve its dispute with the owner and that negotiations had reached a “sticking point”.

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<sup>1</sup> Voice of Africa Radio’s Key Commitments:  
<http://www.ofcom.org.uk/static/radiolicensing/Community/commitments/cr000070.pdf>

VOAR also said that it had discovered that the station's transmission equipment had been stolen while it had been off air. It said that the theft had been reported to police and an investigation was underway. It also said that VOAR was "in the process of resolving this issue" and would keep Ofcom informed of progress.

## **Decision**

Ofcom has a range of duties in relation to radio broadcasting, including securing a range and diversity of local radio services which are calculated to appeal to a variety of tastes and interests, and the optimal use of the radio spectrum. Ofcom discharges these duties by including in the local radio service licences that it grants conditions requiring the provision of the specified licensed service. Provision by a licensee of the radio service specified in its licence on the frequency assigned to it is the fundamental purpose for which a community radio licence is granted. Accordingly, in the case of a service being off the air, the licensee is not fulfilling the fundamental purpose for which the licence was granted, and the listener is clearly not served at all by that licensee.

In this case, the Licensed Service has not been provided by VOAR since 14 July 2015 and remains off the air.

Ofcom noted the reasons put forward by the Licensee for not broadcasting its service, including the theft of its transmission equipment. However, it remains the case that there is an ongoing failure by VOAR to broadcast any output since 14 July 2015.

VOAR has breached Licence Conditions 2(1) and 2(4) for failing to provide its Licensed Service. These breaches follow similar breaches of VOAR's licence for failing to provide the Licensed Service, which were recorded in January 2011<sup>2</sup> and March 2015<sup>3</sup>. Ofcom noted that, since November 2014, VOAR has only broadcast the Licensed Service for approximately five weeks.

**Ofcom considers these breaches to be serious and repeated. We are therefore putting the Licensee on notice that we will consider these breaches for the imposition of a statutory sanction, which may include revocation of the licence.**

**Breaches of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence held by Voice of Africa Radio (licence number CR000070BA).**

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<sup>2</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb175/issue175.pdf>

<sup>3</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb275/issue275.pdf>

## In Breach

### Provision of information: community radio station finance reports

*Various community radio licensees, year ending 31 December 2014*

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#### Introduction

Community radio stations are provided primarily for the good of members of the public or for a particular community, rather than primarily for commercial reasons. They must also deliver social gain, operate on a not-for-profit basis, involve members of their target communities and be accountable to the communities they serve.

There are statutory restrictions on the funding of community radio stations, as set out in section 105(6) of the Broadcasting Act 1990, as modified by The Community Radio Order 2004 (“the Order”).

Any profit produced by providing a community radio service must be used “wholly and exclusively for securing or improving the future provision of the service, or for the delivery of social gain to members of the public or the community that the service is intended to serve” (clause 3(3) of the Order).

These funding requirements are set out in community radio licences. Ofcom must be able to verify that community radio licensees are complying with them. Licensees are therefore required to submit an annual report explaining how they have met their financial obligations during the previous calendar year. The annual reports from stations also inform Ofcom’s own report on the community radio sector, which is featured in the annual Communications Market Report.

In March 2015, Ofcom requested finance reports for the calendar year 2014 from all community radio licensees who were broadcasting during the whole of 2014. Following our requests, a number of stations failed to provide their reports by the deadline specified.

Ofcom considered that this raised issues warranting investigation under Licence Condition 9(1) which states:

"The Licensee shall maintain records of and furnish to Ofcom in such manner and at such times as Ofcom may reasonably require such documents, accounts, estimates, returns, reports, notices or other information as Ofcom may require for the purpose of exercising the functions assigned to it by or under the 1990 Act, the 1996 Act or the Communications Act and in particular...

- (c) such information as Ofcom may reasonably require for the purposes of determining whether the Licensee is complying with the requirements of the Community Radio Order 2004 for each year of the Licensed Service;
- (d) such information as Ofcom may reasonably require for the purposes of determining the extent to which the Licensee is providing the Licensed Service to meet the objectives and commitments specified in the Community Radio Order 2004; and...

(e) the provision of information under this section may be provided to Ofcom in the form of an annual report which is to be made accessible to the general public.”

