

# **Ofcom Broadcast Bulletin**

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## Introduction

Under the Communications Act 2003, 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.

The Broadcast Bulletin reports on the outcome of investigations into alleged breaches of those Ofcom codes, as well as licence conditions with which broadcasters regulated by Ofcom are required to comply. These include:

- a) Ofcom's Broadcasting Code ("the Code"), which, can be found at: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-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. COSTA can be found at: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/advert-code/>.
- 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>2</sup>.

The BCAP Code is at: [www.bcap.org.uk/The-Codes/BCAP-Code.aspx](http://www.bcap.org.uk/The-Codes/BCAP-Code.aspx)

- 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 on television and radio licences can be found at: <http://licensing.ofcom.org.uk/tv-broadcast-licences/> and <http://licensing.ofcom.org.uk/radio-broadcast-licensing/>.

Other codes and requirements may also apply to broadcasters, depending on their circumstances. These include the Code on Television Access Services (which sets out how much subtitling, signing and audio description relevant licensees must provide), the Code on Electronic Programme Guides, the Code on Listed Events, and the Cross Promotion Code. Links to all these codes can be found at:

<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/>

It is Ofcom's policy to describe fully the content in television and radio programmes that is subject to broadcast investigations. Some of the language and descriptions used in Ofcom's Broadcast Bulletin may therefore cause offence.

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

<sup>2</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

## Standards cases

### In Breach

#### Sister Ruby Ramadan Special 2011

*Radio Asian Fever (Leeds), 17 August 2011, 12:00 and 18 August 2011, 11:00*

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#### Introduction

Radio Asian Fever (Leeds) is a community radio station that serves the South Asian communities of Leeds. The licence for this station is held by Radio Asian Fever (Leeds) ("Radio Asian Fever" or "the Licensee").

Two listeners alerted Ofcom to the two programmes above, each approximately fifty minutes in duration and broadcast in Urdu, complaining that the programmes contained homophobic material. Having obtained an independent translation of the content, we noted that each of the two programmes consisted of a sermon delivered by a female presenter, Rubina Nasir ("Sister Ruby").

In the broadcast on 17 August 2011, the presenter commenced with a Qur'anic verse (Sura Al-Nisa, verse 16) and gave her interpretation of that verse as being highly critical of homosexuality. The presenter also discussed various historical events portrayed in the Qur'an in the context of her main theme of homosexuality. In the broadcast on 18 August 2011, the presenter focused her discussion on another Qur'anic verse (Sura Al-Baqra, verse 221) and gave her interpretation of that verse as being critical of mixed-faith marriages.

Ofcom obtained an independent translation of the two programmes from the original Urdu into English. We first noted the following two statements made by the presenter in the programme broadcast on 17 August 2011:

*"What should be done if they do it [practise homosexuality]? If there are two such persons among you, that do this evil, the shameful act, what do you have to do? Torture them; punish them; beat them and give them mental torture."*

*"Allah states, 'If they do such a deed [i.e. homosexuality], punish them, both physically and mentally.' Mental punishment means rebuke them, beat them, humiliate them, admonish and curse them, and beat them up. This command was sent in the beginning because capital punishment had not yet been sent down."*

We considered the above statements raised issues warranting investigation under Rules 2.4 and 3.1 of the Code.

Rule 2.4: "Programmes must not include material (whether in individual programmes or in programmes taken together) which, taking into account the context, condones or glamorises violent, dangerous or seriously antisocial behaviour and is likely to encourage others to copy such behaviour."

Rule 3.1: "Material likely to encourage or incite the commission of crime or to lead to disorder must not be included in television or radio services."

We therefore sought Radio Asian Fever's comments as to how this material complied with these rules.

In addition, in the programme broadcast on 17 August 2011, we noted the presenter made the following statements:

*"Those who invented this evil [homosexuality] were the people of Lot's nation";*

*"... this one evil [homosexuality] is the root cause of many other evils";*

*"In America, the 1990-92 Homosexual Workshop Report states that an average homosexual has partners numbering between 20 and 106, and they make new partners every year. In other words, one such man commits this bad act with at least 20 and with a maximum of 106 men";*

*"50% of those who commit suicide are victims of homosexuality. Murderers too suffer from the same disease. In USA 50% cases of AIDS are homosexuals. Among these people – those who do this bad deed and act against nature – peace and happiness cannot be found. Among women who are victims of homicide, 21% are victims of homosexuality too";*

*"The act specific to Prophet Lot's nation [homosexuality] is acceptable neither to God nor to human nature. The human body too does not accept this act. It is such a bad deed as no one can accept";*

*"[Homosexuality] is such a bad deed that made Allah so very furious – they were doing such a heinous sin that Allah sent such a severe punishment upon them";*

*"The things [i.e. homosexuality] you are listening to in today's programme, it is hard to speak about them – they are shameful";*

*"I would advise you to very closely scrutinize and check, before you arrange the marriages of your children, if the boys and girls in question are suffering from this disease [homosexuality]. They should be cured"; and*

*"These [i.e. homosexual acts] are such major sins as have wounded the earth".*

In the programme broadcast on 18 August 2011 the sermon dealt with the issue of mixed-faith marriages, and we noted the presenter made the following statements:

*"In this verse Allah states "Do not marry Mushrak<sup>1</sup> women until they become believers. Surely a Muslim slave girl is better than a free Mushrak woman, even if you like the latter too much. And do not wed your Muslim women to Mushrak men until they become believers. Surely a Muslim slave is better than a free Mushrak man, even if you like the latter. Those people invite you to hell but Allah invites you to Paradise and forgiveness";*

*"What do they [Mushraks] invite you to? Fire! Which means that if you got married to a Mushrak, if you cohabited, if you intended to spend your life with them, what will be your abode? Hellfire! Our prayers include seeking protection from hellfire. They invite you to hellfire";*

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<sup>1</sup> Ofcom understands the term "Mushrak" to describe someone who commits "Shirk" – see footnote 2.

*“What happens when a Muslim man or woman get married to a Mushrak? Listeners! Marriage of a Muslim man or woman with a Mushrak is the straight path to hellfire”;*

*“Have my sisters and brothers, who live with people of bad religions or alien religions, ever thought about what would become of the children they have had with them – and the coming generation?”;*

*“Where the filth of shirk<sup>2</sup> is present, where the dirt of shirk is present, where the heart is impure, how can you remove apparent filth. How many arrangements will you make to remove the apparent filth?”;*

*“We are saying that Mushraks have no concept of cleanliness and uncleanliness”;*

*“Let alone the temporary and minor difficulties, Allah has openly and fully explained, ‘They [“Mushraks”] invite you to hellfire’. They are calling you towards fire! Listeners! One is the fire of hell. And when there is a huge difference in matters of religion between a husband and wife, this world becomes a fire too. The world becomes a hell too”;* and

*“If you will live with them [Mushraks] where will you go? Towards what do they invite you? To Hell – to fire. They are calling you to hellfire”.*

We considered the above statements raised issues warranting investigation under Rule 2.3 of the Code, which states:

*“In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context. Such material may include... discriminatory treatment or language (for example on the grounds of... religion... and sexual orientation) ...”.*

We therefore asked the Licensee for its comments as to how the material above complied with this rule.

In addition, we considered the two broadcasts were “religious programmes” i.e. programmes which dealt with “matters of religion as the central subject, or as a significant part, of the programme”. This was because the programmes consisted of sermons which focused on Islamic theology.

Ofcom believed that the broadcast comments set out above also raised issues warranting investigation under Rule 4.1 of the Code, which states that:

*“Broadcasters must exercise the proper degree of responsibility with respect to the content of programmes which are religious programmes.”*

We therefore also asked the Licensee how the programmes overall complied with this rule.

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<sup>2</sup> Ofcom understands the term “Shirk” to be the sin of polytheism or worshipping entities in addition to Allah.

## Response

In its initial representations, Radio Asian Fever agreed that this material breached the Code, and that Rules 2.3, 2.4 and 4.1 of the Code “were not complied with”. However, the Licensee did not consider that it had contravened Rule 3.1 of the Code. In further representations, Radio Asian Fever said that no Code rule had been intentionally breached and stated its belief that only Rule 4.1 had been breached. Radio Asian Fever said that it was “very embarrassed and can only sincerely apologize for the offense caused to all the communities and guarantee that these types of mistakes will not be repeated”.

In its representations, the Licensee provided: its comments concerning the presenter; comments from the presenter herself; Radio Asian Fever’s comments concerning the programmes; its comments in relation to Rule 3.1; and the steps it had taken to improve compliance following the broadcasts in this case.

### Background on the presenter

In this case, the female presenter (‘Sister Ruby’) delivered sermons on successive days, illustrating her sermons with Qur’anic texts. In the Licensee’s words, the two sermons in question went “against all that [Radio Asian Fever] stands for, we do not encourage or allow such programmes; these go against our ethos and actually divide communities”.

In relation to Sister Ruby, Radio Asian Fever said that she was a “self-taught preacher”, and was not one of the station’s regular presenters. The Licensee added that it had “never had any concerns about [her] lectures before” and that the presenter was presenting daily sermons during Ramadan, a time which “is a challenge for us as we train new and inexperienced presenters in delivering Islamic talk shows”. In this regard, the Licensee supplied Ofcom with a copy of a document entitled ‘Radio Asian Fever Agreement’ which the Licensee had required all presenters to sign from 2007, whenever presenters appeared in different programmes. This document forbids “anyone to slander or belittle any person, group, organization, sect or business in any way”. Radio Asian Fever said that since 2009/10 it had no longer required its presenters to sign these documents because “it was so repetitive but...also because it was feared that it was insulting to the intelligence of somebody who had already signed such a document dozens of times”. However, the Licensee said that it did continue to “explain our rules and ask everyone to use common sense, and to seek advice if not sure about anything”. Further, it confirmed that it had now reintroduced the requirement for presenters to sign these documents, and that if a presenter or guest belittles, slanders or attacks “any person, group, sect or business including callers...then the presenter will be suspended...and the matter brought in front of the management committee to investigate and decide whether to expel the presenter entirely”.

In addition, Radio Asian Fever said that during the sermons, the presenter was emphasising “the historical background of Islam and raised a discussion as to how this has changed within today’s society and how Muslims should cope with it”. The Licensee added that the presenter “sincerely apologized for the offence that she caused and explained that she had taken information from various religious books and didn’t realize that this was not allowed on the airwaves”. Further, according to Radio Asian Fever, the presenter had stated “nothing could have been further from her mind than the desire to offend any member of the general public...[and that] she believes in equality and that everyone is of equal value”. The Licensee added that: “These are not words from a lady who wants to stir up trouble”. However, the

Licensee also said “[w]ith hindsight [the presenter] realizes how wrong she was and the offence that she has caused”.

Radio Asian Fever stated its view that “one person does not represent our station as a whole and should not be allowed to tarnish the great reputation that Radio Asian Fever has built up over the years”. In addition, the Licensee said that the presenter in this case would not be asked to present any shows on the station “now or in the future”.

#### Comments provided by the presenter

In its representations, Radio Asian Fever provided a letter from Sister Ruby, which sought to provide further information in this case. She stated that she had been studying Qur’anic theology for 13 years and had been broadcasting for four years. The presenter said that the programme broadcast on 17 August 2011 “did not consist of my own personal views or opinions on the topic of homosexuality”. Further, she cited references which she had used as background to the two statements, included in the programme broadcast on 17 August 2012, which Ofcom was investigating under Rules 2.4 and 3.1. She first provided the reference to the following statement:

*“What should be done if they do it [practise homosexuality]? If there are two such persons among you, that do this evil, the shameful act, what do you have to do? Torture them; punish them; beat them and give them mental torture.”*

The presenter said that she had sourced this statement from ‘AlQuran’, which “is a resource which translates the Arabic into Urdu and provides further explanations of what...verse[s] actually mean to help people understand the message from the Holy Qur’an”. Further, she added that the actual statement derived from the Tafseer Ibn-E-Kaseer<sup>3</sup> (available on the ‘AlQuran’ resource) relating to the following Qur’anic verses: Surah Hude, verses 76, 80, 81 and 83.

The presenter said the second following statement was also taken from a hadith<sup>4</sup> within Tafseer Ibn-E-Kaseer:

*“Allah states, ‘If they do such a deed [i.e. homosexuality], punish them, both physically and mentally.’ Mental punishment means rebuke them, beat them, humiliate them, admonish and curse them, and beat them up. This command was sent in the beginning because capital punishment had not yet been sent down.”*

The presenter stated that “In order for me to deliver my programme I emphasize the historical background of Islam and further discuss how this has changed within today’s society in addition to how we should adopt it”.

The presenter stated in her letter that she was “utterly unaware” of the Code, and confirmed that she had not discussed the subject matter of her lectures with the management of Radio Asian Fever prior to the broadcasts in question.

In conclusion, the presenter said it was not her intention to “offend or cause discrimination” and that she felt “much remorse if I have upset anyone”.

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<sup>3</sup> Ofcom understands a ‘tafseer’ to be a commentary on The Qur’an, and Ibn-E-Kaseer was a noted cleric who produced a tafseer of some repute.

<sup>4</sup> Ofcom understands hadith to be sayings or opinions ascribed to the Prophet Mohammed which are supplementary texts which help interpret the Qur’an.

### The programmes

In relation to the degree of oversight that it had in place over the presenter in this case, Radio Asian Fever said that “no one in the management or staff was aware that [the presenter] was going to present a lecture on the gay community and mixed marriages” and no one from the Licensee’s Management Committee “actually heard” the programmes in this case due to other commitments. According to the Licensee, its Management Committee was “very shocked, confused and embarrassed that such lectures were broadcast on our station”. Further, the presenter was “not given any permission, nor was any permission sought” by the presenter in relation to broadcasting the sermons in question. This was due to the Managing Director of Radio Asian Fever working at night and not being present when the programmes were broadcast, or being able to hear the programmes as they were being broadcast. The Licensee added that if the Managing Director of the station had heard the programmes he “would have advised against these sermons”.

The Licensee added that the member of staff who was present when these programmes were broadcast was “a young person...[in] her first employment after her graduation”. This member of staff “was unable to understand the lecture[s] as her Urdu is very weak and she did not ask what the topic of the day was...because [the member of staff] had heard [the presenter’s] lectures since 1<sup>st</sup> of August and everything seemed fine”. Accordingly, the member of staff “did not take much notice or understand” the two lectures included in the programmes in this case. Radio Asian Fever said that the member of staff had ceased working for the station due to the “sheer embarrassment” caused by this case.

The Licensee also outlined specific factors surrounding the production of these two broadcasts. For example, due to Radio Asian Fever being “under enormous pressure first to raise funds for our re-location, then moving and reorganizing ourselves at the new premises” to commence broadcasting from new studios on 10 July 2011, it was not possible to have a team meeting ahead of Ramadan starting on 1 August 2011. The Licensee said that such meetings had been previously used to “educate and inform the presenters of their responsibility”.

### Rule 3.1

Radio Asian Fever made a number of points in support of its position that the two sets of statements made by Sister Ruby and identified by Ofcom were not likely to encourage or incite crime or lead to disorder, and therefore did not breach Rule 3.1:

- Radio Asian Fever did not receive any complaints from listeners in response to the 17 August broadcast. The Licensee said it believed the complaint was made to Ofcom by someone who had a grievance against the station and was “malicious”.
- “The fact of the matter is that the words did not lead to or provoke the commission of crime or disorder”.
- “It is crucial to bear in mind that these talks [by Sister Ruby] were given during the holy month of Ramadan...they were liberally scattered with quotations from the Qur’an, much as a Christian preacher might illustrate his/her remarks by reference to passages in the Bible” and that “one does not have to look far in the Old Testament to find passages that are apparently as blood thirsty as the passage complained about – or even more so”. In this regard, the Licensee cited

a biblical reference<sup>5</sup> about which Radio Asian Fever said, “No Western Christian upon hearing such a passage on a radio station would be likely to reach for his gun, locate an obscure nomadic people living in Palestine, and wipe them out as a consequence of listening to such a broadcast,” and that “much the same can be said of passages that are quoted from the Quran”.

- “It is also important to understand that a Muslim audience, unlike an average Western audience, would be totally familiar with the passages quoted from the Quran which many of them would have learned by rote, as children. For them, therefore, such passages do not come as any surprise, or for that matter, any kind of call to arms”.
- In justifying its contention that the statements in question did not lead to or provoke the commission of crime or disorder, the Licensee said that: “Any religiously educated Muslim would recognize the passage from the Quran as being an illustration written hundreds of years ago of the serious view that Allah would take in respect of such sinful behaviour – as it was viewed then”.
- As a community radio station run largely by volunteers “it is not possible to manage [Radio Asian Fever] in the way that a monolith like the BBC or the professional commercial radio [sector] can be managed” and that “[p]eople who participate in this station can be managed to a degree but also have to be trusted”.

#### Steps taken to improve compliance

In conclusion, Radio Asian Fever said it had taken steps to prevent any future compliance “mistakes” by:

- translating the Code and associated Guidance into “each trainee’s native language” and distributing and explaining these documents to all presenters;
- as outlined above, re-introducing signed presenter agreements;
- explaining the “rules of our station” to all presenters, in English or other languages;
- ensuring that members of staff “manning the controls for a community language programme will be able to understand English, Urdu and Punjabi”;
- requiring all presenters to seek permission from “staff/management on any lecture/topic” to be broadcast on the station; and
- discussing the Code at regular staff and team meetings.

By way of background, the Licensee stated that its role in the cultural and everyday life of the community is “immense”. It has undertaken valuable charity work, broadcasts in Hindi, Arabic and Punjabi as well as English and Urdu, and, uses the services of over 60 volunteers. Further, “the station is particularly appreciated by some of the most isolated members of the community”.

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<sup>5</sup> Radio Asian Fever cited 1<sup>st</sup> Samuel, chapter 15, verses 2 to 3: “This is what the Lord Almighty says: ‘I will punish the Amalekites for what they did to Israel when they waylaid them as they waylaid them as they came up from Egypt. Now go, attack the Amalekites and totally destroy everything that belongs to them. Do not spare them; put to death men and women, children and infants, cattle and sheep, camels and donkeys”.

## 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, including that: “generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material”; “material likely to encourage or incite the commission of crime or lead to disorder is not included in television or radio services”; and “broadcasters exercise the proper degree of responsibility with respect to the content of programmes which are religious programmes”. These duties are reflected in Sections Two, Three and Four of the Code.

In reaching a decision in this case, Ofcom has taken careful 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 (“ECHR”). Article 10 provides for the right of freedom of expression, and the right to receive and impart information and ideas without unnecessary interference by public authority.

Ofcom has also had regard to Articles 9 and 14 of the ECHR. Article 9 states that everyone “has the right to freedom of thought, conscience and religion”. This Article goes on to make clear that freedom to “manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of ... health ... or for the protection of the rights and freedoms of others”. Article 14 concerns the right to enjoyment of human rights without discrimination on grounds such as religion.

We first considered the broadcasts against Rules 3.1 (material likely to encourage crime) and 2.4 (material condoning or glamorising violent, dangerous or antisocial behaviour and likely to encourage others to copy that behaviour).

We then also assessed the material broadcast against Rules 2.3 (whether the inclusion in the service of statements made by the presenter were likely to breach generally accepted standards) and 4.1 (whether the Licensee had exercised the proper degree of responsibility with respect to the content of these religious programmes).

In investigating these programmes, Ofcom took account of the programmes’ editorial context. We noted they were broadcast on a station aimed at a South Asian audience in a part of Leeds, including members of the Muslim community. We also observed that the two programmes consisted of sermons, including quotations from religious texts, given by a presenter during the holy month of Ramadan. In the first sermon, broadcast on 17 August 2011, the presenter gave her views concerning homosexuality. In the second sermon, broadcast on 18 August 2011, she gave her views concerning mixed-faith marriages. Being programmes which dealt with “matters of religion as the central subject, or as a significant part” of the broadcasts, they were clearly “religious programmes” as referred to in Section Four of the Code (Religion).