**Decision**

In Breach

Ofcom did not receive the annual finance reports from the following two licensees in time for the data to be included in Ofcom’s Communications Market Report. In these cases, we found a breach of Licence Condition 9(1):

<b>Licence number</b>	<b>Station name</b>	<b>Licensee</b>
CR000149BA	Radio JCom (Leeds)	Radio JCom Ltd
CR000173BA	TCR FM (Tamworth)	Tamworth Broadcasting CIC

Resolved

The following licensees failed to submit their annual finance report by the original deadline, but subsequently submitted late reports. However, they were filed in time for the data to be used in Ofcom’s Communications Market Report. We therefore considered these cases to be resolved:

<b>Licence number</b>	<b>Station name</b>	<b>Licensee</b>
CR000089BA	Diverse FM (Luton)	Diverse FM
CR000161BA	Moorlands Radio (Biddulph)	Moorlands Radio
CR000037BA	New Style Radio (Birmingham)	Afro Caribbean Millennium Centre
CR000083BA	Sheffield Live	Commedia Sheffield
CR000070BA	Voice of Africa (Newham, London)	Voice of Africa Radio
CR000217BA	Wythenshawe FM	Wythenshawe Community Media

## Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed between 19 September and 2 October 2015 and decided that the broadcaster did not breach Ofcom's codes, licence conditions or other regulatory requirements.

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

Programme	Broadcaster	Transmission date	Categories
Brotherhood (trailer)	Comedy Central	18/05/2015	Offensive language

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

## Complaints Assessed, Not Investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 19 September and 2 October 2015 because they did not raise issues warranting investigation.

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

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

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Celebrity Big Brother	5*	29/08/2015	Scheduling	1
Celebrity Big Brother	5*	30/08/2015	Scheduling	1
Celebrity Big Brother's Bit on the Side	5*	05/09/2015	Offensive language	1
BBC News	BBC 1	20/09/2015	Generally accepted standards	1
BBC News	BBC 1	29/09/2015	Outside of remit / other	1
BBC News at Six	BBC 1	03/09/2015	Generally accepted standards	1
BBC News at Ten	BBC 1	02/09/2015	Generally accepted standards	3
BBC News at Ten	BBC 1	03/09/2015	Generally accepted standards	1
Breakfast	BBC 1	29/09/2015	Animal welfare	1
Casualty	BBC 1	26/09/2015	Race discrimination/offence	3
Doctor Who	BBC 1	19/09/2015	Race discrimination/offence	1
Doctor Who	BBC 1	26/09/2015	Outside of remit / other	1
Match of the Day	BBC 1	19/09/2015	Violence and dangerous behaviour	1
Ripper Street	BBC 1	04/09/2015	Religious/Beliefs discrimination/offence	1
Ripper Street	BBC 1	18/09/2015	Generally accepted standards	1
Strictly Come Dancing	BBC 1	25/09/2015	Race discrimination/offence	1
The One Show	BBC 1	24/09/2015	Disability discrimination/offence	1
The One Show	BBC 1	24/09/2015	Outside of remit / other	1
Cradle to Grave	BBC 2	24/09/2015	Generally accepted standards	1
In Case You Missed It	BBC 2	21/09/2015	Generally accepted standards	1

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Newsnight	BBC 2	02/09/2015	Generally accepted standards	1
The Daily Politics	BBC 2	21/09/2015	Race discrimination/offence	79
Family Guy	BBC 3	07/09/2015	Disability discrimination/offence	1
Steve Wright in the Afternoon	BBC Radio 2	18/09/2015	Scheduling	1
The Chris Evans Breakfast Show	BBC Radio 2	Various	Outside of remit / other	1
Iain Lee	BBC Three Counties Radio	21/09/2015	Disability discrimination/offence	1
Champions League Football	BT Sport 2	15/09/2015	Violence and dangerous behaviour	1
Channel 4 News	Channel 4	31/08/2015	Scheduling	1
Channel 4 News	Channel 4	02/09/2015	Generally accepted standards	4
Channel 4 News	Channel 4	03/09/2015	Due impartiality/bias	1
Channel 4 News	Channel 4	03/09/2015	Due impartiality/bias	1
Channel 4 News	Channel 4	14/09/2015	Due impartiality/bias	1
Channel 4 News	Channel 4	21/09/2015	Due impartiality/bias	1
Channel 4 News	Channel 4	25/09/2015	Offensive language	1
Come Dine with Me	Channel 4	16/09/2015	Sexual orientation discrimination/offence	1
Frontline Fighting: The Brits Battling Isis	Channel 4	16/09/2015	Crime	1
Gogglebox	Channel 4	17/09/2015	Due impartiality/bias	1
Hollyoaks	Channel 4	16/09/2015	Violence and dangerous behaviour	2
Hunted	Channel 4	17/09/2015	Race discrimination/offence	1
One Born Every Minute	Channel 4	26/08/2015	Nudity	1
The Battle of Britain	Channel 4	15/09/2015	Materially misleading	1
The Simpsons	Channel 4	24/09/2015	Outside of remit / other	1
This is England '90	Channel 4	20/09/2015	Generally accepted standards	3
Time Crashers	Channel 4	27/09/2015	Offensive language	1
Time Crashers	Channel 4	Various	Animal welfare	1
5 News at 5	Channel 5	17/09/2015	Due impartiality/bias	1
Benefits Britain: Life on the Dole	Channel 5	17/09/2015	Offensive language	1
Body Donors	Channel 5	29/09/2015	Generally accepted standards	1
Body Donors (trailer)	Channel 5	22/09/2015	Scheduling	2
Body Donors (trailer)	Channel 5	23/09/2015	Generally accepted standards	1
Body Donors (trailer)	Channel 5	23/09/2015	Scheduling	1
Body Donors (trailer)	Channel 5	24/09/2015	Scheduling	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Body Donors (trailer)	Channel 5	24/09/2015	Generally accepted standards	1
Body Donors (trailer)	Channel 5	25/09/2015	Scheduling	2
Body Donors (trailer)	Channel 5	28/09/2015	Generally accepted standards	2
Can't Pay? We'll Take it Away!	Channel 5	14/09/2015	Generally accepted standards	1
Can't Pay? We'll Take it Away!	Channel 5	30/09/2015	Generally accepted standards	1
Celebrity Big Brother	Channel 5	30/08/2015	Generally accepted standards	1
Celebrity Big Brother	Channel 5	31/08/2015	Generally accepted standards	2
Celebrity Big Brother	Channel 5	31/08/2015	Sexual orientation discrimination/offence	32
Celebrity Big Brother	Channel 5	02/09/2015	Sexual orientation discrimination/offence	1
Celebrity Big Brother	Channel 5	04/09/2015	Disability discrimination/offence	14
Celebrity Big Brother	Channel 5	04/09/2015	Sexual orientation discrimination/offence	112
Celebrity Big Brother	Channel 5	05/09/2015	Generally accepted standards	1
Celebrity Big Brother	Channel 5	07/09/2015	Generally accepted standards	1
Celebrity Big Brother	Channel 5	08/09/2015	Sexual orientation discrimination/offence	1
Celebrity Big Brother	Channel 5	08/09/2015	Generally accepted standards	3
Celebrity Big Brother	Channel 5	09/09/2015	Generally accepted standards	12
Celebrity Big Brother	Channel 5	10/09/2015	Voting	1
Celebrity Big Brother	Channel 5	10/09/2015	Generally accepted standards	12
Celebrity Big Brother	Channel 5	11/09/2015	Generally accepted standards	3
Celebrity Big Brother	Channel 5	12/09/2015	Generally accepted standards	5
Celebrity Big Brother	Channel 5	13/09/2015	Offensive language	1
Celebrity Big Brother	Channel 5	13/09/2015	Voting	1
Celebrity Big Brother	Channel 5	13/09/2015	Generally accepted standards	3
Celebrity Big Brother	Channel 5	14/09/2015	Voting	1
Celebrity Big Brother	Channel 5	14/09/2015	Generally accepted standards	3
Celebrity Big Brother	Channel 5	16/09/2015	Disability discrimination/offence	1
Celebrity Big Brother	Channel 5	16/09/2015	Sexual material	1
Celebrity Big Brother	Channel 5	19/09/2015	Generally accepted standards	1
Celebrity Big Brother	Channel 5	19/09/2015	Voting	1
Celebrity Big Brother	Channel 5	20/09/2015	Generally accepted standards	3
Celebrity Big Brother	Channel 5	20/09/2015	Offensive language	8