### Rule 3.1: Material likely to encourage or incite the commission of crime or lead to disorder must not be included in television or radio services

Rule 3.1 of the Code states that:

“Material likely to encourage or incite the commission of crime or to lead to disorder must not be included in television or radio services.”

This rule is concerned with the likelihood of the encouragement or incitement of crime. In this case, Ofcom therefore assessed whether two statements, as quoted in the Introduction, included in the programme broadcast on 17 August 2011, would be understood within a context that would be likely to encourage or incite the commission of crime (e.g. a crime of hatred or violence), or lead to disorder. In deciding this Ofcom focused in particular on whether the actual comments as they were presented contained a direct or implied call to action which would be likely to encourage or incite the commission of crime or lead to disorder.

Ofcom is mindful that broadcast content, in the form of references to scripture or sacred texts, may refer to acts of violence, but this does not necessarily mean of course that there has been a breach of the Code. In considering Rule 3.1 we are required to address the likelihood of the commission of a crime being encouraged or incited such as, in this case, the likelihood of a hate crime against members of the homosexual community. In particular, we have considered whether the references in the programme included direct or indirect calls to action that would be likely to encourage or incite the commission of crime. We recognised that the overarching tone of much of the 17 August 2011 sermon was clearly critical of the homosexual community. In addition, we were of the view that the two statements quoted in the Introduction could be objectively and reasonably regarded as not only condoning but encouraging violent behaviour against homosexual people.

For example, we noted that within the first two minutes of the programme broadcast on 17 August 2011 the presenter gave her interpretation of a particular Qur’anic verse, and concluded this section (underlined in the passage below) by giving her views, based on her understanding of particular interpretations of sacred texts, on how people should react to homosexuality and treat homosexual people:

*“Honourable listeners...you [have just] listened to...[the] 16<sup>th</sup> verse of Sura Al-Nisa. I beg your pardon – you listened to verse 15 – and in verse 16 Allah states ‘And if two persons’ – these two could be a man and a woman, or a man and a man, or a woman and a woman. The interpretation of the word ‘walizan’ has been done in two ways: the evildoers could be a man and a woman, or two men or two women. What should be done if they do it [practise homosexuality<sup>6</sup>]? If there are two such persons among you, that do this evil, the shameful act, what do you have to do? Torture them; punish them; beat them and give them mental torture”.*

Soon afterwards (around three minutes into the programme), the presenter continued her interpretation of the Qur’anic verse, by giving more of her views, based on her understanding of particular interpretations of sacred texts, of how homosexual people should be treated:

*“Allah states, ‘If they do such a deed [i.e. homosexuality<sup>7</sup>], punish them, both physically and mentally.’ Mental punishment means rebuke them, beat them, humiliate them, admonish and curse them, and beat them up. This command was sent in the beginning because capital punishment had not yet been sent down”.*

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<sup>6</sup> From the context of the rest of this sermon, we considered both of the presenter’s statements above referred to the act of homosexual sex.

<sup>7</sup> Ibid.

In reaching our decision under Rule 3.1, Ofcom took into account that acts of violence and hatred on the grounds of sexual orientation are prohibited by UK law. We considered that, on balance, the inclusion of the above statements in the programme broadcast on 17 August 2011 was likely to encourage or incite the commission of crime i.e. violence or hatred on the grounds of sexual orientation. Our reasons for this view are set out in the following paragraphs.

Ofcom first assessed the nature of the statements themselves. We noted that the Licensee indicated that the statements were presented to the audience as the presenter emphasising “the historical background of Islam and raised a discussion as to how this has changed within today’s society and how Muslims should cope with it” in relation to a particular Qur’anic verse (Sura Al-Nisa, verse 16). However, in Ofcom’s view, the presenter delivered her interpretation, based on her understanding of particular interpretations of sacred texts, as the correct interpretation – as a matter of fact – of this particular Qur’anic reference. Further, because there were no other interpretations presented and the presenter did not seek to qualify her remarks in any way, we considered that the audience would be more likely to perceive the presenter’s interpretation as legitimate.

Furthermore, Ofcom considered that the statements could be objectively and reasonably regarded as calls to action to undertake violent and other forms of potentially criminal behaviour against the homosexual community. In our view, the presenter clearly set out that it was appropriate for people listening to the programmes to: *“Torture ...; punish...; beat ... and give ... mental torture”* to homosexual people. We considered that the use of the imperative clearly indicated to listeners that they should act in this way. To further emphasise what she meant, the presenter went on to explain to listeners within the next minute or so that: *“mental punishment [for homosexual people] means rebuke them, beat them, humiliate them, admonish and curse them, and beat them up”*.

Ofcom then assessed the context within which the presenter’s sermon was broadcast. Radio Asian Fever is a service aimed at South Asian communities in Leeds, and the programme broadcast on 17 August 2011 consisted of a sermon delivered by a presenter to an Islamic audience without interruption or any challenge to her views. At no point in the programme, for example, was there any mediating view or qualification to the above statements – either made by the presenter herself, by another contributor, or by the station – which would have made it clear to the audience that it is completely unacceptable to *“torture”, “punish”, or “beat”* homosexual people because of their sexual orientation.

In Ofcom’s view, although the presenter was “self-taught”, the fact that these views were included in a sermon given during the holy month of Ramadan, and in a programme seeking to give interpretation of sacred texts to a largely Muslim audience which would have given the comments extra weight.

We noted Radio Asian Fever’s representations, echoed by the presenter in her representations, that the presenter was emphasising “the historical background of Islam and raised a discussion as to how this has changed within today’s society and how Muslims should cope with it”. We also noted that Sister Ruby said that her lecture given on 17 August 2011 “did not consist of my own personal views” and the Licensee’s view that “[t]hese are not words from a lady who wants to stir up trouble”. Radio Asian Fever also argued that the presenter’s statements were not meant to be taken literally and that she was including Qur’anic quotations in her sermon much as any Christian preacher might quote from the Bible in a sermon which also contains passages reliant on violent imagery. We also noted the Licensee’s argument that the

Muslim audience to this programme “would be totally familiar with the passages quoted from the Quran which many of them would have learned by rote, as children” and that for them the comments would not represent “any kind of call to arms”, and that “religiously educated Muslim[s] would recognize the passage from the Quran as being an illustration written hundreds of years ago”.

However, in Ofcom’s view the highly problematic statements were not part of a quotation from the Qur’an. We are aware that the verse in question in the Qur’an (Sura Al-Nisa, verse 16), which was specifically referred to by the presenter within her lecture, can be translated as follows:

“If two persons among you are guilty of lewdness punish them both. If they repent and amend leave them alone; for Allah is Oft-Returning, Most Merciful”.

Further, we do not consider that the highly problematic statements were part of other Qur’anic verses cited by the presenter in her representations: Surah Hude, verses 76, 80, 81 and 83<sup>8</sup>.

Therefore, we do not consider that the statements made by the presenter in relation to homosexual people – such as “*Torture them; punish them; beat them and give them mental torture*” – could be seen as a quotation from the above Qur’anic verses written in a particular historical context.

Further, while it may have been the case that parts of the presenter’s sermon were seeking to explain the historical background relating to a particular reading of the Qur’an, we do not consider that the above comments were delivered in that context. In this regard, we noted that the presenter said the two problematic statements in this case were derived from a Qur’anic commentary or ‘tafseer’ by a noted cleric, Ibn-E-Kaseer. However, in our view, it would have not been clear to the audience that the presenter was providing interpretations of particular Qur’anic verses by a noted cleric. Further, although the viewpoint the presenter was expressing may have originally been voiced by a noted cleric, it was the case that this viewpoint went unchallenged and was clearly endorsed by the presenter. As stated above, we considered that the presenter delivered her interpretation as a matter of fact and we found no evidence of the presenter seeking to qualify her remarks in any way to ensure that they could not be misinterpreted, or would not be likely to encourage or incite the commission of crime or lead to disorder.

In reaching our decision, we also noted that the presenter relied not just on Qur’anic references to illustrate the points she was making about homosexuality in the sermon; she also cited various statistics, which in her view, demonstrated the deleterious effects of homosexuality. For example, the presenter said:

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<sup>8</sup> These verses can be translated as follows:

- Verse 76: “O Ibrahim (Abraham)! Forsake this. Indeed, the Commandment of your Lord has gone forth. Verily, there will come a torment for them which cannot be turned back”.
- Verse 80: “He said: ‘Would that I had strength (men) to overpower you, or that I could betake myself to some powerful support (to resist you)’”.
- Verse 81: “They (Messengers) said: ‘O Lout (Lot)! Verily, we are the Messengers from your Lord! They shall not reach you! So travel with your family in a part of the night, and let not any of you look back, but your wife (will remain behind), verily, the punishment which will afflict them, will afflict her. Indeed, morning is their appointed time. Is not the morning near?’”
- Verse 83: “Marked from your Lord, and they are not ever far from the *Zalimun* (polytheists, evil-doers, etc.)”.

*“In America, the 1990-92 Homosexual Workshop Report states that an average homosexual has partners numbering between 20 and 106, and they make new partners every year. In other words, one such man commits this bad act with at least 20 and with a maximum of 106 men”; and*

*“50% of those who commit suicide are victims of homosexuality. Murderers too suffer from the same disease. In USA 50% cases of AIDS are homosexuals. Among these people – those who do this bad deed and act against nature – peace and happiness cannot be found. Among women who are victims of homicide, 21% are victims of homosexuality too”.*

The fact that the presenter relied on, what she presented to be, non-theological statistical sources to back up the views she was putting forward would, in our view, have helped to establish in listeners’ minds that what the presenter was stating was established fact.

We are conscious that Radio Asian Fever maintained that the words did not in fact lead to or provoke actual crime or disorder. However, in judging whether Rule 3.1 has been breached Ofcom does not need to demonstrate that any particular broadcast content has caused, or has contributed to the commission of specific criminal acts. Rather the rule requires Ofcom to assess whether broadcast content is likely to encourage or incite the commission of crime or lead to disorder. In reaching our decision in this case, we not only had regard to all the points above, but also to evidence of instances of homophobic hate crimes committed by certain members of the Islamic community, on the basis of their understanding of the Qur’an<sup>9</sup>. We considered this indicative of the strength of reaction that a particular view or interpretation is capable.

In light of all of the above considerations, Ofcom has reached the view that the Radio Asian Fever service included material likely to encourage or to incite the commission of crime or to lead to disorder. Accordingly, Ofcom found the Licensee in breach of Rule 3.1 of the Code.

We noted Radio Asian Fever’s arguments that: as a community radio station “it is not possible to manage [Radio Asian Fever] in the way that a monolith like the BBC or the professional commercial radio [sector] can be managed”; “[p]eople who participate in this station can be managed to a degree but also have to be trusted” and “one person does not represent” Radio Asian Fever and should not be allowed to “tarnish” the station’s reputation. Ofcom recognises the fact that many community radio stations are run by volunteers and will not have the same resources as more established broadcasters. However, all Ofcom-licensed broadcasters – however small and however limited their resources – must ensure compliance with the Code.

Radio Asian Fever stated that neither its Managing Director nor any other member of the station’s Management Committee was present when the programme was broadcast and that the Managing Director “would have advised against” the sermon. We also took into account the specific factors surrounding the production of these two broadcasts, such as the station having to deal with relocating in the weeks before the broadcasts. We also noted: the fact that presenter had been barred from

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<sup>9</sup> For example, in January 2012, three Muslim men from Derby became the first people in Britain to be convicted of inciting hatred on the grounds of sexuality after they distributed leaflets calling for gay people to be killed on the basis that, according to the three men, this is what is required by Islamic teaching: <http://www.guardian.co.uk/world/2012/jan/20/three-muslims-convicted-gay-hate-leaflets>

presenting any future programmes on this station; and the various steps taken by the Licensee to improve compliance, including that if a presenter or guest “is allowed to belittle, slander or attack any person, group, sect or business including callers” then the presenter would be suspended, and depending on the facts of the case, dismissed. However, Radio Asian Fever allowed the material to be broadcast uninterrupted and provided no evidence to Ofcom to show that it had any proper procedures or systems in place for monitoring live content to ensure compliance with the Code or to take appropriate action quickly when required. For example, we noted that the member of production staff who was present when the programmes were being broadcast “did not take much notice or understand” the two lectures included in the programmes in this case.

We also noted that, at the time of the broadcasts in this case, although the Licensee said that it did “explain our rules and ask everyone to use common sense, and to seek advice if not sure about anything”, it did not require its presenters to sign its ‘Radio Asian Fever Agreement’ document, which required any presenter not “to slander or belittle any person, group, organization, sect or business in any way”. Further, we considered the presenter’s own admission that she was “utterly unaware” of the Code and “didn’t realize that [such content] was not allowed on the airwaves”, was indicative of the presenter not having been properly briefed about the requirements of the Code before being allowed to broadcast.

Rule 2.4: Programmes must not include material which condones or glamorises violent, dangerous or antisocial behaviour and is likely to encourage others to copy such behaviour

In addition to considering the two problematic statements above under Rule 3.1 of the Code, we also considered these statements under Rule 2.4 of the Code.

Rule 2.4 of the Code states:

“Programmes must not include material (whether in individual programmes or in programmes taken together) which, taking into account the context, condones or glamorises violent, dangerous or seriously antisocial behaviour and is likely to encourage others to copy such behaviour.”

The relevant test under Rule 2.4 is firstly, that material must not, taking into account the context, condone or glamorise violent, dangerous or seriously antisocial behaviour; and second, that it should not be likely to encourage others to copy such behaviour.

With regard to context, Ofcom took into account that Radio Asian Fever is a service aimed at South Asian communities in Leeds, and the programme broadcast on 17 August 2011 consisted of a sermon delivered by a presenter to an Islamic audience without interruption.

In considering whether the material condoned or glamorised violent, dangerous or seriously anti-social behaviour, and was likely to encourage others to copy such behaviour, Ofcom considered the way in which it was likely to be perceived, and the effect it was likely to have on the audience.

Ofcom is mindful that there is a tradition of violent imagery being used in different sacred texts. Further, there is no prohibition on broadcasters using and discussing such violent imagery in the context of a religious discussion programme, as long as the broadcast material complies with the Code.

As noted under Rule 3.1 above, the presenter delivered her interpretation, based on her understanding of particular interpretations of sacred texts, as the correct interpretation – as a matter of fact – of this particular Qur’anic reference. Further, because no mediating view, challenge or qualification to the two problematic statements above was given to listeners and the presenter did not seek to qualify her remarks in any way, we considered that the audience would be more likely to perceive the views that the presenter expressed as legitimate.

Furthermore, in our view, the presenter clearly set out that it was appropriate for people listening to the programmes to: “*Torture ...; punish...; beat ... and give ... mental torture*” to homosexual people. We considered that the use of the imperative clearly indicated to listeners that they should act in this way. To further emphasise what she meant, the presenter went on to explain to listeners within the next minute or so that: “*mental punishment [for homosexual people] means rebuke them, beat them, humiliate them, admonish and curse them, and beat them up*”. In our view, the presenter’s statements clearly condoned violent or seriously antisocial behaviour towards homosexual people.

We went on to consider whether this material was likely to encourage others to copy such behaviour. For the reasons set out above relating to Rule 3.1, we considered that the inclusion of the above statements in the programme broadcast on 17 August 2011 was likely to encourage or incite the commission of crime. For the same reasons we concluded that these statements were likely to encourage others to copy the sort of unacceptable behaviour towards homosexual people described by the presenter.

These statements therefore also breached Rule 2.4 of the Code.

Ofcom noted that the Licensee admitted in its first set of formal representations to Ofcom that the two statements by Sister Ruby set out in the Introduction had, in its opinion, breached Rule 2.4.

Rule 2.3: In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context

Rule 2.3 of the Code requires that:

“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...humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of... religion, beliefs, and sexual orientation) ...”.

Ofcom considered first whether the content was potentially offensive; and, if so, whether the offence was justified by the context. Context includes for example: the editorial content of the programme, the service on which it is broadcast, the time of broadcast, the likely size and composition of the potential audience and the likely expectation of the audience.

We noted that, in the sermon broadcast on 17 August 2011, homosexuality was described in a consistently negative and derogatory way, for example: it was called “evil”; a “bad act”; a “disease”; as “such a bad deed as no one can accept”; and “shameful”. In the sermon broadcast on 18 August 2011, Muslims and non-Muslims entering mixed-faith marriages were also described very negatively, for example: going to “hellfire”; having “impure” hearts; dealing in “filth”; and having “no concept of

*cleanliness and un-cleanliness*". We considered that the two sermons in this case therefore clearly contained a number of statements which had the potential to cause offence to the audience.

In considering context, we noted that the programmes in this case were sermons giving spiritual guidance and interpretation on religious issues aimed at a Muslim audience during the holy month of Ramadan. It is unsurprising that at such a time the Licensee would want to broadcast programmes that discuss Islamic principles; and it is likely that Radio Asian Fever's audience would expect such discussion.

Ofcom acknowledges that programming derived from a particular religious or spiritual viewpoint may include advice to followers of particular faiths as to how to lead their lives which may cause offence to certain sections of the audience. Ofcom recognises that some faith groups and their followers disapprove of homosexuality on religious grounds and wish to broadcast their opinions. The Code does not prevent these views being broadcast, provided the material is justified by the context and complies with the relevant Code rules, including that generally accepted standards are applied.

We noted that the Licensee accepted that Rule 2.3 was "not complied with". We in turn considered that the terms used to describe homosexuality and homosexual people, and Muslims and non-Muslims entering mixed-faith marriages, exceeded legitimate criticism and comment and became gratuitous abuse regardless of the fact that this material was broadcast to a largely Muslim audience. Therefore the potential offence in this case was increased due to the lack of any mediating or counteracting views within the programmes to balance the statements being made by the presenter.

We noted that both the Licensee and the presenter in this case had apologised for any offence caused. However, given the above, Ofcom concluded that the context was insufficient to justify the broadcast of the offensive content in this case, and that Radio Asian Fever did not apply generally accepted standards. Consequently, the programmes were in breach of Rule 2.3 of the Code.

Rule 4.1: Broadcasters must exercise the proper degree of responsibility with respect to the content of programmes which are religious programmes

Rule 4.1 of the Code requires that:

"Broadcasters must exercise the proper degree of responsibility with respect to the content of programmes which are religious programmes."

For the reasons explained above, these two broadcasts were "religious programmes".

Broadcasters can transmit programmes taking a critical view of particular issues or conduct from a religious viewpoint, provided they do so with a proper degree of responsibility. The comments made in these programmes described above were made in the context of religious programmes produced for a predominantly Muslim audience. The Code does not seek to prevent followers of one religion from being able to criticise aspects of other religions or of human behaviour. However, such material must comply with the relevant provisions of the Code, and in particular Rule 4.1 which requires licensees to exercise the proper degree of responsibility when, for example, hyperbole or more extreme views are broadcast which could be deemed to be offensive to people in the audience who hold different views and beliefs.

As noted earlier, Radio Asian Fever explained that: the presenter in this case had not been given “permission” to broadcast her sermons; neither its Managing Director nor any other member of the station’s Management Committee was present when the programmes were broadcast; and if the Managing Director had been present during the broadcasts he “would have advised against these sermons”. We have also noted the Licensee’s explanation that although it did “explain our rules and ask everyone to use common sense, and to seek advice if not sure about anything”, at the time of the broadcasts in this case it did not require its presenters to sign its ‘Radio Asian Fever Agreement’ document, which required any presenter not “to slander or belittle any person, group, organization, sect or business in any way”.

We noted the various steps taken by the Licensee to improve compliance following the broadcasts in this case, including ensuring that presenters are adequately briefed about the requirements of the Code. However, in the context of the requirements of Rule 4.1 we were concerned that the Licensee did not provide any evidence of relevant steps it had taken that demonstrated it had taken a proper degree of responsibility with respect to the content of the programme in this case. For example, we noted that Radio Asian Fever had said that: it had not made any checks for problematic content before the sermons were broadcast; and that it had not monitored the live output to ensure that it could intervene swiftly if unsuitable material was broadcast. For example, as mentioned above, we noted that the member of production staff who was present when the programmes were being broadcast “did not take much notice or understand” the two lectures included in the programmes in this case. We were concerned that the Licensee appeared to base its compliance decisions in this case on the basis that it had “never had any concerns about [the presenter’s] lectures before”. We were also concerned by the presenter’s own admission that she was “utterly unaware” of the Code and “didn’t realize that [such content] was not allowed on the airwaves”.