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Celebrity Big Brother	Channel 5	21/09/2015	Generally accepted standards	81
Celebrity Big Brother	Channel 5	22/09/2015	Offensive language	4
Celebrity Big Brother's Bit on the Side	Channel 5	22/09/2015	Violence and dangerous behaviour	9
Milkshake (trailer)	Channel 5	09/09/2015	Generally accepted standards	1
The End of the World (trailer)	Channel 5	19/09/2015	Generally accepted standards	1
The Wright Stuff	Channel 5	15/09/2015	Due impartiality/bias	1
The Wright Stuff	Channel 5	Various	Religious/Beliefs discrimination/offence	1
I Live With Models (trailer)	Comedy Central	16/02/2015	Scheduling	1
I Live With Models (trailer) and Drunk History (trailer)	Comedy Central	19/02/2015	Scheduling	1
Two and a Half Men (trailer)	Comedy Central	23/02/2015	Scheduling	1
Two and a Half Men / Mike and Molly / I Live with Models (trailers)	Comedy Central	Various	Scheduling	1
Brickleberry (trailer)	Comedy Central	23/03/2015	Sexual material	1
Broad City (trailer)	Comedy Central	17/04/2015	Scheduling	1
Brotherhood (trailer)	Comedy Central	29/05/2015	Offensive language	1
Brotherhood (trailer)	Comedy Central	05/06/2015	Scheduling	1
Drunk History (trailer)	Comedy Central	Various	Scheduling	3
Jason Manford: First World Problems (trailer)	Comedy Central	Various	Scheduling	9
John Bishop Live (trailer)	Comedy Central	18/04/2015	Scheduling	1
Pineapple Express	Comedy Central	18/04/2015	Drugs, smoking, solvents or alcohol	1
Programme trailers	Comedy Central	24/02/2015	Scheduling	1
Stoner Night (trailer)	Comedy Central	Various	Drugs, smoking, solvents or alcohol	2
Bad Teachers (trailer)	Comedy Central Extra	25/03/2015	Offensive language	1
Brotherhood (trailer)	Channel 5	Various	Offensive language	29
Live at the Apollo	Comedy Central	29/08/2015	Offensive language	1
South Park (trailer)	Comedy Central	14/09/2015	Generally accepted standards	1
South Park (trailer)	Comedy Central	26/09/2015	Offensive language	2
Dave Gorman Modern Life is Goodish	Dave	20/09/2015	Scheduling	1
Dave Gorman Modern Life is Goodish	Dave	20/09/2015	Offensive language	2