In reaching our decision, we took into account the specific factors surrounding the production of these two broadcasts, such as the station having to deal with relocating in the weeks before the broadcasts. However, given the above, we consider that the broadcaster did not exercise the proper degree of responsibility with respect to the content of these religious programmes. The programmes were therefore also in breach of Rule 4.1 of the Code.

### Conclusion

Ofcom regards the breaches in this case as serious breaches of the Code. In particular, in relation to Rule 3.1, Ofcom views any incident where a licensee has allowed content to be broadcast that is likely to encourage or incite the commission of crime or to lead to disorder as a significant contravention of the Code. **Ofcom therefore puts the Licensee on notice that we will consider these breaches for the imposition of a statutory sanction.**

### **Breaches of Rules 2.3, 2.4, 3.1 and 4.1**

## In Breach

### Religion and Society

*Voice of Russia, 24 February 2012, 08:05*

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#### Introduction

Voice of Russia is the Russian government's international radio broadcasting service. A selection of its English language programmes are broadcast on one of the three digital radio multiplexes serving the London area by World Radio Network Broadcast ("WRN" or "the Licensee"). WRN is responsible for the compliance of Voice of Russia's programming on this service.

Ofcom was alerted by a complainant to a programme broadcast on the service which featured an interview by the Russian presenter, Vakhtang Kipshidzhe, with a Christian psychotherapist, Lesley Pilkington. Before the interview, the presenter explained that Lesley Pilkington was facing the loss of her accreditation to the British Association for Counselling and Psychotherapy<sup>1</sup>. This was because Lesley Pilkington had agreed to treat an undercover journalist (posing as a homosexual man seeking treatment from Mrs Pilkington), who had asked her to "cure" him of his homosexuality.

The complainant was concerned that when referring to homosexuality, Vakhtang Kipshidzhe used phrases such as "mental disorder", "cured" and "suffer from". The complainant believed that the presenter implied that homosexuality was linked to an illness or disease and needed correction.

Ofcom assessed a recording of the material and noted that this edition of *Religion and Society* consisted of a 20 minute interview conducted in English, between the presenter and Lesley Pilkington. During the interview, we noted the following exchanges:

Presenter: *"I think the church says about that – that if you want to be homosexual you choose this kind of behaviour. If you don't, you don't. That is why you are, if I may say so, responsible for committing such kind of sin."*

Lesley Pilkington: *"We would say that it is not as clear as that. We would say that you are not born that way but there are certain things that happen in a person's life that would make them feel homosexual."*

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Lesley Pilkington: *"I very much believe that God is there to help that person and to love that person and to heal, to heal the pain."*

Presenter: *"There are people that want to be cured from homosexuality...have you met many people who want to be cured from this mental disorder, or how we can call it?"*

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<sup>1</sup> A professional membership body representing counselling and psychotherapy in the UK.

Lesley Pilkington: *“Yes we could call it a disorder because people feel ‘disordered’. Now that’s not a term, even today, we use but it still gives a good sense of how people feel when they come to us. They feel a sense of disorder...there are a lot of people that want to come forward for this help but they are afraid to do that. And it really is a question of their human rights, really, are being violated.... Usually, most people are helped and benefited to some extent by the kind of therapy that we’re offering.”*

Presenter: *“So...that means that gay activists are creating a kind of atmosphere where people who want to be cured to get rid of these kind of attractions feel very insecure and don’t see any way out of this society.”*

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Presenter: *“So what you are saying is...in fact, homosexuality brings disorder inside people who suffer from that kind of behavioural attraction. So how can you find a way to combine your Christian beliefs and scientific data to use in this kind of helping people.”*

Lesley Pilkington: *“First of all let me say that if people are happy in their homosexual lifestyle that is fine. I’m not saying this is for everyone. I’m just saying it’s for those who come to us.... Now, for me it is very important to work as a Christian in this area because it means the person I’m working with and I, we have similar values.”*

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Presenter: *“In Russia, there is a kind of legal initiative to put [sic] a ban on propaganda of homosexual lifestyle as our legislators are afraid of the danger that young generation could be indoctrinated by homosexual lifestyle. And that is why public demonstrations of homosexual lifestyle will be fined and gay prides will be forbidden by local authorities.”*

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Presenter: *“We’ve all seen and heard the quotations from homosexual propaganda that parents should support them in their desire to be homosexual otherwise they will suffer. What is your experience in this regard? How would you react to this being a Christian?”*

Lesley Pilkington: *“...You’re not born that way [i.e. as a homosexual] so there is no need at all to say that you have be homosexual and that’s it...with help you can change. The parents that I see – and I’ve seen quite a lot of parents, they’re absolutely heartbroken when...their child comes to them and says ‘look, I think I’m homosexual or bisexual.’ They’re completely heartbroken. They go through a kind of grief.... The hopes and the aspirations that they have for that child, that they’re going to*

*grow and develop and have girlfriends and get married. That's all gone. So it's sort of like a grieving process."*

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Presenter: *"I visited some big international events...in Europe and their freedom of religion was also discussed. And I met people who organised special institutions that are dealing with people with same-sex attractions."*

Ofcom also noted that the interviewee attributed homosexuality to a negative experience in childhood:

*"We would say that you are not born that way but there are certain things that happen in a person's life that would make them feel homosexual...often there is a lack of loving or lack of nurturing or a lack of emotional intimacy that tends to leave the young child feeling that there is something wrong with them and they have a sense of shame."*

Ofcom considered the material raised issues warranting investigation under Rule 2.3 of the Code, which states:

*"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,...discriminatory treatment or language (for example on the grounds of...sexual orientation)."*

Ofcom therefore asked WRN for its comments as to how this content complied with this rule.

## **Response**

The Licensee said it was clear that there were some "shortcomings" in the English language skills of the Russian presenter, Vakhtang Kipshidzhe, and it believed that this may have contributed to the impression that the programme sought to denigrate homosexuality. However, it did not consider this was intentional.

WRN said the presenter used words such as "cured" and "disorder" because of the context of the discussion. It explained that they were used "following the discussion of the World Health Organisation's declassification of homosexuality as a disease in 1992<sup>2</sup> and the interviewee's analysis of what she saw as one potential cause of homosexuality in some men". WRN acknowledged that the use of the word "cured" was regrettable but highlighted Lesley Pilkington's explanation that she used the word "disorder" to reflect that "some people "feel disordered" in the context that they may be depressed, anguished or feel that their life is out of control."

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<sup>2</sup> The first edition of what is now known as the International Classification of Diseases ("ICD") was adopted by the International Statistical Institute in 1893. The ICD serves as a global reference on physical and mental troubles. The World Health Organisation ("WHO") took over the responsibility for the ICD in 1948. Editions of the ICD until 1990 classified homosexuality as a form of mental illness. In 1990 the 10<sup>th</sup> edition of the ICD was endorsed by the WHO and it came into use in 1994. See: <http://www.who.int/classifications/icd/en/> From the 1990 10<sup>th</sup> edition of the ICD onwards homosexuality was no longer included in the ICD as a form of mental illness.

WRN said that the presenter's phrase "*suffer from*" was used "in the context of the interviewee's assertion that she offers help to those who seek it" and not in a pejorative way and added that Lesley Pilkington responded by stating that if people "*are happy in their homosexual lifestyle, that is fine.*" It did, however, recognise that Vakhtang Kipshidzhe's "shortcomings" in the English language and choice of words may have caused offence.

The Licensee said that, in addition to its regular meetings with Voice of Russia, it had requested a meeting with the station's London Bureau specifically to discuss the issues raised by Ofcom about this particular programme; and was in the process of establishing a system for flagging potentially contentious issues to ensure that programmes do not cause offence to listeners.

In WRN's opinion the interviewee's views on homosexuality as expressed in this programme were justified. The Licensee added that to balance the interviewee's opinions on this subject, a discussion featuring gay rights campaigner Peter Tatchell was broadcast the same week. However, it acknowledged that, with hindsight, the programme itself should have presented a more balanced view and avoided words or phrases that owing to the presenter's "language limitations" may have caused offence. It reiterated that it was certainly not WRN's or Voice of Russia's intention to cause offence to listeners.

## **Decision**

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

In reaching decisions, Ofcom must 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 ("ECHR"). 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 unnecessary interference by public authority. Ofcom also must give regard to Article 9 of the ECHR which states that everyone "has the right to freedom of thought, conscience and religion." This Article goes on to make clear that freedom to "manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of ... health ... or for the protection of the rights and freedoms of others".

Rule 2.3 of the Code states that "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...".

In this case, we considered in turn whether the comments made by the interviewee, Lesley Pilkington, and then the comments made by the interviewer, Vakhtang Kipshidzhe, complied with Rule 2.3.

### **Lesley's Pilkington's comments**

Ofcom first considered whether Lesley Pilkington's comments had the potential to offend the audience. We noted that during the interview Lesley Pilkington asserted that homosexuality: is a lifestyle choice; may result from a "*lack of emotional*

*intimacy*”; and that parents might undergo a “*grieving process*” if their child was homosexual. We considered that these statements had the potential to cause offence to listeners.

Ofcom then went on to consider whether the potential offence caused by Lesley Pilkington’s comments was justified by the context. Context includes (but is not limited to) the editorial content, the service on which it is broadcast and the likely expectations of the audience.

We noted that this was a religious programme focusing on Christian beliefs and their application in modern society. We considered that the likely audience of this programme would therefore have expected the broadcast of views reflecting the application of Christian values to different forms of human behaviour. As a practising Christian, Lesley Pilkington was putting forward her viewpoint based on a certain interpretation of Christian doctrine that homosexuality is not innate in people and that, if they wish, homosexual people can and should be able to receive therapy to help them stop being homosexual.

While the views of Lesley Pilkington had the potential to cause offence, we considered that at different times she made various comments to contextualise her opinions and put forward a conciliatory stance towards homosexual people. These included stressing the benevolent aspects of Christian theology as she saw them. These comments would overall - in our view - have served to mitigate and soften the potential offence to some extent.

For example during the interview Lesley Pilkington made the following statements:

*“I very much believe that God is there to help that person and to love that person and to heal, to heal the pain.”*

*“First of all let me say that if people are happy in their homosexual lifestyle that is fine. I’m not saying this is for everyone. I’m just saying it’s for those who come to us.”*

Also during the interview, Lesley Pilkington explained the circumstances that led to the situation whereby she was facing the loss of her accreditation by the British Association for Counselling and Psychotherapy. The presenter sought to clarify whether Lesley Pilkington’s view was that homosexuality was a lifestyle choice determined by social factors, and Lesley Pilkington gave a qualified response:

Presenter: *“I think the church says about that – that if you want to be homosexual you choose this kind of behaviour. If you don’t, you don’t. That is why you are, if I may say so, responsible for committing such kind of sin.”*

Lesley Pilkington: *“We would say that it is not as clear as that. We would say that you are not born that way, but there are certain things that happen in a person’s life that would make them feel homosexual.”*

Further, when the interviewer referred to homosexuality as a form of “*disorder*”, we noted that Lesley Pilkington expressed some caution about the use of this particular term:

*“Yes we could call it a disorder because people feel ‘dis-ordered’. Now that’s not a term, even today, we use - but it still gives a good sense of how people feel when they come to us.”*

Given the above, and taking into account Articles 9 and 10 of the ECHR, Ofcom considered that, while some of Lesley Pilkington’s comments were at the margins of acceptability under the Code, on balance, the potential offence caused by her comments was justified by the context. Therefore there was no breach of Rule 2.3 in relation to the various comments made by Lesley Pilkington.

### The presenter’s comments

Ofcom then considered whether the comments of the presenter, Vakhtang Kipshidzhe, had the potential to offend the audience. Ofcom noted that when referring to homosexuality, the presenter asserted that homosexuality was a medical affliction or problem that could be cured or homosexual people needed assistance with. For example, we noted the presenter started the interview by saying: *“We are speaking to Mrs Lesley Pilkington who is providing help for people with same sex attractions”*. We noted the presenter then went on to say the following by way of example:

*“There are people that want to be cured from homosexuality...have you met many people who want to be cured from this mental disorder, or how we can call it?”*

*“So what you are saying is...in fact, homosexuality brings disorder inside people who suffer from that kind of behavioural attraction.”*

Ofcom considered that the use of words and phrases such as *“cured”*, *“mental disorder”* and *“suffer from”* by the presenter, in the context of implying that homosexuality was an illness which is capable of being treated by therapy, clearly had the potential to cause offence to listeners.

Ofcom then went on to consider whether the potential offence caused by the presenter’s comments was justified by the context. As noted above, we took into account that this was a religious programme focusing on Christian beliefs and their application in modern society. We considered that the likely audience to this programme would therefore have expected the broadcast of views reflecting the application of Christian values to different forms of human behaviour.

Ofcom believes that the presenter’s comments had the potential to cause a considerable level of offence to listeners. This was particularly because the presenter used terminology that associated homosexuality with disease or affliction and did so quite frequently during the interview. The potential offence was exacerbated by the presenter using the answers given by Lesley Pilkington as a means of supporting his own highly critical views of issues linked to homosexuality. For example, we noted the presenter said the following in different points in the interview:

*“I visited some big international events...in Europe and their freedom of religion was also discussed. And I met people who organised special institutions that are dealing with people with same-sex attractions. And generally, I see a kind of reaction to this aggressive kind of homosexual propaganda in civil society in general.”*

*“Thank you very much Mrs Pilkington and I wish you good luck in this fight and I hope that you will win in this case but generally, please feel support from our side because I think that many people in Russia are on your side, because nobody is happy about the things which are happening around the world in relation to this aggressive homosexual propaganda.”*

At no point did Vakhtang Kipshidzhe seek to challenge Lesley’s Pilkington’s views or put forward a viewpoint supportive of homosexuality. In fact, he used his role as presenter to advance his own offensive viewpoint on homosexuality. In this respect, interviewers in our view have a privileged role as the editorial voice of the programme. The Code does not prohibit interviewers putting forward viewpoints that may cause offence. However, broadcasters must ensure that there is sufficient context to mitigate any potential offence.

In this case, the presenter used potentially offensive terms such as “*cure*” and “*disorder*” to describe homosexuality. In this context, we noted the Licensee’s representation that the presenter used these terms following the “World Health Organisation’s declassification of homosexuality as a disease in 1992”. However, we are not aware of any evidence to suggest that the audience to this programme would have been aware of this as a possible reason to help justify the presenter’s use of such potentially offensive terms. Taking all these factors into account, Ofcom considered that the presenter’s remarks exceeded the expectations of the audience for this programme.

We noted the Licensee’s representation that “shortcomings” in the English language skills of the presenter may have contributed to the impression that the programme sought to denigrate homosexuality. We recognise that it can be difficult when speaking a foreign language always to choose the right word appropriate to context and take proper account of listeners’ cultural sensitivities. Ofcom therefore acknowledges that – to some extent – the language limitations of the Russian presenter, who was not speaking in his mother-tongue, may have contributed towards an inappropriate choice of words. We also acknowledge that attitudes towards issues such as religion and homosexuality may vary considerably between different cultures. However, Ofcom expects all broadcasters to: be fully aware of the impact broadcast material may have on their audiences; exercise caution when complying programmes that discuss sensitive or controversial issues; and, ensure all presenters and programme makers are capable of having – and are appropriately selected or trained to have – proper regard to the sensitivities of their audience.

Given the above, and having taken into account Articles 9 and 10 of the ECHR, Ofcom did not consider the potential offence caused by the statements made by the presenter in this case was justified by the context. Therefore Rule 2.3 of the Code was breached.

As a result of this case, Ofcom has some concerns about WRN’s compliance arrangements in relation to Voice of Russia. We noted that in its representations, the Licensee had requested a specific meeting with the Head of Voice of Russia’s London Bureau to discuss the compliance issues raised by this programme. While recognising that this meeting was in addition to WRN and Voice of Russia’s regular meetings, Ofcom has some concerns about the effectiveness of WRN’s editorial control over the station’s output. Ofcom therefore reminds WRN that, as the Licensee, it is responsible for ensuring all its output complies with the Code.

### **Breach of Rule 2.3**

## In Breach

### Playing it Straight

*E4, 9, 16, 23, and 30 January 2012, 21:00*

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#### Introduction

*Playing it Straight* is a reality game show that features a woman, Cara, and eleven men who must live together for eight weeks while they get to know each other and perform various tasks. The men are made up of a combination of heterosexual and homosexual participants and at the end of the series the woman must choose a partner she considers is heterosexual. If her decision about the man's sexual orientation is correct, the pair win a cash prize of £50,000 to share between them. However, if she chooses a homosexual man, he gets to keep the entire cash prize.

Two viewers alerted Ofcom to potentially inappropriate content during these programmes when broadcast at 21:00. These complaints concerned potentially homophobic content and language of a sexual nature used by the narrator, Alan Carr. After assessing the content, Ofcom decided these particular concerns raised by the complainants did not raise potential issues under the Code. However, when viewing the content, we noted that all four episodes contained three examples of very strong language within the first minute of each programme, which began at the 21:00 watershed.

Each of the four programmes began with the same pre-title sequence. The sequence contained three instances of the word "fuck" or "fucking". Ofcom noted the first and second instances of offensive language occurred 30 seconds and 32 seconds respectively into the broadcast (i.e. within the first minute of the programme), when Cara found out the man to whom she was most attracted was homosexual and said:

(off-screen over a shot of a group of the men)

*"You fucking lying little bastard"*

(on-screen)

*"fuck off"*

The third use of offensive language occurred 12 seconds later (i.e. also within the first minute of the programme) when Cara was surprised by one of the male participants, who was naked. Cara said (on-screen): *"fucking hell"*.

Having viewed the material, we considered it raised issues warranting investigation under Rule 1.6 of the Code, which states:

"The transition to more adult material must not be unduly abrupt at the watershed (in the case of television)... For television the strongest material should appear later in the schedule."

Ofcom sought comments from Channel 4 Television Corporation ("Channel 4" or "the Licensee") under this rule.

## Response

The Licensee said that Rule 1.6 states that “the strongest material should appear later in the schedule” and that while the language used in the first part of the episodes in question was strong, it was not the strongest material in the episodes highlighted above. Channel 4 added that “the use of strong language was not excessive” and “the transition to more adult material was smooth”.

The Licensee said that in the four episodes highlighted by Ofcom, the number of occasions “fuck” or its derivatives were used in the first part of the programmes up to the first advertisement break varied from three to five. Three of those instances occurred in the pre-title sequence (which were the same in each episode) and the remaining instances were used by the male participants.

Channel 4 said that it takes its scheduling obligations seriously and all programmes are carefully considered and scheduled at an appropriate time so that children are protected from material that is unsuitable for them. The Licensee explained that it has systems in place to ensure that all programmes that do contain strong language are preceded by a clear and appropriate warning to that effect. It added that the inclusion of strong language is carefully considered so that any use of the most offensive language soon after the watershed is editorially justified.

Channel 4 said that in deciding whether there was a breach of Rule 1.6 the Code in this case, Ofcom should take careful account of the context. Channel 4 said that “pre-title sequences for an episode are an increasingly important and legitimate tool used to draw the desired audience into sticking with the episode and indeed the series... and often include moments of high drama”. The Licensee explained that the female participant, Cara, had found the process “emotional, stressful and difficult as she had to choose between her head and her heart, having her feelings hurt several times by men she liked lying to her”. Channel 4 explained that the pre-title sequence for a programme of this nature, which was comedic and playful in tone, was the result of careful consideration and the content was chosen to establish Cara’s dilemma, frustration and emotional distress.

Channel 4 said that E4 is not a mainstream channel. It is primarily aimed at 16 to 34 year olds and E4 is “known as being aimed at teenagers and young adults, so the expectation is that material which affects teenagers and young adults will be broadcast”. The Licensee added that “it has long been established that stronger material and more offensive language is generally considered to fall within this sophisticated, younger audience’s expectation” for material broadcast at 21:00 on E4, particularly as this was the second series of *Playing it Straight*. The Licensee said that “taking into consideration Channel 4’s remit<sup>1</sup>, we do not believe this material was beyond the likely expectations of an E4 audience, and do not believe it would have offended the majority of viewers”.

The Licensee said that the episodes highlighted above were all preceded with clear warnings such as the one broadcast on 9 January 2012:

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<sup>1</sup> Under the Communications Act 2003, Channel 4 has a public service remit to provide a broad range of high quality and diverse programming which, in particular: demonstrates innovation, experiment and creativity; appeals to the tastes and interests of a culturally diverse society; and exhibits distinctive character.

*“Strong language from the start, nudity and adult humour now here on E4 as we see if Cara can tell who’s Hetero and who’s Metro and who’s just playing it straight”.*

In response to Ofcom’s preliminary view that there was a breach of Rule 1.6 in this case, Channel 4 responded as follows.

Channel 4 argued that Ofcom’s breach finding regarding Big Brother on Channel 5, published on 19 December 2011 in Bulletin 196<sup>2</sup> had created an extremely high threshold for the editorial justification of the use of strong language immediately after the watershed.

The Licensee also said that broadcasters must be entitled to schedule post-watershed programmes appropriately and to include a pre-title sequence which reflects the programme’s content, providing that the warning that precedes it is clear and unambiguous. Channel 4 went on to suggest that Ofcom’s approach in this case would create a tougher rule for pre-titles than for trails and would run counter to Ofcom’s own published guidance, which Channel 4 argued allows trails with challenging material to be scheduled post-watershed if preceded by a warning or if the trail appears within programming that is substantially similar in terms of the strength of the content.

Channel 4 highlighted that there was no evidence from the complaints received<sup>3</sup> by Ofcom that the language had caused, or was likely to cause, a significant or indeed any degree of offence to the audience. Channel 4 went onto suggest that this approach would be a radical policy change in the way that Ofcom regulates strong language in the pre-titles of post watershed programming, and this could only be justified by evidence of harm and offence to the audience, for example by complaints and research.

The Licensee considered that Ofcom had failed to give sufficient weight to the nature of the channel and its audience and the clear and specific warning. It noted that its “carefully considered” compliance actions were sufficient and proportionate to ensure that any potential offence caused by any of the programmes was justified by its context and that Rule 1.6 was not breached.

It also argued that the finding changed the goal posts on the acceptability of strong language after the watershed on niche channels and was a disproportionate interference with freedom of expression.

## **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.

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<sup>2</sup> See breach finding regarding Big Brother on Channel 5 published on 19 December 2011 in Bulletin 196: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb196/obb196.pdf>

<sup>3</sup> Channel 4 pointed out that it had not received a single complaint in relation to the use of offensive language.

Rule 1.6 states that the transition to more adult material must not be unduly abrupt at the watershed, and adds that the strongest material should appear later in the schedule.

When applying the requirement to protect persons under the age of eighteen, Ofcom must 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 unnecessary interference by public authority. However, the broadcaster's right to freedom of expression is not absolute. In carrying out its duties, Ofcom must balance the right to freedom of expression on one hand, with the requirement in the Code to protect under-eighteens.

As Ofcom noted in its recent Guidance on observing the watershed on television<sup>4</sup>, "[c]ontent that commences after the watershed should observe a smooth transition to more adult content. It should not commence with the strongest material." Recognising that children may not have ceased viewing at exactly 21:00, Rule 1.6 is designed to avoid a sudden change to more adult material that would only be deemed suitable for a post-watershed broadcast.

In this case, Ofcom noted that the pre-title sequence used in all of the above four episodes each contained a total of three uses of the words of "fuck" and "fucking". These occurred 30, 32 and 44 seconds into each of the four broadcasts. Ofcom's research<sup>5</sup> confirms that the word "fuck" and other variations of this word are regarded as examples of the most offensive language with the capacity to cause a considerable degree of offence, particularly when used repeatedly.

Rule 1.6 is not prescriptive. It does not stipulate a certain set time after the watershed when broadcasters may start to transmit the most offensive language. However bearing in mind that there is an absolute prohibition on the most offensive language immediately before 21:00 (Rule 1.14), a broadcaster would need very strong reasons to justify starting to broadcast the most offensive language – especially when used repeatedly – in the period *immediately* after the 21:00 watershed. This is not a new principle when Ofcom applies Rule 1.6 but follows from the requirement that the "transition to more adult material must not be unduly abrupt at the watershed (in the case of television)...". Ofcom's concern to ensure that broadcasters should not use the most offensive language immediately after the watershed without sufficient justification was made clear in a recent published finding<sup>6</sup>.

What constitutes an "unduly abrupt" transition to more adult material under Rule 1.6 depends on the context: for example, factors such as the editorial content of the programme, the time it is broadcast, warnings given and the likely expectations of the audience.

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<sup>4</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/watershed-on-tv.pdf>, published 30 September 2011

<sup>5</sup> Audience attitudes towards offensive language on television and radio, August 2010 (<http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>)  
Language and Sexual Imagery in Broadcasting: A contextual investigation, September 2005 (<http://stakeholders.ofcom.org.uk/binaries/research/radio-research/language.pdf>)

<sup>6</sup> See breach finding regarding Big Brother on Channel 5 published on 19 December 2011 in Bulletin 196: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb196/obb196.pdf>.

Ofcom therefore considered whether there was sufficient editorial justification for broadcasting this strong language repeatedly within the first minute after the 21:00 watershed.

Ofcom noted that Channel 4 said it aimed in the sequence to show the character of Cara, and the emotional state she experienced as she attempted to establish relationships with the men, only to find out that she was being repeatedly misled. We acknowledged that the pre-title sequence is an important device to help broadcasters attract viewers to, and interest them in, a programme or series. However, broadcasters need to take care with pre-title sequences because, in a similar way to trailers, limited context can be provided to viewers and they may be more likely to come across the material unawares. Therefore, in pre-title sequences immediately after the watershed, very strong editorial justification would be required for the inclusion of the most offensive language. This would especially be the case in Ofcom's opinion where there are multiple uses of the most offensive language in a pre-title sequence immediately after the watershed, and the uses of the most offensive language in an individual pre-title sequence do not directly reflect the content of the particular programme that follows.

In Ofcom's view, the first two instances of Cara's use of the most offensive language in the pre-title sequence were aimed at an individual. They showed that she was shocked and frustrated by the revelation that the man to whom she was most attracted was homosexual. We noted that Cara was not obviously in distress and appeared to use the offensive language, albeit in a jovial manner, towards the individual concerned. Ofcom's research shows that audiences consider language to be more offensive when aimed at an individual<sup>7</sup>.

The third example of offensive language in the pre-title sequence related to Cara being surprised by a naked contestant and was less distinct than the first two instances because she was laughing as she said "*fuck off*". In our view, Cara's "emotional distress" (that Channel 4 referred to in their representations as helping to justify broadcasting Cara's strong language in the pre-title sequence), appeared limited and did not justify this use of the most offensive language.

Ofcom considered that viewers of these reality entertainment programmes were likely to have expected some degree of offensive language given the time of broadcast and nature of the channel and programme, and we noted that there was a warning of strong language immediately before these programmes started. However, in Ofcom's opinion, many viewers of *Playing it Straight* were unlikely to have expected such offensive language to have occurred repeatedly during the first 44 seconds of each of the four programmes immediately after the 21:00 watershed, especially when each multiple use of the offensive language in each pre-title sequence was not directly related to the individual, particular programme they were about to watch. Further, Ofcom considers that the broadcast of multiple uses of the most offensive language would have exceeded the likely expectations of any viewers who might have come across this material unawares, while moving from channel to channel at this time straight after the watershed. In Ofcom's view the warning given before the programmes was not sufficient to mitigate the potential for offence to viewers who were expecting a smooth transition to more adult material at the watershed.

Ofcom acknowledges that E4 is primarily aimed at 16 to 34 year olds. However we believe it is reasonable to assume that content aimed at this age group broadcast

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<sup>7</sup> Audience attitudes towards offensive language on television and radio, August 2010  
Page 62: (<http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>)

immediately after the watershed is also likely to have a younger child audience, specifically those aged between 10 and 15 years old. Audience figures for these programmes demonstrate that on 9 January 2012 and 16 January 2012 for example *Playing it Straight* attracted 11,000 and 12,000 viewers aged between 10 and 15 years respectively. Audience viewing figures also showed that overall there were on average 19,500 child viewers (aged 4 to 15) for each of the four episodes we investigated. This represented an average of 8.7% of the audience.

We noted that Channel 4 argued that if Ofcom were to find a breach of Rule 1.6 in this case, it would be based on Ofcom wrongly assuming that “a pre-title sequence to a post watershed programme has some special status...and must be subject to the same rules as a trail...”. The Licensee added that Ofcom’s guidance (on Rule 2.3) explains that programme trailers scheduled after the 21:00 watershed can in certain circumstances contain challenging material, for example by broadcasting a warning immediately before the trailer is shown to alert viewers.

In response, Ofcom points out that a pre-title sequence to a post-watershed programme is different to a trail and does not have any special status. A pre-title sequence is simply part of the programme which it precedes, and Ofcom would assess whether it complies with the Code taking appropriate account of the context. In considering that context however, Ofcom notes that a pre-title sequence and a trailer are similar to the extent that in each case a broadcaster may find it more difficult to justify broadcasting challenging material by the context. This is because normally viewers come across trailers unawares (although a warning could be provided before a trailer); and even if a warning is provided immediately before a challenging pre-title sequence is played, broadcasters would need to take care to ensure strong material in a pre-title sequence is appropriate in all the circumstances – particularly straight after the watershed.

In this particular case, Ofcom noted that the pre-title sequence included multiple uses of the most offensive language during the first minute of each broadcast. This multiple use of the most offensive language did not reflect accurately or appropriately the content of each of the four programmes the pre-title sequence preceded. The various factors cited by the Licensee to justify these uses of the most offensive language in context (e.g. the pre-transmission warning, the editorial nature of the programme, the nature of E4, and the likely expectations of the audience for these programmes) were in Ofcom’s opinion insufficient to ensure adequate protection for child viewers.

Channel 4 also argued that if Ofcom were to find a breach of Rule 1.6 in this case it would represent “a radical policy change” which can “only be justified by evidence of ‘harm’ or ‘offence’ – for example from complaints or research.” Ofcom does not consider that the breach of Rule 1.6 in this case does represent any form of policy change. It is merely an example of applying Rule 1.6 and its accompanying guidance to a particular set of facts in a particular context. As stated above, Ofcom has conducted extensive research on the use of the most offensive language in programme content, including post-watershed material. We regularly review and update this research to take into account the changing attitudes towards the use of offensive terminology in television and radio programming. Ofcom is not required, and it would not be proportionate, to carry out specific research on every potential circumstance in which offensive language is used in programmes. Further, although Ofcom takes account of complaints, Ofcom does not require a complaint in order to initiate an investigation into potentially problematic material, and whether or not there have been any complaints is not in any way determinative of whether the Code has

been breached. Ofcom carries out targeted monitoring of programming and has moved to an “issues-based” model of assessment of complaints and investigations<sup>8</sup>.

Ofcom does not believe that – as Channel 4 argued – for Ofcom to record a breach of the Code in this case will “mean that in lighter more entertaining reality show [sic]...there is an effective rule that no f-words be included in the first few minutes of the programme.” Each decision under Rule 1.6 depends on the individual circumstances. Ofcom considers however that the decision in the present case is proportionate and takes appropriate account of Channel 4’s freedom of expression.

In conclusion, in this particular case, Ofcom considered that the context was insufficient to justify the use of three instances of the most offensive language in the pre-title sequence for this reality entertainment programme which was broadcast immediately after the watershed at the start of four separate programmes. The transition to more adult material was unduly abrupt at the watershed and Rule 1.6 was therefore breached.

### **Breaches of Rule 1.6**

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<sup>8</sup> See: Procedures for investigating breaches of content standards for television and radio, published 1 June 2011:  
<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/june2011/breaches-content-standards.pdf>.

## In Breach

### Focus Nigeria

*AIT International, 9 February 2012, 09:00*

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#### Introduction

AIT International is an English language general entertainment and current affairs television channel that shows African programming, and broadcasts on the Sky satellite platform. The licence for this service is held by AIT International UK Limited (“AIT” or “the Licensee”).

A complainant alerted Ofcom to an edition of *Focus Nigeria*, a daily current affairs programme. This edition of the programme consisted of two pre-recorded packages, *Ondo State Scorecard* and *The Seriake Dickson/Jonah 2012 Restoration Story*.

#### *Ondo State Scorecard*

Ondo State is one of the 36 federal states of Nigeria. The studio presenter of *Focus Nigeria* introduced the package as being part of a series that “*showcases the achievements of the Ondo State Government*”. The package itself was approximately 25 minutes long, and included an interview with the Ondo State Commissioner<sup>1</sup> for Education, Remi Olatubora, on the education policy of the government of Ondo State<sup>2</sup>. The package focused on secondary education in particular. For example, during the interview, Commissioner Olatubora: outlined the renovation programme for schools being undertaken by the Ondo State Government; and highlighted the work of the Education Quality Assurance Agency in Ondo State. The package concluded with various statements from individuals which could be construed as being supportive of the education policy of the Ondo State Government:

A teacher: *“We are encouraged and I want to work at least to show that we appreciate what the Governor has done”.*

Roseline Adediran  
(Principal, St. Helen’s  
School, Ondo): *“The Governor has improved the learning conditions of the school. Every building in the school has been renovated including the office, the administrative office. And definitely, it is an environment that is conducive for a child learning [inaudible] so we are really thanking the Governor”.*

A pupil: *“Everywhere, the school looks so good. And now the school is looking beautiful...I am so glad”.*

A pupil: *“I am so happy and I want to use this opportunity*

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<sup>1</sup> Under section 192 the 1999 Constitution of the Federal Republic of Nigeria, the post of ‘Commissioner’ is a political office appointed by the Governor in each federal state, subject to approval by the relevant federal state legislative. Commissioners head up the government departments in federal state administrations in Nigeria.

<sup>2</sup> The current Governor and head of the Government of Ondo State is Olusegan Mimiko of the Labour Party in Nigeria.

*to thank [the] Governor”.*

A pupil:

*“The school has really improved. The school has a better look now compared to the former state and I want to use this medium to appreciate the present of the Governor for this wonderful opportunity”.*

As discussed below, it was Ofcom’s view that this package was dealing with a “matter of political or industrial controversy” or “a matter relating to current public policy” (i.e. the education policy of the Ondo State Government). We therefore considered this content raised issues warranting investigation under Rule 5.5 of the Code.

Rule 5.5 states that:

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

Ofcom asked AIT to provide comments on how the broadcast package complied with the above rule.

*The Seriake Dickson/Jonah 2012 Restoration Story*

This package was approximately 30 minutes long. It focused on the candidacy of Seriake Henry Dickson (and his running mate, Goboribiogha Jonah), the People’s Democratic Party (“PDP”) candidate for the Gubernatorial Election for the Nigerian state of Bayelsa. This election was held on 11 February 2012. The package summarised Seriake Henry Dickson’s campaign to become Governor of Bayelsa State up until that point in the election campaign (i.e. two days before polling day), including footage of Seriake Henry Dickson appearing and speaking at various campaign rallies. At one point in the package there was a one minute segment which consisted of a montage of images, including Seriake Henry Dickson campaigning, and with a number of successive on-screen slogans as follows:

*“FORWARD”  
“RESTORATION DON [sic] COME”  
“2012”  
“SHINE YOUR EYES”  
“PLENTY FOOD”  
“GOOD ROADS”  
“URBAN HOUSING”  
“EDUCATION”  
“WATER”  
“POWER”  
“EMPLOYMENT”  
“WHO BE THE MAN WEN [sic] WE VOTE?”  
“SERIAKE HENRY DICKSON”*

The segment concluded with a voice over, which included the following statements:

*“People of Bayelsa State! Vote for the right person! Vote for the right party! Vote for Honourable Seriake Henry Dickson”.*

*“Vote for Honourable Seriake Henry Dickson for Bayelsa State Governor. New Bayelsa. Brighter future”.*

The package concluded with footage of the main PDP election rally endorsing the candidacy of Seriake Henry Dickson, and showed various senior members of the PDP giving their support for Seriake Henry Dickson, including the Nigerian President, Goodluck Ebele Jonathan.

We considered that, as this package was dealing with the Gubernatorial Election for Bayelsa State, whilst the campaign for that election was still on-going, Rule 6.1 of the Code was applicable.

Rule 6.1 states that:

“The rules in Section Five, in particular the rules relating to matters of major political or industrial controversy and major matters relating to current public policy, apply to the coverage of elections and referendums.”

By virtue of this rule, the 2012 Bayelsa State Gubernatorial Election was considered by Ofcom to be a “matter of major political or industrial controversy and major matter relating to current public policy”. As a consequence the rules in Section Five of the Code applied in relation to this programme, but in particular Rule 5.11 and 5.12. Ofcom therefore considered this material raised issues warranting investigation under Rule 6.1 and under the following rules:

Rule 5.11 “In addition to the rules above, due impartiality must be preserved on matters of major political and industrial controversy and major matters relating to current public policy by the person providing a service (listed above) in each programme or in clearly linked and timely programmes.”

Rule 5.12 “In dealing with matters of major political and industrial controversy and major matters relating to current public policy an appropriately wide range of significant views must be included and given due weight in each programme or in clearly linked and timely programmes. Views and facts must not be misrepresented.”

Ofcom asked AIT to provide comments on how the broadcasts complied with the above rules.

## **Response**

AIT said that *Focus Nigeria* is a daily programme broadcast live from AIT’s studios in Nigeria. The programme’s aim is to discuss the socio-economic issues affecting the development of Nigeria: “Just like the USA sixty minutes, it has a huge followership worldwide and since its existence over a decade ago, the programme has received widespread acclamation both nationally and internationally including several awards for its impartiality”. AIT added that “having conducted our own internal investigation, we can see that the two packages...were not delivered to AIT standards” although “the intention of the programme was only ever to broadcast a balanced view”. In particular, the Licensee said that the presenter of *Focus Nigeria* “fully accepts that his words may not have been appropriately chosen in the introduction of the show”.

The Licensee said that this edition of *Focus Nigeria* should not be looked at in isolation, and it would not be “fair” to state that the *Focus Nigeria* series did not

include alternative views to those, for example, included in the *Ondo State Scorecard* package i.e. the Labour Party administration of Olusegan Mimiko in Ondo State (of which Commissioner Olatubora is a part).

In conclusion, AIT said that since the incident, it had put in place an “organisation-wide retraining programme on the [Code] to safeguard against issues like this in the future” and that it “wishes to draw a line under this matter”.

## **Decision**

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for the content of programmes as appear to it best calculated to secure the standards objectives, including that the special impartiality requirements set out in section 320 of the Act are complied with.

This standard is contained in the Code. Broadcasters are required to comply with the rules in Section Five of the Code to ensure that the impartiality requirements of the Act are complied with, including that due impartiality is preserved on matters of major political or industrial controversy and major matters relating to current public policy (see above for the specific provisions). Section Six of the Code reflects the specific requirements relating to broadcasters covering elections.

In reaching this decision Ofcom has also taken account of the right to freedom of expression, as set out in Article 10 of the European Convention on Human Rights. The right to freedom of expression includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authority regardless of frontiers. The exercise of these freedoms may be subject to such restrictions and conditions as are prescribed by law and necessary in a democratic society, in the interests, for example, of national security, territorial integrity or public safety, for the prevention of disorder or crime, or the protection of the rights of others. 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 Code and the requirements of statutory and common law.

It is not part of Ofcom’s remit to question or investigate the validity of the political views expressed in a case like the current one, but to require the broadcaster to comply with the relevant rules in the Code. The Code does not prohibit broadcasters from discussing any controversial subject or including any particular point of view in a programme. To do so would be an unacceptable restriction on a broadcaster’s freedom of expression.