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Bad Robots (trailer)	E4	18/09/2015	Offensive language	1
Bad Robots (trailer)	E4	20/09/2015	Offensive language	2
Hollyoaks Omnibus	E4	20/09/2015	Materially misleading	1
Young, Free and Single	E4	21/09/2015	Materially misleading	1
The Towering Inferno	Film4	29/09/2015	Offensive language	1
Ice Road Truckers	History	Various	Offensive language	1
Amazon Prime's sponsorship of Downton Abbey	ITV	27/09/2015	Sponsorship credits	1
Anadin's sponsorship of The Chase	ITV	16/09/2015	Sponsorship credits	1
Britain's Biggest Adventures with Bear Grylls	ITV	15/09/2015	Violence and dangerous behaviour	1
Britain's Biggest Adventures with Bear Grylls	ITV	22/09/2015	Harm	5
Coronation Street	ITV	13/09/2015	Violence and dangerous behaviour	2
Coronation Street	ITV	16/09/2015	Disability discrimination/offence	1
Coronation Street	ITV	21/09/2015	Generally accepted standards	1
Coronation Street	ITV	23/09/2015	Violence and dangerous behaviour	9
Coronation Street	ITV	Various	Scheduling	1
Doc Martin	ITV	21/09/2015	Animal welfare	1
Doc Martin	ITV	28/09/2015	Materially misleading	1
Emmerdale	ITV	23/09/2015	Violence and dangerous behaviour	1
Emmerdale	ITV	23/09/2015	Violence and dangerous behaviour	2
Emmerdale	ITV	24/09/2015	Suicide and self harm	2
Emmerdale	ITV	25/09/2015	Violence and dangerous behaviour	2
Emmerdale	ITV	29/09/2015	Race discrimination/offence	1
Emmerdale	ITV	Various	Scheduling	1
Good Morning Britain	ITV	23/09/2015	Scheduling	1
ITV News and Weather	ITV	06/08/2015	Race discrimination/offence	1
ITV News and Weather	ITV	02/09/2015	Generally accepted standards	1
ITV News and Weather	ITV	03/09/2015	Generally accepted standards	2
ITV News and Weather	ITV	24/09/2015	Religious/Beliefs discrimination/offence	1
ITV News at Ten	ITV	02/09/2015	Generally accepted standards	6
ITV News at Ten	ITV	03/09/2015	Due impartiality/bias	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
ITV News at Ten	ITV	03/09/2015	Generally accepted standards	4
ITV News London	ITV	04/09/2015	Generally accepted standards	1
Jackpot247	ITV	13/09/2015	Participation TV - Offence	22
Jackpot247	ITV	18/09/2015	Gambling	1
Loose Women	ITV	17/09/2015	Generally accepted standards	1
Lorraine	ITV	Various	Product placement	1
On Assignment	ITV	21/09/2015	Due impartiality/bias	1
Rugby World Cup	ITV	18/09/2015	Race discrimination/offence	3
Rugby World Cup	ITV	19/09/2015	Generally accepted standards	1
Rugby World Cup	ITV	23/09/2015	Outside of remit / other	1
Rugby World Cup	ITV	26/09/2015	Due impartiality/bias	2
SSE's sponsorship of ITV's coverage of Rugby World Cup 2015	ITV	18/09/2015	Race discrimination/offence	3
SSE's sponsorship of ITV's coverage of Rugby World Cup 2015	ITV	26/09/2015	Race discrimination/offence	1
The Jeremy Kyle Show	ITV	15/09/2015	Generally accepted standards	1
The Jeremy Kyle Show	ITV	16/09/2015	Generally accepted standards	1
The Jeremy Kyle Show	ITV	23/09/2015	Advertising minutage	1
The Jeremy Kyle Show	ITV	25/09/2015	Generally accepted standards	1
The Jeremy Kyle Show	ITV	29/09/2015	Generally accepted standards	1
The X Factor	ITV	20/09/2015	Drugs, smoking, solvents or alcohol	1
This Morning	ITV	10/09/2015	Generally accepted standards	9
Through the Keyhole	ITV	19/09/2015	Generally accepted standards	17
Tonight: Britain's Noise Nuisance	ITV	11/09/2015	Materially misleading	7
Celebrity Juice	ITV2	24/09/2015	Generally accepted standards	1
Release the Hounds	ITV2	Various	Animal welfare	1
Through the Keyhole	ITV2	23/09/2015	Generally accepted standards	1
You've Been Framed!	ITV2	26/09/2015	Religious/Beliefs discrimination/offence	1
Inside Death Row with Trevor McDonald (trailer)	ITV3	11/09/2015	Scheduling	1
Rugby World Cup	ITV4	19/09/2015	Materially misleading	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Shelagh Fogarty	LBC 97.3FM	15/09/2015	Premium rate services	1
Soldier, Soldier	Movie Mix	14/09/2015	Offensive language	1
Get Blake	Nick Toons	23/09/2015	Offensive language	1
Norkin's List	NTV Mir Lithuania	19/04/2015	Harm	1
Danone's sponsorship of Pick TV	Pick TV	Various	Gender discrimination/offence	1
Combat Dealers	Quest	16/09/2015	Materially misleading	1
Programming	Raj Radio	04/06/2015	Religious programmes	1
The World's Biggest Penis	Really	29/09/2015	Gender discrimination/offence	1
Evening News	Sheffield Live Television	30/08/2015	Due impartiality/bias	1
Kid Jensen's Flashback 40	Signal 2	27/09/2015	Generally accepted standards	1
Sex and the Silver Screen	Sky Arts	27/08/2015	Sexual material	1
Sex in the Comix	Sky Arts	24/07/2015	Sexual material	1
Game of Thrones	Sky Atlantic	20/09/2015	Generally accepted standards	1
Vijay and I	Sky Movies Premiere	13/09/2015	Religious/Beliefs discrimination/offence	4
News on the Hour	Sky News	17/09/2015	Due impartiality/bias	1
Sky News	Sky News	02/09/2015	Generally accepted standards	5
Sky News	Sky News	09/09/2015	Generally accepted standards	1
Sky News	Sky News	18/09/2015	Due impartiality/bias	1
Sky News with Colin Brazier	Sky News	03/09/2015	Generally accepted standards	3
Sky News with Dermot Murnaghan	Sky News	16/09/2015	Due impartiality/bias	1
Sky News with Kay Burley	Sky News	03/09/2015	Generally accepted standards	2
Sky World News	Sky News	03/09/2015	Generally accepted standards	1
Sunrise	Sky News	12/09/2015	Gender discrimination/offence	1
Sunrise	Sky News	15/09/2015	Due accuracy	2
Sunrise	Sky News	17/09/2015	Due impartiality/bias	1
Week in Review	Sky News	26/09/2015	Religious/Beliefs discrimination/offence	1
International One-Day Cricket	Sky Sports 2	11/09/2015	Surreptitious advertising	1
Duck Quacks Don't Echo	Sky1	21/09/2015	Offensive language	1
Duck Quacks Don't Echo	Sky1	28/09/2015	Race discrimination/offence	1
Starz TV	Starz TV	09/08/2015	Participation TV - Offence	1
The Alan Brazil	Talksport	16/09/2015	Due impartiality/bias	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Sports Breakfast				
The Two Mikes	Talksport	23/09/2015	Generally accepted standards	1
Jesse Duplantis Ministries	TBN UK	02/09/2015	Programme-related material	1
Jesse Duplantis Ministries	TBN UK	06/09/2015	Programme-related material	1
If Katie Hopkins Ruled The World	TLC	01/09/2015	Religious/Beliefs discrimination/offence	1
UTV Live	UTV	19/09/2015	Outside of remit / other	1
News	Various	Various	Due impartiality/bias	1
The Call Centre	Watch	27/09/2015	Offensive language	1