However, the broadcaster’s right to freedom of expression is not absolute. In carrying out its duties, Ofcom must balance the right to freedom of expression on one hand, with the requirement in the Code to preserve “due impartiality” on matters relating to political or industrial controversy or matters relating to current public policy. Ofcom recognises that Section Five of the Code, which sets out how due impartiality must be preserved, acts to limit, to some extent, freedom of expression. This is because its application necessarily requires broadcasters to ensure that neither side of a debate relating to matters of political or industrial controversy and matters relating to current public policy is unduly favoured. Therefore, while any Ofcom licensee should have the freedom to discuss any controversial subject or include particular points of view in its programming, in doing so broadcasters must always comply with the Code.

### Ondo State Scorecard

Rule 5.5 states:

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

Ofcom firstly had to ascertain whether the requirements of Section Five of the Code should be applied: that is, whether the package *Ondo State Scorecard* concerned matters of political or industrial controversy or a matter relating to current public policy.

In this case, this package included an interview with the political head of the Education Department for Ondo State, Remi Olatubora, in which he discussed the education policy – and in particular pointed to positive aspects of the education policy – of Ondo State. Further, the package concluded with various statements from teachers and pupils in relation to the effects of this policy on their schools. Ofcom therefore considered that the broadcast dealt with a matter relating to current public policy. Rule 5.5 was therefore applicable.

We then went on to assess whether the package preserved due impartiality, by for example containing sufficient alternative viewpoints. In assessing whether due impartiality has been applied in this case, the term “due” is important. Under the Code, it means adequate or appropriate to the subject and nature of the programme. “Due impartiality” does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented. Due impartiality may be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures due impartiality is maintained.

In summary, the package included: a studio interview with head of the Ondo State Education Department (which is a political appointment) during which he answered various questions on his education policy, such as the renovation programme for schools being undertaken by the Ondo State Government, and the work of the Education Quality Assurance Agency in Ondo State. During the interview with Commissioner Olatubora, he was asked a number of questions by the presenter. However, we considered that these questions, rather than critically challenging the points being made by Commissioner Olatubora, served principally to prompt Commissioner Olatubora’s ongoing explanation of what he viewed to be the positive aspects of his education policy.

We also noted that the package concluded with various statements from individuals which could be construed as being supportive of the education policy of the Ondo State Government. For example, various individual teachers and pupils variously expressed thanks to and support for the Governor of Ondo State, Olusegan Mimiko, for the renovations undertaken to their schools and the positive effects of these renovations on the education being undertaken in those schools.

The package consisted exclusively of views that were supportive of the education policy of the Ondo State Government. This package when considered alone gave a one-sided view on this matter of current public policy. Further, we noted AIT’s representations that: *Focus Nigeria* has according to the Licensee received widespread acclamation both nationally and internationally including several awards

for its impartiality; and this edition of *Focus Nigeria* should not be looked at in isolation, and it would not be “fair” to state that other programmes in the *Focus Nigeria* series did not include alternative views to the Labour Party administration of Olusegun Mimiko in Ondo State (of which Commissioner Olatubora is a part). However, the broadcaster did not provide to Ofcom any specific evidence of the viewpoints of, for example, Nigerian political parties who oppose the Labour Party administration of Olusegun Mimiko in Ondo State (of which Commissioner Olatubora is a part), being included on the channel in a series of programmes taken as a whole (i.e. more than one programme in the same service, editorially linked, dealing with the same or related issues within an appropriate period and aimed at a like audience).

In reaching our decision, we took account of the Licensee’s representations that “the two packages...were not delivered to AIT standards” and staff were being retrained.

However, given all the factors the above, Ofcom considered the *Ondo State Scorecard* package to be in breach of Rule 5.5 of the Code.

#### *The Seriake Dickson/Jonah 2012 Restoration Story*

Rule 6.1 states:

“The Rules in Section Five, in particular the rules relating to matters of major political or industrial controversy and major matters relating to current public policy, apply to the coverage of elections and referendums.”

Rule 5.11 states:

“In addition to the rules above, due impartiality must be preserved on matters of major political and industrial controversy and major matters relating to current public policy by the person providing a service (listed above) in each programme or in clearly linked and timely programmes.”

Rule 5.12 states:

“In dealing with matters of major political and industrial controversy and major matters relating to current public policy an appropriately wide range of significant views must be included and given due weight in each programme or in clearly linked and timely programmes. Views and facts must not be misrepresented.”

Ofcom first considered whether the requirements of Section Five and Section Six of the Code were applicable to this broadcast material: that is, whether the package *The Seriake Dickson/Jonah 2012 Restoration Story* concerned major matters of political or industrial controversy or a matter relating to current public policy, and whether the rules relating to elections applied in this case.

As background, we noted the 2012 Bayelsa State Gubernatorial Election had been announced prior to the broadcast on 9 February 2012, and that polling day was on 11 February 2012. Therefore, we considered that this package was broadcast during the election campaign for that particular election.

The effect of Rule 6.1 is to ensure broadcasters must preserve due impartiality in their coverage of elections and referendums. This is to help ensure that elections are conducted fairly, and that no unfair advantage is given to particular candidates through promotion in the broadcast media, irrespective of whether the candidate can

be shown to have actually benefited in practice. Rule 6.1 applies to elections both inside and outside the UK, and requires broadcasters' coverage of elections to comply with the rules in Section Five. In particular, Rule 6.1 deems elections to be matters of major political or industrial controversy and major matters relating to current public policy. As this package was broadcast on 9 February 2012, during the Bayelsa State Gubernatorial Election campaign, Rule 6.1 of the Code was clearly applicable.

Due to the fact that the Bayelsa State Gubernatorial Election was a matter of major political or industrial controversy and major matter relating to current public policy, Rules 5.11 and 5.12 applied in this case.

Ofcom therefore assessed whether in accordance with Rule 5.12 in the package *The Seriake Dickson/Jonah 2012 Restoration Story*, "due impartiality was preserved" and "an appropriately wide range of significant views were included" and "given due weight".

We noted that this 30 minute package outlined the story Seriake Henry Dickson's candidacy, on behalf of the PDP, for the position of Governor of Bayelsa State. Ofcom considered the content and views expressed during this broadcast as a whole were entirely about the PDP, Seriake Henry Dickson and his election manifesto as a candidate for the Bayelsa State Gubernatorial Election. For example, there was footage of: Henry Seriake Dickson appearing and speaking at various campaign rallies; and, the main PDP election rally endorsing Seriake Henry Dickson's candidacy, which showed various senior members of the PDP giving their support for Seriake Henry Dickson, including the Nigerian President, Goodluck Ebele Jonathan.

Further, there was a prominent one minute segment which in Ofcom's view directly promoted the candidacy of Seriake Henry Dickson. For example, this segment included the following voice over commentary: "*People of Bayelsa State! Vote for the right person! Vote for the right party! Vote for Honourable Seriake Henry Dickson*". It was our view that viewers would interpret this as an unambiguous 'call to action' encouraging people to vote for Seriake Henry Dickson in the forthcoming Gubernatorial Election for Bayelsa State, which was due to take place two days after the broadcast of this content.

The Code does not prohibit broadcasters from showing programmes during an election campaign which include the views of particular political parties contesting that election campaign. However, in order to ensure compliance with Rule 5.12, it is not enough for a broadcaster either just to include some limited viewpoints that could be portrayed as representing an alternative (minority) "significant view" on an issue, or to allude to the existence of such views. An "appropriately wide range of significant views" must be included and be given "due weight". We noted that the package did not for example include: the viewpoints of any other Nigerian political party, other than the PDP; or the viewpoints of anybody who opposes the policies of the PDP in general and Seriake Henry Dickson in particular.

We noted AIT's representations that: *Focus Nigeria* has according to the Licensee received widespread acclamation both nationally and internationally including several awards for its impartiality; and this edition of *Focus Nigeria* should not be looked at in isolation, and it would not be "fair" to state that other programmes in the *Focus Nigeria* series did not include alternative views to those expressed in the *The Seriake Dickson/Jonah 2012 Restoration Story* package. However, the broadcaster did not provide to Ofcom any specific evidence of the viewpoints of, for example, any other Nigerian political party, other than the PDP (or the viewpoints of anybody who

opposes the policies of the PDP in general and Seriake Henry Dickson in particular), being included in “clearly linked and timely programmes” as required under Rule 5.11.

In reaching our decision, we took account of the Licensee’s representations that “the two packages...were not delivered to AIT standards” and staff were being retrained.

However, given all the factors above, we considered that, when dealing with a matter of major political controversy and major matter relating to current policy the Licensee did not include an “appropriately wide range of significant views” and give them “due weight” in the programme or in “clearly linked and timely programmes”. Ofcom therefore considered *The Seriake Dickson/Jonah 2012 Restoration Story* package to be in breach of Rules 5.11, 5.12 and 6.1 of the Code

***Ondo State Scorecard - Breach of Rule 5.5***

***The Seriake Dickson/Jonah 2012 Restoration Story - Breaches of Rules 5.11, 5.12 and 6.1***

## In Breach

### Good Morning Psychic

*Psychic Line, 20 January 2012, 15:30*

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#### Introduction

Psychic Line is a channel offering psychic readings to callers. It is owned and operated by Playboy TV UK/Benelux Limited (“Playboy TV” or “the Licensee”). The content is supplied by a third party, Monza Media Limited (“Monza Media”); however Playboy TV is responsible for the compliance of the service.

The channel transmits frequent promotions of premium rate telephony services (“PRS”), both voice and text, by which psychic readings can be obtained, and a facility for viewers to pay for these by credit card. Callers can select to be connected to (subject to their availability) either a psychic off air, or to the presenter in the studio in which case the reading is broadcast live. PRS calls to the service cost £1.53 per minute.

In September 2010, new Ofcom rules came into force with the effect that channels and content predicated on the promotion of PRS services (“participation television”) became subject to the BCAP Code because they are advertising content. At the same time, the revised BCAP Code allowed PRS-based live and personalised psychic services on channels licensed for that purpose (previously the BCAP Code had prohibited such services).

A complainant alerted Ofcom to the broadcast of a reading that featured a caller who suspected her husband was having an affair. During the call, the caller asked the presenter several questions about the validity of her suspicions and the future of her relationship with her husband. The call was terminated mid-conversation after 19 minutes – the maximum length of a PRS call permitted at this cost.

The complainant was concerned that the reading offered potentially life changing advice and exploited the vulnerability of the caller. Ofcom first assessed whether the material raised issues warranting investigation under Rule 15.5.3:

“Advertising permitted under rule 15.5 [i.e. PRS-based live and personalised psychic services] may not:

- Make claims of accuracy or efficacy;
- Predict negative experiences or specific events;
- Offer life changing advice directed at individuals – including advice related to health (including pregnancy) or financial situation;
- Appeal particularly to children;
- Encourage excessive use.”

While not specifically referred to in this rule, Ofcom considers advice offered with regard to relationships has the potential to fall within this definition, depending on the facts of the case and relevant context. However, in this instance the presenter did not directly answer the caller’s questions or provide advice that, if acted upon, could have life-changing consequences. Nor did the presenter predict any negative experiences or specific events. Ofcom therefore concluded that we did not need to consider this broadcast content under Rule 15.5.3 of the BCAP Code.

When viewing the material, Ofcom noted that at the beginning of the call the caller gave the first name and surname of her husband along with his date of birth. His first name and surname were later repeated at the presenter's request.

Ofcom considered the material raised issues warranting investigation under the following rules of the BCAP Code:

Rule 1.2 "Advertisements must be prepared with a sense of responsibility to the audience and to society."

Rule 6.1 "With limited exceptions, living persons must not be featured, caricatured or referred to in advertisements without their permission."

Ofcom asked Playboy TV for its comments as to how this content complied with these rules.

### **Response**

The Licensee said that it asked Monza Media for its comments on the broadcast and asked "whether they deemed it in breach".

Monza Media explained that callers to the service are vetted by the studio producer to ensure that they are "safe to go on air", informed that "no bad language or offensive behaviour is tolerated" and "that there should be no reference to any previous readings".

Monza Media said that this particular caller selected to be connected to the presenter in the studio and after going through the vetting procedure, was put to air. It added that the caller "had the choice to speak to off-screen readers, but did not opt for this alternative".

Monza Media said that although the caller gave the full name of her partner, the on-screen reader, Joanna, correctly chose only to refer to him by his first name. It also pointed out that throughout the call, the presenter giving the live psychic reading was keen to stress that the caller should not judge her partner and did not confirm whether the caller's partner was having an affair or not.

In conclusion, Monza Media took the view that the presenter "acted properly and responsibly throughout the call and that the caller was given generic guidance and never anything more".

The Licensee confirmed however, that to prevent the possibility of recurrence of any issue similar to that highlighted by this case, it would no longer allow callers to be connected to the presenter in the studio for a psychic reading to be broadcast live.

### **Decision**

Under the Communications Act 2003 ("the Act"), Ofcom has a statutory duty to require the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material. Ofcom has a duty to set such standards as appear to it best calculated to secure the standards objectives, one of which is that "the inclusion of advertising which may be misleading, harmful or offensive in television

and radio services is prevented". This standards objective is reflected in the rules set out in the BCAP Code.

When setting and applying standards in the BCAP Code to provide adequate protection to members of the public from serious or widespread offence, Ofcom must have regard to the need for standards to be applied in a manner that best guarantees an appropriate level of freedom of expression in accordance with Article 10 of the European Convention of Human Rights, as incorporated in the Human Rights Act 1998. However, the advertising content of psychic services has much less latitude than is typically available to editorial material in respect of context and narrative. A primary intent of advertising is to sell products and services, and consideration of acceptable standards will take that context into account.

### Rule 1.2

Rule 1.2 states that advertisements "must be prepared with a sense of responsibility to the audience and to society".

While the material did not on the facts of this case raise issues under Rule 15.5.3, this rule clearly places an obligation on broadcasters to exercise caution with regard to the potential vulnerability of viewers when complying interactive psychic television services. In assessing the advertising content in this case under Rule 1.2, Ofcom first considered whether the Licensee had sufficient measures in place to ensure both the suitability of the caller and subject matter prior to the caller being put through to the studio.

Ofcom was concerned that Monza Media's vetting procedure only appeared to address the potential behaviour of callers on air and ensuring there was no reference to previous readings. There was no mention of any safeguards in place to ensure the welfare of callers and determine the suitability of a psychic entertainment service for the subject of concern to the caller. Ofcom did not therefore consider the vetting procedure outlined by Monza Media to be adequate.

We then considered whether this particular call demonstrated that the broadcaster had prepared the content with a sense of responsibility to the audience and society as required by Rule 1.2 of the BCAP Code.

Ofcom noted that the caller gave an indication of the nature of her situation when introducing the subject matter:

*"I'm ringing up about a relationship question because I'm in a tricky situation here."*

After giving details of her husband, the following dialogue was broadcast:

Caller: *"Is he having an affair with someone else? That's what I want to know, basically."*

Presenter: *"I'll find out for you. I'll tell you the cards that come up with that exact sort of information."*

During the call, the caller asked 14 direct questions about the future of her relationship or her husband's alleged affair. For example:

*“Can you see if our relationship is going to split up, ‘cause it’s very bad right now?”*

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*“So in the next 6 months, you don’t see us splitting up?”*

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*“Is that [the alleged affair] all over?”*

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*“Does this man love me?”*

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As the call progressed, it became apparent to Ofcom that the caller was in an increasingly distressed state:

*“It’s about this woman. He keeps denying it but I know there’s something.”*

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*“I’m insecure as well, I could do with him telling he loves me, you know what I mean?”*

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*“He goes, ‘you don’t trust me, you don’t trust me’, and all this, and I know there’s something. I just know.”*

And at one point towards the end of the conversation the caller said:

*“I just need to know...I don’t know where I am, what to do – does it show we’re going to split up or what?”*

As noted above, the presenter gave no direct answers or assurances. Nonetheless, Ofcom was very concerned that the broadcaster considered it appropriate to allow the call to continue to the maximum time permitted despite being aware of the perceptible distress and vulnerability of the caller. Further, at no time did the presenter suggest that the caller may wish to seek assistance from a more suitable service off air. The situation was exacerbated by the abrupt termination of the call which occurred midway through the presenter’s suggestion about how the caller should handle the issue.

Therefore, Ofcom considered that both the vetting procedures and the material itself demonstrated that the service had not been prepared with a sense of responsibility to the audience and to society, and was a breach of Rule 1.2 of the BCAP Code. Ofcom noted the Licensee’s decision going forward to remove live psychic readings from the advertising content of this channel. However, as Rule 1.2 applies to the preparation of advertising content, irrespective of whether or not it is broadcast (i.e. in this case live readings conducted on-air), Ofcom advises the Licensee to review thoroughly its vetting and other compliance procedures to ensure compliance with Rule 1.2 of the BCAP Code.

### Rule 6.1

Rule 6.1 states that:

“With limited exceptions, living persons must not be featured, caricatured or referred to in advertisements”.

Ofcom noted that the advertising content featured the broadcast of the first name and surname (twice), and the date of birth, of the caller’s husband. The material also contained a reference to the first name of another individual. Although the presenter only referred to first names, Ofcom considered the information as a whole sufficient to identify the parties involved. Consequently, the broadcast was in breach Rule 6.1 of the BCAP Code.

Ofcom considers this material raises serious issues with regard to the Playboy TV’s approach to complying psychic television services predicated on premium rate telephony services. Breaches of this nature are potentially serious because they may result in consumer harm. Ofcom puts Playboy TV on notice that should compliance issues of this type arise in future, it will be likely to consider the imposition of statutory sanctions.

### **Breaches of BCAP Rules 1.2 and 6.1**

## In Breach

### **Masti Chat**

*Party, 18 March 2012, 06:45 to 07:00*

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#### **Introduction**

*Masti Chat* is interactive 'daytime chat' advertising content broadcast on the service called Party on Digital Terrestrial Television ("Freeview") channel 97. The service is available freely without mandatory restricted access and is situated in the 'adult' section of the Freeview electronic programme guide ("EPG"). This service is owned and operated by Square 1 Management Limited ("Square 1" or "the Licensee").

Viewers are invited to contact on-screen female presenters via premium rate telephony services ("PRS"). The presenters generally dress and behave in a flirtatious manner while encouraging viewers to contact the PRS numbers.

Ofcom received a complaint that this material contained adult content that was too strong to be shown at this time of the morning.

Ofcom noted that the female presenter wore blue knee high socks, gold knickers and a blue bandeau top. She was lying down on her back, with the camera angle pointing down her cleavage. Her breasts were not adequately covered and we noted that at various points during the broadcast she: stroked her breasts and thighs; gyrated her hips; and occasionally had her legs wide open (albeit away from camera) throughout.

Ofcom considered the material raised issues warranting investigation under BCAP Code Rule 32.3, which states:

"Relevant timing restrictions must be applied to advertisements that, through their content, might harm or distress children of particular ages or that are otherwise unsuitable for them."

Ofcom asked Square 1 for its comments as to how this content complied with this rule.

#### **Response**

The Licensee did not comment on how this content complied with BCAP Code Rule 32.3.

#### **Decision**

Under the Communications Act 2003, Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that: "the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented". This objective is reflected in the rules set out in the BCAP Code.

The BCAP Code contains rules which permit 'daytime chat' services to be advertised (and so broadcast) within prescribed times and on free-to-air channels that are specifically licensed by Ofcom for that purpose. When setting and applying standards in the BCAP Code to provide adequate protection to members of the public from serious or widespread offence, Ofcom must have regard to the need for standards to

be applied in a manner that best guarantees an appropriate level of freedom of expression in accordance with Article 10 of the European Convention of Human Rights, as incorporated in the Human Rights Act 1998. However, the advertising content of 'adult chat' services has much less latitude than is typically available to editorial material in respect of context and narrative. A primary intent of advertising is to sell products and services, and consideration of acceptable standards will take that context into account.

Rule 32.3 of the BCAP Code states: "Relevant timing restrictions must be applied to advertisements that, through their content, might harm or distress children of particular ages or that are otherwise unsuitable for them." Appropriate timing restrictions are judged according to factors such as: the nature of the content; the likely number of children in the audience; the likely age of those children; the time of the broadcast; the position of the channel in the relevant electronic programme guide (e.g. the "adult" section); any warnings; and mandatory restricted access. It should be noted that the watershed starts at 21:00 and broadcast advertising material unsuitable for children should not, in general, be shown before 21:00 or after 05:30.

Ofcom has made clear in previous published decisions<sup>1</sup> what sort of material is unsuitable to be included in daytime interactive chat programmes and advertisements without mandatory restricted access.

In the context of daytime interactive chat advertising where the female presenters generally dress and behave in a flirtatious manner for extended periods in order to solicit PRS calls, Ofcom has underlined that the presenters should not, for example, appear to mimic or simulate sexual acts or behave in an overtly sexual manner, and clothing should be appropriate for the time of broadcast.

On 27 July 2011, Ofcom published revised guidance on the advertising of telecommunications-based sexual entertainment services and PRS daytime chat services (the "Chat Service Guidance")<sup>2</sup>. This clearly sets out what Ofcom considers to be acceptable to broadcast on these services pre-watershed. That document explains that the presentation of daytime chat should always be suitable for wide audiences, that is for audiences including children and young persons and should be suitable for children to view should they come across it unawares. In particular, the Chat Service Guidance states that with regard to material broadcast pre-watershed broadcasters should:

- ensure that presenters are wearing appropriate clothing, that adequately covers their bodies, in particular their breasts, genital areas and buttocks. Presenters should not wear revealing underwear, swimwear, gym wear or fetish clothing;
- not broadcast images of presenters touching or stroking their bodies in a suggestive manner, in particular avoiding breasts, thighs, crotches and buttocks; and

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<sup>1</sup> For example: Bluebird Daytime: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb185/obb185.pdf>  
Elite Days: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb179/obb179.pdf>  
40nNaughty: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb174/issue174.pdf>

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

- not broadcast images of presenters mimicking sexual intercourse by rocking and thrusting their bodies, or otherwise adopting sexual poses.

In applying BCAP Code Rule 32.3, Ofcom had first to decide if the broadcast material was unsuitable for children.

Ofcom noted that the presenter wore a top that did not adequately cover her breasts and for the duration of the broadcast the camera angle pointed down her cleavage. The presenter was also shown acting in a sexualised manner by adopting a sexually provocative position for a prolonged period of time: she lay on her back (albeit away from camera) with her legs occasionally parted, slowly gyrating and rocking her hips and arching her body. While in this position she repeatedly stroked and touched her body in a sexually provocative manner, particularly her breasts and thighs.

In Ofcom's view, the revealing clothing, the manner in which the presenter stroked and touched her body and the position she adopted, were intended to be sexually provocative in nature and the broadcast of such content was not suitable to advertise daytime chat. In light of this behaviour and imagery, Ofcom concluded that this material was clearly unsuitable for children.

Ofcom then considered under BCAP Code Rule 32.3 whether relevant timing or scheduling restrictions were applied to these broadcasts by the Licensee. Ofcom noted that the service Party is situated in the 'adult' section of the EPG. However, the broadcast was transmitted on a service which is available freely without mandatory restricted access and on a Sunday morning when children were available to view television, some unaccompanied by an adult. Ofcom also had regard to the likely expectations of the audience for programmes broadcast at this time of day on a channel in the 'adult' section of the EPG. In Ofcom's opinion, viewers (and in particular parents) would not expect such material to be broadcast at this time of day, particularly given that material broadcast on such services at this time should be non-sexual in tone and apparent intent.

Taking into account the factors above, Ofcom concluded that relevant timing and scheduling restrictions were not applied to the broadcast so as to offer adequate protection to children. This broadcast was therefore in breach of BCAP Code Rule 32.3.

### **Breach of BCAP Code Rule 32.3**

## In Breach

### Doktorunuz Sizinle

Kanal 7 Avrupa, 1 February 2012, 23:40

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#### Introduction

Kanal 7 Avrupa is a general entertainment Turkish language channel which can be received in Europe.

During routine monitoring, Ofcom noted that the programme *Doktorunuz Sizinle* ('You and Your Doctor') featured a presenter and a doctor, Dr Mustafa Eraslan, talking in a studio. Just before the programme began, a screen with the text "SAĞLIK" (which is Turkish for 'health') appeared for five seconds.

During the programme Dr Eraslan spoke about using plant extracts as a treatment method in cardiac and vascular conditions. Dr Eraslan referred to several plant extracts including *avena sativa*, *panax ginseng* and *tribulus terrestris*. Three telephone numbers (one each for calls from Turkey, Germany and Europe), appeared on-screen on ten occasions for a total period of approximately six minutes.

Ofcom commissioned an English translation of the content. We noted that:

The programme promoted the benefits of using herbal plant extracts to treat a number of conditions related to cardiac and vascular conditions, for example:

*"And they found quite a number of plants, and with those plants, historical figures such as Ibn-I Sina, Ali Bin Abbas, and Farabi helped to unblock blood vessels. So what are they? We have our avena sativa, oats, what you know as wild oats... . In universities they taught courses in what, in ordinary language, may be described as 'the science of making medicine from plants'. There were experts in this. This is what people did in historical times, and it has also been done in modern times. With camomile, for example, or bullhead (tribulus terrestris). You may not be able fully to extract the material in it. The substance you obtain may not be effective. It may be growing by the side of the road, so the substance in it is different. It may be growing at 1500 metres, so it is different. So this is what we do today: care is taken to ensure that every product contains the same active ingredient at the same dose. There are various methods of ensuring this. As I said a moment ago, oats were used to open up blood vessels, or bullhead was used. What were the active substances in these? We were talking about this on the way here... . There are 17 or 18 substances, and 16 of these are not substances that assist in the opening up of blood vessels. Just one of them is effective. You take this, and you give it to people in a standardised form, always at the same dosage. So the mixtures that are made in this way, the studies, the plants etc, have assisted in the opening up of people's blood vessels. Blood vessels are blocked, a foot started to swell up and turn blue. These plants were used, and within one week, or two weeks, or five weeks, the blood vessel opened up, and the patient improved. They experienced a heart attack, and then the blood vessel was opened up."*

Dr Eraslan also stated:

*“Are you aware that there are an enormous number of publications on hypertension? There are publications about hypertension, and if you look at those publications, you will see that they used tribulus, avena sativa, and ginseng. They used these, they put them together, and they even combined them in proportions of three parts of this and five parts of that. They made a powder, and in the end they [successfully] treated diseases.”*

After approximately 13 minutes, the programme stopped abruptly and another piece of content began. The Licensee confirmed that this material was a teleshopping spot for the herbal product Kibarlı<sup>1</sup> Panax. There was no channel ident or other form of distinction between the programme and the teleshopping spot.

The teleshopping spot, which had duration of two minutes and 30 seconds, consisted of the following:

- Image: A bottle of the product Kibarlı Panax.
- Image: Dr Eraslan appeared on a television screen on the right of the shot.
- Dr Eraslan: *“Kibarlı Panax is a food supplement. That is to say, it is a food, a supplement, which provides from outside the body, in the form of food, certain substances which the body lacks, which are restricted, which are not to be found in the body.”*

While Dr Eraslan was speaking, the following on-screen text appeared on the left of the shot:

- On-screen text: *“Kibarlı Official Sales Site [www.yesilsifa.org](http://www.yesilsifa.org). Europe: [telephone number]. Germany: [telephone number]”.*
- Image: A bottle of the product Kibarlı Panax.
- Voiceover: *“Thanks to the active substances it contains, Kibarlı Panax is a great food supplement which provides support for the body’s nutritional needs.”*
- Image: A bottle of the product Kibarlı Panax.
- On-screen text: *“Panax Ginseng”  
“Avena Sativa”  
“Tribulus Terrestris”*
- Image: Dr Eraslan appeared on a television screen on the right of the shot.
- Dr Eraslan: *“It contains three substances. One of them is a substance we call avena sativa, one is panax ginseng, and one is a plant we call tribulus terrestris. Kibarlı Panax comprises a mixture of these plants, and a combination of the active substances we have obtained from them. We came together and developed a*

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<sup>1</sup> The undotted i (ı) is a letter in the Turkish alphabet.

*combination, and we produced not powdered forms, but the active substances within them, and we have presented these as a formulation which people can use.*

*You can ask for Kibarlı Panax from Kibarlı dealers. When we talk about a Kibarlı dealer, we are not talking about dealers which have my picture on, or which have the word Kibarlı written on them. What I am talking about is dealers who sell our products and who have a dealership certificate provided by Kibarlı.”*

While Dr Eraslan was speaking, the following on-screen text appeared on the left of the shot:

On-screen text: *“Kibarlı Official Sales Site [www.yesilsifa.org](http://www.yesilsifa.org). Europe: [telephone number]. Germany: [telephone number]”*

Image: A bottle of the product Kibarlı Panax.

Voiceover: *“Call us for detailed information, and to find out who the Kibarlı authorised dealers are.”*

On-screen text: *“Not available at pharmacies or herbalists [telephone number]. [www.yesilsifa.org](http://www.yesilsifa.org)”.*

Straight after the teleshopping spot, the screen with the text “SAĞLIK” (which is Turkish for ‘health’), which had appeared previously before the programme *Doktorunuz Sizinle*, then reappeared for five seconds.

Ofcom noted that:

- Dr Eraslan appeared in both the programme and the teleshopping spot;
- both the programme and the teleshopping spot contained the same telephone numbers in on-screen text;
- the programme referred to *avena sativa*, *panax ginseng* and *tribulus terrestris* as three plant extracts which when made into a powder had been used to treat diseases;
- the teleshopping spot referred to *avena sativa*, *panax ginseng* and *tribulus terrestris* as ingredients in the product Kibarlı Panax; and
- the teleshopping spot referred to the URL [www.yesilsifa.org](http://www.yesilsifa.org). On this website, Dr Mustafa Eraslan appears to be selling the product Kibarlı Panax.

Ofcom considered the material raised issues warranting investigation under Rule 9.2 of the Code, which states:

“Broadcasters must ensure that editorial content is distinct from advertising”.

In view of the fact that the medicinal claims made in the programme about the ingredients *avena sativa*, *panax ginseng* and *tribulus terrestris*, were juxtaposed with the teleshopping spot for Kibarlı Panax which contains those ingredients, Ofcom also considered that the material raised issues warranting investigation under Rule 11.12.3 of the BCAP Code, which states:

“Teleshopping for these products is not acceptable: medical treatments for humans or animals.”

We therefore asked the licensee Millennium Broadcast Limited (“Millennium Broadcast” or “the Licensee”) for its comments on how the material complied with Rule 9.2 of the Code and Rule 11.12.3 of the BCAP Code.

## **Response**

Millennium Broadcast said that it accepted that the programme content should have been distinct from the teleshopping content. It said that it had now taken all necessary steps to ensure to “identify distinctively” programme content from advertising content. The Licensee explained that a “clear indication” will appear when advertisements or teleshopping content starts and ends. It informed Ofcom that it would take particular care with content which refers to health issues.

With regards to the telephone numbers which appeared during the programme, Millennium Broadcast said that this seemed to have been “overlooked”, but it assured Ofcom that it takes the issue of compliance seriously and will ensure that going forward that its content complies with the relevant rules.

Millennium Broadcast submitted that Dr Eraslan is a well-known medical doctor who is bound by professional responsibilities and ethical standards. The Licensee said that the views he presented on the programme and in the teleshopping spot were “personal” and do “not necessarily [represent Kanal 7 Avrupa’s] view.”

Millennium Broadcast explained that it had now stopped broadcasting the programme and that no more similar health-related programmes will be broadcast on the channel.

## **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, including “that the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented.” In relation to the potential for advertising to cause medical harm, Rule 11.12.3 of the BCAP Code therefore contains a number of rules regarding the advertising of medical treatments, including that teleshopping for medical treatments for humans or animals is not acceptable.

A further standards objective under the Act requires Ofcom to ensure that the UK’s international obligations with respect to television advertising are complied with. Article 19 of the Audiovisual Media Services Directive requires, among other things, that “television advertising and teleshopping shall be readily recognisable and distinguishable from editorial content.” This is reflected in Rule 9.2 of the Code.

### Rule 9.2

Rule 9.2 requires that editorial content is distinct from advertising in order to prevent editorial material being distorted for commercial purposes. This is intended to ensure that the Licensee maintains editorial control over its programming and that it is clear to viewers that programming has not been subject to the control of advertisers. Rule 9.2 therefore seeks to ensure that viewers are easily able to differentiate between editorial material and advertising.

In this case, Ofcom noted that both before the programme and directly after the teleshopping spot, a screen with the word “SAĞLIK” (which is Turkish for ‘health’) appeared. Further, between the programme and the teleshopping spot, there was no channel ident or other form of distinction.

Further, Ofcom noted that Dr Eraslan appeared in both the programme and the teleshopping spot. In the programme, the doctor spoke about avena sativa, panax ginseng and tribulus terrestris as three plant extracts which when made into a powder had been used to treat diseases. In the teleshopping spot, Dr Eraslan referred to avena sativa, panax ginseng and tribulus terrestris as ingredients in the product Kibarlı Panax. Further, Ofcom noted that both the programme and the teleshopping spot contained the same telephone numbers in on-screen text.

Ofcom therefore considered that viewers would be likely to have understood the material (i.e. both the programme and the teleshopping spot) as one item. There was a clear lack of distinction between the programme and the teleshopping spot. Ofcom considered that this was likely to have led to confusion among viewers about whether or not the programme *Doktorunuz Sizinle* had been subject to influence by the advertiser Kibarlı Panax.

Ofcom therefore found the material in breach of Rule 9.2.

#### Rule 11.12.3 of the BCAP Code

In this case, as detailed above in relation to Rule 9.2 of the Code, Ofcom considered that the lack of distinction between the editorial material and the teleshopping spot would have led to viewers being likely to have understood the material (i.e. both the programme and the teleshopping spot) as one item. We therefore considered whether the teleshopping spot had complied with Rule 11.12.3 which prohibits teleshopping for medical treatments for humans or animals.

Ofcom does not require that licensed medicines or other recognised medically therapeutic treatments be offered or advised upon in teleshopping for issues to be raised under Rule 11.12.3. Mere offers to treat or to advise on medical or health matters attract the prohibition under this rule, whether or not they result in recognised treatments being supplied or self-administered. The trigger for this rule to be applicable is simply the inclusion of offers of treatment of medical or health matters, including diagnosis and advice, by any person.

Ofcom noted that medicinal claims about the ingredients avena sativa, panax ginseng and tribulus terrestris were made in the programme. For example:

*“And they found quite a number of plants, and with those plants, historical figures such as Ibn-I Sina, Ali Bin Abbas, and Farabi helped to unblock blood vessels. So what are they? We have our avena sativa, oats, what you know as wild oats.... In universities they taught courses in what, in ordinary language, may be described as ‘the science of making medicine from plants’. There were experts in this. This is what people did in historical times, and it has also been done in modern times. With camomile, for example, or bullhead (tribulus terrestris). You may not be able fully to extract the material in it. The substance you obtain may not be effective. It may be growing by the side of the road, so the substance in it is different. It may be growing at 1500 metres, so it is different. So this is what we do today: care is taken to ensure that every product contains the same active ingredient at the same dose. There are various methods of ensuring this. As I said a moment ago, oats were used to open up blood vessels, or bullhead was used. What were the*

*active substances in these? We were talking about this on the way here.... There are 17 or 18 substances, and 16 of these are not substances that assist in the opening up of blood vessels. Just one of them is effective. You take this, and you give it to people in a standardised form, always at the same dosage. So the mixtures that are made in this way, the studies, the plants etc, have assisted in the opening up of people's blood vessels. Blood vessels are blocked, a foot started to swell up and turn blue. These plants were used, and within one week, or two weeks, or five weeks, the blood vessel opened up, and the patient improved. They experienced a heart attack, and then the blood vessel was opened up”;*

and

*“Are you aware that there are an enormous number of publications on hypertension? There are publications about hypertension, and if you look at those publications, you will see that they used tribulus, avena sativa, and ginseng. They used these, they put them together, and they even combined them in proportions of 3 parts of this and 5 parts of that. They made a powder, and in the end they [successfully] treated diseases.”*

In view of the facts that:

- the medicinal claims made in the programme about the ingredients avena sativa, panax ginseng and tribulus terrestris, were juxtaposed with the teleshopping spot for Kibarlı Panax which contains those ingredients; and
- as detailed above in relation to Rule 9.2 of the Code, Ofcom considered that the lack of distinction between the editorial material and the teleshopping spot would have led viewers to be likely to have understood the material (i.e. both the programme and the teleshopping spot) as one item;

Ofcom considered that the teleshopping spot gave the impression that the product Kibarlı Panax was being sold as a medical treatment for the various conditions referred to in the editorial material. As teleshopping for medical treatments for humans and animals is prohibited, Ofcom found the material in breach of Rule 11.12.3 of the BCAP Code.

#### **Breaches of Rule 9.2 of the Code and Rule 11.12.3 of the BCAP Code**

## In Breach

### Provision of recordings

*PTV Global, 18 March 2012, 19:30*

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#### Introduction

PTV Global is a current affairs channel based in Pakistan. It broadcasts to the UK via the Sky platform. The licence for the service is held by Pakistan Television Corporation Limited (“the Licensee”).

Ofcom received a complaint about commercial references during programming broadcast on the channel on 18 March 2012 at 19:30.

As part of its assessment of the complaint, Ofcom asked the Licensee to provide a recording of this material. The Licensee said that it was unable to provide the recording as it only retained recordings for “7 to 8 days”.

Ofcom considered the case raised issues warranting investigation under Condition 11 of Pakistan’s Television Limited’s Television Licensable Content Service (TLCS) licence, which states that:

- “(1) The Licensee shall adopt procedures acceptable to Ofcom for the retention and production of recordings in sound and vision of any programme which is the subject matter of a Standards Complaint...
- (2) In particular, the Licensee shall:
  - a) make and retain or arrange for the retention of a recording in sound and vision of every programme included in the Licensed Service for a period of 60 days from the date of its inclusion therein; and
  - b) at the request of Ofcom forthwith produce to Ofcom any such recording for examination or reproduction.”

Ofcom therefore asked the broadcaster for its comments under TLCS Licence Conditions 11(1) and 11(2)(a) and (b).

#### Response

The Licensee did not respond to Ofcom’s request for comments.

#### Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a duty to ensure that in each broadcaster’s licence there are conditions requiring that the licensee retains recordings of each programme broadcast in a specified form and for a specific period after broadcast; and to comply with any request by Ofcom to produce such recordings.

In this case, the Licensee not only failed to provide the recording to Ofcom upon request but did not retain the recording for the required 60 days from the date of broadcast. The Licensee was therefore in breach of Conditions 11(2)(a) and (b) of its

TLCS licence. Further, given that the Licensee said that it only retained the recording for “7 to 8 days”, it had not adopted acceptable procedures for the retention and production of recordings and as such, the Licensee was also in breach of Condition 11(1) of its TLCS licence.

Breaches of Condition 11(2)(b) are potentially serious because they impede Ofcom’s ability to assess whether a particular broadcast raises potential issues under the relevant codes. This can therefore affect Ofcom’s ability to carry out its statutory duties in regulating broadcast content.

Ofcom was very concerned that the Licensee appeared to consider it acceptable practice to retain recordings for a period “7 to 8 days” given that this fell well short of the timeframe stipulated in Licence Condition 11(2)(a).

Ofcom is therefore putting the Licensee on notice that it will consider further regulatory action including the imposition of statutory sanction in the event of a recurrence.

**Breaches of TLCS Licence Conditions 11(1) and 11(2)(a) and (b)**

## Resolved

### Death on the Nile

ITV1, 17 March 2012, 15:30

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#### Introduction

During the afternoon of Saturday 17 March 2012, ITV1 broadcast the cinematic adaptation of Agatha Christie's murder mystery novel *Death on the Nile*. In the scene where the murderer was revealed towards the end of the film, a female character shot her lover in the head off-camera before taking her own life in the same way. The female character was shown on screen putting the revolver to her head and shooting herself, causing blood to ooze from the wound.