### Complaints assessed under the General Procedures for investigating breaches of broadcast licences

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

Licensee	Licensed service	Categories
Bradford City Radio Limited	Sunrise FM	Format

## Complaints outside of remit

Here are alphabetical lists of complaints received by Ofcom that fell outside of our remit. This is because Ofcom is not responsible for regulating the issue complained about. For example, the complaints were about the content of television and radio adverts, or accuracy in BBC programmes.

For more information about what Ofcom's rules cover, go to:

<http://consumers.ofcom.org.uk/complain/tv-and-radio-complaints/what-does-ofcom-cover/>

### Complaints about television or radio programmes

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

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
BBC News	BBC 1	28/09/2015	Due impartiality/bias	1
BBC News at Six	BBC 1	21/09/2015	Due impartiality/bias	1
BBC News at Ten	BBC 1	28/09/2015	Due impartiality/bias	2
Breakfast	BBC 1	29/09/2015	Product placement	1
Question Time	BBC 1	24/09/2015	Due impartiality/bias	1
6 Degrees of Separation	BBC 2	14/09/2015	Materially misleading	1
Newsnight	BBC 2	01/07/2015	Due impartiality/bias	1
Newsnight	BBC 2	02/09/2015	Due accuracy	1
Rick Stein From Venice to Istanbul	BBC 2	18/09/2015	Undue prominence	1
The Adventures of Bottle Top Bill and His Best Friend Corky	Demand 5	Various	Offensive language	1
Advertisement	ITV	13/09/2015	Flashing images/risk to viewers who have PSE	1
Advertisement	ITV	18/09/2015	Advertising content	1
Advertisement	ITV	19/09/2015	Advertising content	1
Advertisement	ITV	23/09/2015	Advertising content	2
Advertisement	ITV	24/09/2015	Advertising content	1
Advertisement	ITV	25/09/2015	Advertising content	1
Advertisement	ITV	26/09/2015	Advertising content	3
Advertisement	ITV4	26/09/2015	Advertising content	1
Advertisement	QVC	17/09/2015	Advertising content	1
Advertisement	Sky Living	22/09/2015	Advertising content	1
Advertisement	Sky Living	29/09/2015	Advertising content	1
Advertisement	Sky Sports News	23/09/2015	Advertising content	1

## Investigations List

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

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

Here are alphabetical lists of new investigations launched between 19 September and 2 October 2015.

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

Programme	Broadcaster	Transmission date
Programming	Chart Show TV	31 August 2015
Breakfast Show	Citybeat Belfast	17 August 2015
Inside Amy Schumer (trailer)	Comedy Central	14 September 2015
Alor Dishari	Iqra Bangla	31 August 2015
Programming	Peace TV Urdu	12 and 13 September 2015
Going Underground	RT	12 September 2015
Programming	Sangat TV	13 August 2015
Starz TV	Starz TV	9 August 2015
Advertising minutage	TLC (Slovenia)	14 June 2015

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

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

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

Programme	Broadcaster	Transmission date
Channel 4 News	Channel 4	2 and 3 March 2015
Dunya News, Ikhtilafi Note	Dunya TV	03 July 2015

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission date</b>
Stalkers	TV8 Sweden	16 March 2015

For more information about how Ofcom considers and adjudicates upon Fairness and Privacy complaints, go to:

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

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

<b>Licensee</b>	<b>Licensed Service</b>
St Mathews Community Solution Centre Limited	EAVA FM

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

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