Ofcom received one complaint from a viewer who considered the scene to be too violent in view of the possibility that a significant number of children could be watching at this time.

Having viewed the material, Ofcom considered it raised issues warranting investigation under Rule 1.11 of the Code. This states that:

“Violence, its after-effects and descriptions of violence, whether verbal or physical, must be appropriately limited in programmes before the watershed...and must also be justified by the context.”

Ofcom therefore sought comments from ITV Broadcasting Limited (“ITV” or “the Licensee”) as to how the material complied with this rule.

#### Response

ITV said that the film had been broadcast on ITV1 and ITV3 since 2004 on “over twenty occasions” in pre-watershed slots. It added that while children are clearly available to view on a Saturday afternoon, it argued that the Agatha Christie detective genre is not one with any particular interest to children, particularly younger children.

ITV argued that the scene in question was the climax of the film and its inclusion was essential to the plot. The Licensee highlighted that viewers saw the impact of the second gunshot only and that it did not consider it to be naturalistic or particularly gory. Similarly, it said that the entire scene was highly formal and theatrical and that the deaths are presented in a manner akin to a stage play.

ITV therefore considered the violence in this scene appropriately limited and justified by the context. However, it added that in keeping with its periodic review of pre-watershed material in the light of viewer concerns, particularly those of parents, it undertook some additional editing of this scene for future daytime broadcasts.

#### 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 1.11 requires that violence in programmes shown before the watershed must be appropriately limited and must be justified by the context.

In this case, the female character shot herself in the head in relative close up, causing blood to ooze from the wound. Her suicide was therefore shown in some detail and was not in Ofcom's opinion appropriately limited.

Ofcom also considered whether the violence was justified by the context. Ofcom noted, that according to ITV this cinematic adaptation had been broadcast on various occasions previously, the film was not specifically aimed at children and that the Agatha Christie detective genre is not one with any particular interest to children, especially younger ones. Ofcom's research has shown however that violent scenes shown on television pre-watershed are of principal concern to parents.<sup>1</sup> Given the Saturday afternoon scheduling of this film, Ofcom's assessment was that it was likely that a significant number of children would have been watching ITV's main and public service channel at this time. Indeed, audience figures indicated that 71,000 viewers were under sixteen years old. Some of these would not have been accompanied by an adult. While recognising the importance of including such a pivotal scene, Ofcom was concerned that the impact of the second gunshot was not edited or removed. As a result Ofcom considered that on balance the likely expectations of the audience for this channel, and of parents in particular, would have been exceeded by broadcasting this particular sequence at the length and with the detail shown on a Saturday afternoon.

However, Ofcom noted the Licensee's review of the film and additional editing of the scene in order to ensure that the content is suitable for a daytime transmission in future. We therefore consider the matter resolved.

## **Resolved**

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/watershed-on-tv.pdf>

## Broadcast Licence Condition cases

### In Breach

#### Breach of Licence Condition

*NE1fm, community radio service for central Newcastle and Gateshead  
16 April 2012 - present*

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#### Introduction

NE1fm is a community radio station licensed to provide a service for the population of parts of central Newcastle upon Tyne and Gateshead. It started broadcasting on 8 June 2007. The licence is held by Community Broadcast Initiative Tyneside Ltd ("the Licensee").

Community radio licences are granted for a five-year period. A Licensee must broadcast a service on the frequency assigned to it and provide other outputs (such as opportunities for volunteers) described in the licence, throughout the licence period.

The Licensee contacted Ofcom in January 2012 to inform us that it had been warned by the landlord of the building on which its transmitter was located – a public house – that the building was going to be sold and that the station should therefore start looking for an alternative site for its transmitter. At that time, we asked the Licensee to keep us informed of any developments and warned that a transmitter site move requires a process of formal re-clearance, involving external agencies, for a frequency to be allowed to be used at a new location, and that this can take some months to complete. Subsequently the Licensee was informed by the landlord that early sale was highly unlikely, and so finding a new site became a low priority.

On 20 April 2012, a representative of the Licensee contacted Ofcom to inform us that the station had ceased broadcasting on its FM transmitter four days earlier (i.e. on Monday 16 April), and that it would not be able to resume transmissions from the currently agreed transmission site. He said that the building on which the transmitter was located had been closed, boarded up and the electricity supply cut off on 16 April. Although, as set out above, the Licensee had been warned three months earlier that this might happen, the Licensee told us that it had not been given any advance notice of the actual closure of the building, and that it was now attempting to remove its transmission equipment from the site so that it could be re-located elsewhere. The Licensee also told us that it believed that it would be relatively straightforward to re-locate the transmitter on an adjacent property (with an increase in antenna height at a later date, subject to planning permission). We invited the Licensee to submit details for us to consider.

On the same day (i.e. 20 April), a listener contacted Ofcom by email to inform us that a statement on the station's website said it had ceased broadcasting on FM and was broadcasting via the internet only for the time being. (The listener subsequently made contact again, on 9 May, to say that the situation had not changed.)

The Licensee submitted details of its proposed new transmitter site on 25 April. Under some circumstances, particularly where a move is to a location a very short distance from the licensed site, we can agree to a transmitter site move immediately pending formal clearance (this is known as agreement on a 'non interference, non-

protected' basis, and includes caveats regarding potential interference both from and to the service). However, Ofcom observed that as the Licensee was proposing to move to a building with a metal roof, this would be very likely adversely to affect the signal and coverage. We suggested to the Licensee that the antenna needed to be located higher up to avoid this, and recommended that they seek professional technical advice. We have not had any further communication with the Licensee regarding the transmitter site.

In view of the fact that the service had ceased broadcasting on 16 April and had not yet resumed broadcasting (nor had provided Ofcom with a suitable transmitter site from which it might do so), on 8 May Ofcom wrote to the Licensee to ask how it was complying with the following two conditions in its licence relating to the delivery of its service:

Condition 2(1) contained in Part 2 of the Schedule to the licence, which states that:

“The Licensee shall provide the Licensed Service specified in the Annex<sup>1</sup> for the licence period.”

Condition 2(4), contained in Part 2 of the Schedule to the licence, which states that:

“The Licensee shall ensure that the Licensed Service accords with the proposals set out in the Annex<sup>2</sup> so as to maintain the character of the Licensed Service throughout the licence period.”

## Response

The Licensee did not reply to our letter. However, we noted a statement on the NE1fm website, dated 15 May, which said: “NE1fm is currently unavailable on 102.5 FM. However, we remain available to listen online 24 hours a day, live via this website.

“This is because the owners at our current transmitter site have withdrawn their agreement for us to house our transmission equipment there with immediate effect.

We have attempted to reach an agreement to have our equipment turned on whilst we arrange a move, but this has been refused. We now need to move this equipment to a new, suitable site and have it approved by the broadcast regulator Ofcom.

We do not know how long it will take to resume FM broadcasts at this time but please rest assured that we are working as hard as possible to restore full FM services as soon as is possible.

Many of our programmes continue to broadcast online during this time, and therefore it is very much business as usual at NE1fm. Please note however that there may be

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<sup>1</sup> The annex sets out the radio station's 'key commitments'. The key commitments include a description of the programme service, social gain (community benefit) objectives (such as training provision), arrangements for access for members of the target community, opportunities to participate in the operation and management of the service, and accountability to the community. NE1 FM's key commitments can be found here <http://www.ofcom.org.uk/static/radiolicensing/Community/commitments/cr050.pdf>

<sup>2</sup> See footnote 1.

minor disruptions to our schedule, as some presenters will be using the downtime to take a short break.

We're very sorry for any inconvenience to your listening, and we hope to be back as soon as possible. As soon as any more updates are available, we will be letting you know here, as well as via our Twitter feed."

## **Decision**

By ceasing to provide its licensed service on its FM frequency, 102.5 MHz, from 16 April 2012, the Licensee was in breach of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to its community radio licence. Ofcom has therefore formally recorded this breach of its licence by Community Broadcast Initiative Tyneside Ltd.

The Licensee notified Ofcom after it ceased broadcasting and verbally set out the circumstances that had led to the cessation of broadcasting. We note that this was as a result of the action of a third party, but also that the Licensee had had several months' warning that the building was likely to be sold. Seven weeks after the FM broadcasts stopped, Ofcom had still not been notified of an appropriate alternative transmitter site for the service, and so the service has not resumed broadcasting on FM.

The Licensee maintains that 'off-air' activities included in the licence (as set out in the Licensee's key commitments) have continued to be delivered. These include 'social gain' (such as training programmes) and access to and participation in the service (volunteering opportunities, for example).

Provision by a Licensee of its licensed service on the frequency assigned to it is the fundamental purpose for which a community radio licence is granted. 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. These matters find expression in, or are linked to, the licence condition requiring the provision of the specified licensed service. Where a licensed service is not being provided in accordance with the licence, none of the required community radio programme output is provided. In addition, choice for listeners is reduced.

It is a duty placed upon Ofcom to ensure optimal use is made of the electromagnetic spectrum. The non-provision of its licensed radio service by Community Broadcast Initiative Tyneside Ltd is not optimal use of that radio spectrum.

Ofcom has formally notified the Licensee that we are considering these licence contraventions for the imposition of a statutory sanction in light of their seriousness and ongoing nature.

**Breach of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence held by Community Broadcast Initiative Tyneside Ltd (licence number CR050).**

## In Breach

### Audio Description provision

*ESPN, January to December 2011*

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#### Introduction

Ofcom's Code on Television Access Services ("the Access Services Code") requires UK-licensed television broadcasters to provide access services (subtitling, signing and audio description services) to accompany a proportion of their programming. They are required to meet targets that rise annually from the date when the licensee began to provide services.

Rule 8 of the Access Services Code states that "broadcasters are required to meet the targets" the Code sets out for their service.

ESPN is a sports television channel broadcasting a combination of live sports events and sports related programming. The licence for this service is held by ESPN (Europe, Middle East, Africa) Limited ("ESPN" or "the Licensee") and the channel's target for audio description in 2011 was 3%.

On 17 August 2011, ESPN advised Ofcom that technical problems throughout the first half of the year prevented the provision of audio description on the channel, but these had been resolved and that ESPN intended to start providing audio description at a sufficient level to meet the annual quota. In January 2012 however, ESPN reported that in fact no audio description had been provided on the channel in 2011.

Condition 9 (1) of ESPN's Television Licensable Content Service (TLCS) licence states that "the Licensee shall ensure that the provisions of the Code on Subtitling, Signing and Audio-Description are observed in the provision of the Licensed Service".

As Ofcom had previously made ESPN aware that the channel was subject to an audio description target of 3% of its programming in the calendar year 2011, we sought formal comments as to whether ESPN considered that it had complied with the requirements of the Access Services Code.

#### Response

ESPN said that discussions with providers and experts about how it could provide audio description had taken longer than had been intended. ESPN stated that this was because the character of its sports output made it extremely difficult to provide audio description. The reasons for this included the high proportion of live and near-live programming that it shows, much of which ESPN acquires and does not produce itself.

ESPN advised Ofcom that it had planned its budgets with the aim of surpassing future targets once it begins to offer audio description, to compensate for missing targets in previous years. It argued that it had therefore not profited by failing to provide audio description.

ESPN said that it would schedule a higher proportion of documentary-style programming suitable for audio description that would help it meet its targets in the

“short term”. It considered, however, that this adjustment was likely to be unsustainable and that ESPN might not be able to meet higher targets in future years.

### **Decision**

Under sections 303 to 305 of the Communications Act 2003, Ofcom is required to draw up and from time to time review a code that gives guidance as to the extent to which broadcasters should promote the understanding and enjoyment of their services by sensory impaired consumers. This is reflected in Ofcom’s Access Services Code, with which licensees are required to comply by virtue of conditions in their licences.

In accordance with its usual practice, Ofcom notified ESPN in mid-2010 of its requirement to provide audio description in 2011 in order to comply with the Access Services Code. In August 2011 ESPN explained that it had encountered some difficulties in delivering audio description, but offered assurances that it would make up the shortfall by the end of the year. In the event, it was not able to do so.

Ofcom noted the longer than anticipated time frame that ESPN had experienced in its negotiations with providers. Ofcom also acknowledged the challenges broadcasters face in audio describing certain types of content. ESPN had raised these difficulties with Ofcom when it first became clear that it would need to provide access services, but Ofcom advised at the time that it did not regard them as insuperable. Ofcom noted that subsequently (August 2011), ESPN had said that it had resolved the difficulties it faced, and expected to meet the audio description targets. Ofcom also noted that though the Access Services Code allows broadcasters to seek exemptions from the targets on grounds of technical difficulty, we noted that ESPN had not done so.

In conclusion, Ofcom considered that the Licensee’s failure to provide audio description against a target of 3% constituted a significant breach of the Access Services Code. In view of its previous failure to implement assurances it gave in 2011 to make up the deficit in audio description by the end of that year, Ofcom will ask ESPN to set out detailed plans for remedying the position during 2012.

### **Breach of Rule 8 of the Code on Television Access Services**

## Advertising Scheduling cases

### In Breach

#### Breach findings table

*Code on the Scheduling of Television Advertising compliance reports*

Rule 4 of the Code on the Scheduling of Television Advertising (“COSTA”) states:

“... time devoted to television advertising and teleshopping spots on any channel must not exceed 12 minutes.”

Channel	Transmission date and time	Code and rule / licence condition	Summary finding
S4C	8 March 2012, 21:00 13 March 2012, 21:00	COSTA Rule 4	S4C notified Ofcom that it exceeded the permitted advertising allowance on these dates by 30 and 74 seconds, respectively.  <b>Finding: Breach</b>
Pick TV	11 March 2012	COSTA Rule 4	Ofcom noted, during monitoring, that the amount of advertising exceeded the permitted hourly allowance by 100 seconds in clock hour 23:00 on 11 March 2012.  <b>Finding: Breach</b>

Rule 16 of COSTA states that

“Restrictions apply when inserting advertising breaks during the following programmes;

- a) Films and news programmes may only include one advertising or teleshopping break for each scheduled period of at least 30 minutes.

Additionally, Rule 3 f) of COSTA states that

“films’ means cinematographic works and films made for television.”

Rule 17 of COSTA stipulates the maximum number of internal breaks programmes (other than those exceptions in Rule 15) may contain:

Scheduled duration of programme (on non-PSB channels)	Number of breaks
< 26 minutes	One
26 – 45 minutes	Two
46 – 65 minutes	Three
66 – 85 minutes	Four
86 – 105 minutes	Five
106 – 125 minutes*	Six

\*for every additional 20 minutes of programming, a further break is permitted.

Channel	Transmission date and time	Code and rule / licence condition	Summary finding
Kiss TV	17 February 2012, 20:00	COSTA Rule 17	Ofcom noted, during monitoring, that the 281 minute programme <i>Booty Battle</i> contained 15 internal advertising breaks – one more than permitted by Rule 17 of COSTA.  <b>Finding: Breach</b>

## Fairness and Privacy Cases

### Upheld

#### Complaint by Miss Grace Nyesigire

*Swahili Diaries, BEN TV, 10 January 2012*

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**Summary:** Ofcom has upheld this complaint of unwarranted infringement of privacy in the programme as broadcast by Miss Grace Nyesigire.

This programme broadcast footage taken at the funeral in Croydon of Mr Solomon Alinda who had been killed in a motorcycle accident. Footage of Mr Alinda's friends and family at different stages of the funeral was shown as well as interview footage of some of the mourners who spoke about Mr Alinda. Footage of Miss Grace Nyesigire, Mr Alinda's mother and next of kin, was also included in the programme. Miss Nyesigire complained to Ofcom that her privacy was unwarrantably infringed in the programme as broadcast in that footage of the funeral was included in the programme without her consent.

Ofcom found that Miss Nyesigire had a legitimate expectation of privacy in relation to the broadcast of the footage of her son's funeral without her consent. In the particular circumstances of this case, Ofcom considered that the broadcaster's right to freedom of expression did not outweigh the intrusion into her privacy. Therefore, Ofcom takes the view that Miss Nyesigire's privacy was unwarrantably infringed in the programme as broadcast.

#### Introduction

On 10 January 2012, BEN TV (which describes itself on its website as an "Ethnic, Africa-Caribbean satellite channel" and which provides general cultural, entertainment, news and current affairs programmes) broadcast an episode of *Swahili Diaries*. This programme, according to the broadcaster's website, "depicts the cultural, social, economic lives of the people of the Great Lakes region of Eastern Africa".

This particular edition of the programme was devoted to coverage of the funeral held in Croydon in south London on 19 May 2011 of Mr Solomon Alinda, who had been killed in a motorcycle accident. The programme included footage of Mr Alinda's friends and family at the church service and interview footage with some of the mourners who spoke about Mr Alinda. Footage of Miss Grace Nyesigire (Mr Alinda's mother and next of kin) in the church where the funeral service was taking place was shown in the programme.

Following the broadcast of the programme, Miss Nyesigire complained to Ofcom that her privacy was unwarrantably infringed in the programme as broadcast.

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

Miss Nyesigire complained that her privacy was unwarrantably infringed in the programme as broadcast in that BEN TV broadcast footage of her son's funeral without her consent. By way of background to the complaint, Miss Nyesigire said that in the circumstances the broadcast of the footage came as a shock to her and her family.

In response, BEN TV said that in May 2011, it was contacted by Mr Martin Rwenzigye, Mr Alinda's father, about filming and broadcasting his son's funeral in order to highlight the issue of public and road safety since his son died in a road traffic accident. BEN TV said that Mr Rwenzigye subsequently confirmed this in an email dated 15 May 2011.

BEN TV said that its camera crew had met Mr Rwenzigye when filming at the funeral on 19 May 2011 and that it said that he had organised interviews with some of those attending and "was totally in charge of our itinerary". BEN TV said that at no time during the filming and interviews did any member of the Mr Alinda's family object to the presence of the camera crew. It said that BEN TV was not the only camera crew filming the funeral, but that its camera crew displayed BEN TV's identities and logos and the camera operator wore a jacket with a BEN TV logo on it. BEN TV said that this was in accordance with Mr Rwenzigye's instructions, namely that the camera crew was filming for a broadcaster (i.e. BEN TV) and filming material that would be subsequently broadcast.

BEN TV said that it believed that it had not infringed the privacy of Miss Nyesigire as it was dealing with Mr Rwenzigye, who the broadcaster said was "the head of the family, [and the] father of the deceased" and the person who had contacted it to film and broadcast the funeral. BEN TV said that it understood that it was in the middle of "a feud" between the complainant, Miss Nyesigire, and her former husband, Mr Rwenzigye. In response to the broadcaster's statement that Mr Rwenzigye was "the head of the family", Miss Nyesigire said that although he may have been Mr Alinda's father, he played no direct role in raising Mr Alinda. She said that she was Mr Alinda's next-of-kin and was responsible for the funeral arrangements.

BEN TV said that in the time between the filming of the funeral and its subsequent broadcast, it had maintained close contact with Mr Rwenzigye in order to determine how and when the programme would be broadcast. It said that when gathering personal information from contributors, audiences and other members of the public by invitation, it was important for BEN TV to be clear about its intended use. It said that this was the case in this matter and that BEN TV had invited Mr Rwenzigye several times to the studio to look at the final version of the programme before its broadcast. BEN TV said that Mr Rwenzigye had declined the offers.

BEN TV said that this matter (i.e. the funeral) was already in public domain and had been placed there "at the request and encouragement" of Mr Alinda's family who had given interviews and had taken part in the media coverage of Mr Alinda's death<sup>1</sup>.

## **Decision**

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unjust or unfair treatment and unwarranted infringement of privacy in, or in connection with the obtaining of material included in, programmes in such services.

In carrying out its duties, Ofcom has regard to the need to secure that the application of these standards is in the manner that best guarantees an appropriate level of freedom of expression. Ofcom is also obliged to have regard, in all cases, to the

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<sup>1</sup> BEN TV provided Ofcom with a number of articles from local newspaper websites in which both Mr Rwenzigye and Miss Nyesigire commented on their son's death.

principles under which regulatory activities should be transparent, accountable, proportionate and consistent and targeted only at cases in which action is needed.

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and both parties' written submissions. Ofcom also took careful account of the representations made by Miss Nyesigire in response to being given the opportunity to comment on Ofcom's preliminary view on this complaint. While Ofcom had attentive regard to all of Miss Nyesigire's comments in finalising this decision, it concluded that none of the further points she raised materially affected the outcome of the complaint. The broadcaster chose not to make any representations on Ofcom's preliminary view.

In Ofcom's view, the individual's right to privacy has to be balanced against the competing rights of the broadcasters to freedom of expression. Neither right as such has precedence over the other and where there is a conflict between the two, it is necessary to intensely focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate.

This is reflected in how Ofcom applies Rule 8.1 of Ofcom's Broadcasting Code ("the Code") which states that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.

Ofcom considered Miss Nyesigire's complaint that her privacy was unwarrantably infringed in that footage of her son's funeral was broadcast with her consent.

In considering the complaint, Ofcom had regard to Practice 8.6 of the Code which states that if the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted. It also had regard to Practice 8.16 of the Code which states that broadcasters should not take or broadcast footage or audio of people caught up in emergencies, victims of accidents or those suffering a personal tragedy, even in a public place, where that results in an infringement of privacy, unless it is warranted or the people concerned have given consent.

In considering whether or not there had been an unwarranted infringement of Miss Nyesigire's privacy in the programme as broadcast, Ofcom first considered the extent to which Miss Nyesigire could have legitimately expected that the footage of her son's funeral would not be broadcast without her consent.

Ofcom noted that the programme broadcast footage of Mr Alinda's family and friends at his funeral. It included footage of the funeral cortege, the mourners waiting outside the church, Mr Alinda's coffin being carried into the church and the funeral service inside the church itself. Miss Nyesigire was shown in the congregation and it was noticeable that she was upset. The programme also included interview footage of a number of people who attended the funeral and who spoke about Mr Alinda and their memories of him. Ofcom noted too that the filming appeared to have been conducted openly by the programme makers.

With reference to Practice 8.16 of the Code (see above), Ofcom considered there was no question that Miss Nyesigire was suffering from a personal tragedy in attending her son's funeral and was shown in a situation that was sensitive and could reasonably be considered as attracting a significant degree of privacy. Ofcom considered that Miss Nyesigire would not have expected that footage of her son's

funeral and of her of the nature, extent and duration shown in this programme would be broadcast in a television programme to a wider audience without her consent.

Ofcom noted the broadcaster's position that the funeral was "already in public domain and had been placed there 'at the request and encouragement' of Mr Alinda's family". In Ofcom's view, whether or not an event, action or information is in the public domain must be considered on a case by case basis according to all the relevant facts. While it is not disputed that Mr Alinda's funeral was covered in the local newspapers at the time and that members of his family, including Miss Nyesigire, are quoted in some of the coverage, the moving images and sound of the funeral itself (which included footage of Miss Nyesigire) had not been placed in the public domain.

Therefore, taking these factors into account, Ofcom concluded that Miss Nyesigire had a legitimate expectation of privacy in the programme as broadcast.

Having found that Miss Nyesigire had a legitimate expectation of privacy in relation to the broadcast of the footage in the programme, Ofcom then assessed whether or not her consent had been obtained prior to the programme's broadcast.

Ofcom noted that Miss Nyesigire complained that the footage of her son's funeral had been broadcast in the programme without her consent. It noted too that the broadcaster said that it had been contacted by Mr Alinda's father, Mr Rwenzigye, by telephone. He asked BEN TV to film and subsequently broadcast the footage of the funeral to increase public awareness of issues of road safety. In particular, Ofcom noted an email dated 15 May 2011 from Mr Rwenzigye to the programme makers in which he stated "I [Mr Rwenzigye] request you cover this funeral from home, church and to the resting place". Ofcom also noted from the broadcaster's submissions that: the camera crew had filmed openly during the funeral; were clearly recognisable as being from BEN TV; no member of Mr Alinda's family (or any of the mourners at the funeral) objected to their presence; and that close contact was maintained with Mr Rwenzigye after the funeral in order to determine how and when the programme would be broadcast.

Ofcom noted, however, that there appeared to be a dispute as to the nature of Mr Rwenzigye's request for coverage of his son's funeral. In particular, Ofcom noted an email from Mr Rwenzigye to the programme makers dated 13 January 2012, in which Mr Rwenzigye stated that footage of his son's funeral had been broadcast without the family's consent, and that, "This was not a program for public consumption ... This was a private matter for our own memories...".

In Ofcom's view, BEN TV relied on its conversations and correspondence with Mr Rwenzigye and the fact that there were no objections raised to the programme makers' presence at the funeral in forming the view that it had secured appropriate consent to broadcast the footage of the funeral. From the material submitted by the broadcaster, it appeared to Ofcom that the broadcaster had assumed that Mr Rwenzigye, as Mr Alinda's father, had given his consent for the funeral to be filmed and broadcast, and that he was also consenting on behalf of the rest of Mr Alinda's family. Ofcom has not found it necessary to form a view on the exact nature of Mr Rwenzigye's request. However, even if Mr Rwenzigye had given his consent to broadcast, such consent was not given by the rest of the family.

While Ofcom recognised that the broadcaster may well have broadcast the footage in good faith and in the belief that it had secured appropriate consent, it considered that, in the particular circumstances of this case, BEN TV had failed to take sufficient

steps to ensure that Miss Nyesigire was informed about their plan to broadcast footage of her and of her son's funeral of the nature, extent and duration shown in this programme to a wider audience. In the circumstances of this case, where the complainant had suffered a bereavement on the death of her son in a motorcycle accident and was filmed grieving at his funeral, Ofcom considered that it was not enough for the programme makers to have assumed in the circumstances that Miss Nyesigire's wishes and those of Mr Rwenzigye would have been the same. Ofcom considered that as Miss Nyesigire had a legitimate expectation of privacy in relation to the broadcast of footage of her son's funeral in the programme, her informed consent should have been obtained prior to the broadcast. Ofcom noted that Miss Nyesigire's consent had not been sought or obtained.

Ofcom finally considered the broadcaster's competing right to freedom of expression and the audience's right to receive information and ideas without unnecessary interference. Ofcom is aware that intrusion into an individual's privacy in a programme can sometimes be justified on the grounds that there was a public interest in broadcasters making and broadcasting programmes that are aimed at particular communities or particular topics.

However, Ofcom noted that in this case, the broadcaster did not put forward any public interest argument that the intrusion into Miss Nyesigire's privacy by the broadcast of the programme without her consent was warranted.

Therefore, given all the factors set out above, Ofcom concluded that the broadcaster's right to freedom of expression, in the circumstances of this particular case, did not outweigh Miss Nyesigire's expectation of privacy. Ofcom therefore found that the inclusion of footage of Miss Nyesigire's son's funeral of the nature, extent and duration shown in this programme was not warranted without her prior consent and that there was an unwarranted infringement of her privacy in the programme as broadcast.

**Accordingly, Ofcom has upheld Miss Nyesigire's complaint of unwarranted infringement of privacy in the programme as broadcast.**

**Ofcom found the broadcaster in breach of Rule 8.1.**

## Upheld in Part

### Complaint by Mr Andrew Peet

*Party Paramedics: Corfu Carnage, Channel 4, 31 January 2012*

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**Summary:** Ofcom has upheld part of this complaint of unwarranted infringement of privacy made by Mr Andrew Peet.

This programme looked at the work of medical professionals in the UK and abroad and included footage of Mr Peet receiving medical treatment from a doctor in Corfu after apparently injuring himself after falling head-first through a glass door. Mr Peet was intoxicated at the time of the accident. Mr Peet complained to Ofcom that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme and in the programme as broadcast.

Ofcom found that:

- The intrusion into Mr Peet's privacy in connection with the obtaining of material included in the programme was warranted in the public interest.
- The intrusion into Mr Peet's privacy in broadcasting footage of him without his consent outweighed the broadcaster's right to freedom of expression in the circumstances of this case. His privacy was therefore unwarrantably infringed in the programme as broadcast.

### Introduction

On 31 January 2012, Channel 4 broadcast an edition of *Party Paramedics*, a series of programmes about, according to the broadcaster's website, "medical units, home and abroad, that patch up the victims of Britain's binge-drinking culture". This edition, entitled *Corfu Carnage*, followed a team of doctors at "Kavos Emergencies", an emergency medical clinic ("the clinic"), in the town of Kavos in Corfu during the summer season when approximately 50,000 young British holidaymakers visit the destination. The programme followed the doctors as they attended to a number of incidents in which holidaymakers, described in the programme as "...sick drunks...sunburnt drunks, dazed drunks, happy drunks, aggressive drunks...the assaulted, and those who have absolutely no idea where they are or what's happened", needed emergency medical treatment.

One such incident featured a British man, Mr Andrew Peet, who had apparently slipped in his hotel room and fallen head-first through a glass door. He was shown lying on a bed being tended to by a doctor who tried to ascertain what had happened to him. The programme's commentary stated that the man had no insurance and he was heard to tell the doctor that he had no money. Although Mr Peet was not named in the programme and his face was obscured, his voice was audible and was not distorted.

Following the broadcast of the programme, Mr Peet complained to Ofcom that his privacy was unwarrantably infringed in connection with the obtaining of the material included in the programme and in the programme as broadcast.

## Summary of the complaint and broadcaster's response

- a) Mr Peet complained that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme in that he had been filmed being treated by a doctor after suffering a fall and being knocked unconscious. Mr Peet said that when he left his hotel room, he discovered that he was being filmed and had asked the camera crew to stop filming him, but they continued to film and also followed him to the clinic where the crew tried to get him to sign forms while he was under the influence of alcohol. Mr Peet said that he had refused and told them to turn the camera off.

In response, and before addressing the particular elements of Mr Peet's complaint of unwarranted infringement of privacy in both the obtaining of material included in the programme and the programme as broadcast, Channel 4 said that there was a clear and important public interest in British television viewers being able to see "behind the scenes" the effects of "binge drinking" on British individuals and the doctors who care for them, at home and abroad. It said that the programme highlighted the dangers and health hazards of "binge drinking" and exposed the British drinking culture abroad and the trouble that over indulging in alcohol could bring. It said that the programme offered a uniquely intimate perspective of the Greek medical professionals as they treated hundreds of intoxicated young British holidaymakers and served as a warning that the benefits of free NHS care are not always available when abroad and that medical care needed as a result of overindulgence could be costly.

In response to Mr Peet's complaint, Channel 4 said that the principal aim of filming in the clinic and at locations to which its medical staff were called was to capture genuine interactions between the medical staff and those being treated by them on a "normal" night in Kavos during the summer season. Channel 4 also said that it was important to ensure that the programme makers could film with confidence continuously to gather as fair and accurate a representation of the night work of the medical staff as was possible, with minimal interruption. At all times, the filming was carried out openly, but unobtrusively, so as not to interfere with the important work in which the medical staff were engaged.

Channel 4 said that both it and the programme makers were aware and accepted that Mr Peet did not consent to being filmed, or for identifiable images of him to be broadcast as part of the programme.

Channel 4 said that on 12 August 2011, the clinic in Kavos had received a call in relation to an incident involving a man at an hotel and the programme makers followed the doctor who responded to the call to the hotel. At the scene, the doctor found Mr Peet in his hotel room in what appeared to be a confused and heavily intoxicated state having suffered injuries, it seemed, from falling through the glass door to his hotel room. The programme makers filmed through the smashed glass door from outside of Mr Peet's hotel room (much of it from public rough ground adjacent to the hotel) as the doctor treated Mr Peet. Although the programme makers were filming openly, on account of his intoxicated and confused state Mr Peet was unaware of the presence of the film crew outside his hotel room. Channel 4 said that the programme makers determined that on account of Mr Peet's condition when they arrived at the hotel and the necessity for him to receive uninterrupted treatment, it was not appropriate to seek his consent to filming at the time. Given Mr Peet's condition on the doctor's arrival at the hotel, Channel 4 argued that the means of obtaining the material of his treatment was warranted and proportionate and that it would not have been

appropriate to interrupt the doctor's assessment of Mr Peet to seek his consent to filming while he was at the hotel.

Channel 4 said that the unedited footage of the incident did not corroborate Mr Peet's account of events, which the programme makers did not accept.

Channel 4 said that when Mr Peet emerged from his hotel room, the programme makers had filmed him and the doctor outside the hotel on the street. Although the filming was conducted openly, Mr Peet was still unaware of the presence of the programme makers. The programme makers followed Mr Peet and the doctor back to the clinic and, again, Mr Peet was unaware of their presence and was in the care of the doctor. Channel 4 said that upon arrival at the clinic, the programme makers had asked the doctor to explain to Mr Peet that he was being filmed and the reasons why. Mr Peet made it clear at this stage that he did not consent to being filmed and the programme makers immediately ceased filming. Therefore, the programme makers accepted that they had asked Mr Peet for his permission to film the doctor treating him and that Mr Peet had refused. Accordingly, Channel 4 said that the programme makers did not film any further material of Mr Peet.

Channel 4 said that the programme makers were aware of the necessity to obtain full, informed consent from contributors. It said that all contributors who received treatment from the medical staff at the clinic and featured in the programme and who were identifiable had signed appropriate release forms. Channel 4 said that careful consideration was given to ensuring that where an individual who may have a legitimate expectation of privacy did not consent to being included in the programme, they would not be identifiable in the programme as broadcast, unless there was a sufficient public interest to justify infringing their legitimate expectation to privacy.

Channel 4 said that given that Mr Peet was under the influence of alcohol on the night of filming, the programme makers had tried to track him down over the next few days following the incident. After two or three days, the programme makers met Mr Peet and sought to obtain his consent to broadcasting the material of Mr Peet with him being identifiable. Mr Peet refused to give his consent and accordingly, it was explained to Mr Peet that as he had not signed a release form he would not be identified in the programme. Channel 4 said that the programme makers did not accept Mr Peet's account that the programme makers assured him that the footage would not be used at all. Channel 4 said that this was not an option that the programme makers would have given to Mr Peet during their discussion with him.

- b) Mr Peet complained that his privacy was unwarrantably infringed in the programme as broadcast in that footage of him was included in the programme without his consent. Mr Peet said that the programme makers approached him on the last day of his holiday to seek his permission to show the footage in the programme. Mr Peet said that he refused and was assured by the programme makers that the footage would not be used. He said that footage of him lying on a bed in his boxer shorts and a shirt appeared in the programme. Mr Peet said that although his face was obscured, his voice was broadcast as normal.

By way of background to the complaint, Mr Peet said that he had found watching the footage to be very embarrassing and distressing and he was unhappy that the programme makers went against their word, i.e. that they showed the footage. Mr Peet said that his parents and work colleagues had been unaware of

how he had sustained my injuries until the programme was broadcast. He said that had he been “unidentifiable”, then his work colleagues should not have been able to recognise him in the programme.

In response, Channel 4 said that it accepted that Mr Peet had a legitimate expectation of privacy. However, Channel 4 argued that there was no unwarranted infringement of Mr Peet’s privacy in the broadcast of the programme. It said that Mr Peet was unidentifiable in the programme. It said that in all of the images, Mr Peet was shown either lying on the bed or face down with his head covered by his arms and that his head and face were obscured. In images where Mr Peet would otherwise have been identifiable, Channel 4 said that his face was blurred.

Channel 4 said that Mr Peet also complained that although his face was blurred, his voice was unmasked. However, as was clear from the programme, due to being heavily intoxicated and injured, Mr Peet’s speech was slurred and was at times muffled, on account of the positioning of his face on the bed and in his arms. Accordingly, Channel 4 said that Mr Peet’s speech was sufficiently distorted so as not to require any further “masking”.

Further, Channel 4 said that Mr Peet featured only briefly in the programme as broadcast and was not identifiable from the images broadcast, as his face was either blurred, obscured, or in shadow the entire time he was in the footage. Mr Peet was not named, nor was his address or any other personal details revealed. Channel 4 said that as Mr Peet was not identifiable in the programme, his consent was not a necessary prerequisite to the obtaining of the material or the inclusion of the material of him in the programme.

In addition, Channel 4 said that there was a clear public interest in a programme examining the work of the medical staff treating the British public abroad in circumstances where they are dealing with incidents related to excessive drinking. There was a clear public interest in developing viewers’ understanding of the inherent dangers of binge drinking, the range of people who over-indulged and the dangerous situations that could stem from it. Channel 4 said that it was important to show the public the effect of this behaviour on the hard-pressed medical staff.

## **Decision**

Ofcom’s statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unjust or unfair treatment and unwarranted infringement of privacy in, or in connection with the obtaining of material included in, programmes in such services.

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

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast and both parties’ written submissions and further representations. It also considered the unedited footage of Mr Peet and read a transcript of it. Ofcom also

took careful account of the representations made by Mr Peet and Channel 4 in response to being given the opportunity to comment on Ofcom's preliminary view on this complaint. While Ofcom had attentive regard to all of Mr Peet's and Channel 4's comments in finalising this decision, it concluded that none of the further points raised by the parties materially affected the outcome of the complaint of unwarranted infringement of privacy.

In Ofcom's view, the individual's right to privacy has to be balanced against the competing right of the broadcaster to freedom of expression. Neither right as such has precedence over the other and where there is a conflict between the two, it is necessary to intensely focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate.

This is reflected in how Ofcom applies Rule 8.1 of the Code which states that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted<sup>1</sup>.

- a) Ofcom considered first Mr Peet's complaint that his privacy was unwarrantably infringed in the obtaining of material included in the programme in that he was filmed being treated by a doctor after suffering a fall and being knocked unconscious.

Ofcom took into consideration Practice 8.5 of the Code, which states that any infringement of privacy in the making of a programme should be with the person's consent or be otherwise warranted. It also had regard to Practice 8.7 of the Code which provides that if an individual's privacy is being infringed and they ask that the filming be stopped, the broadcaster should do so, unless it is warranted to continue. It also considered Practice 8.9 of the Code which provides that the means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme. Ofcom also took Practice 8.16 into account which states that broadcasters should not take or broadcast footage or audio of people caught up in emergencies, victims of accidents or those suffering a personal tragedy, even in a public place, where that results in an infringement of privacy, unless it is warranted or the people concerned have given consent.

Ofcom noted from the unedited footage filmed of Mr Peet while he received medical attention at the hotel that he was filmed at first lying on a bed in the hotel room and then moving round the room as he prepared to leave to go to the clinic. He was also filmed outside his hotel on the street as the doctor persuaded him to go to the clinic and then, finally, as he approached the entrance to the clinic. Ofcom considered that the filming appeared to have been conducted openly by the programme makers, although Ofcom recognised that it had been dark at the time and that Mr Peet was not only in a state of intoxication, but also had sustained an injury as a result of his accident and that the camera operator may not have been clearly visible to Mr Peet. In further representations made by Channel 4, it said that although Mr Peet was in his hotel room, he would have been clearly visible to the passing public on the street outside his room.

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<sup>1</sup> The explanation of the meaning of "warranted" under Rule 8.1 of the Code identifies revealing or detecting crime, protecting public health or safety, exposing misleading claims made by individuals or organisations, disclosing incompetence that affects the public, as examples of public interest.

Ofcom recognised that, where an individual has sustained a physical injury and is receiving medical treatment, that individual may have an expectation of privacy. In the particular circumstances of this case, Ofcom considered that Mr Peet was filmed in a vulnerable and sensitive situation, i.e. receiving medical treatment for injuries sustained after an accident in his hotel room. Ofcom considered that a person receiving medical treatment could reasonably consider that to be a private matter (especially when they are not in a public place, for example a hotel bedroom) and that a person could reasonably and usually expect not to be filmed being given such treatment without his prior consent. Ofcom concluded therefore that Mr Peet had a legitimate expectation of privacy in the particular circumstances of this case.

Given this conclusion, Ofcom then assessed whether the programme makers had secured Mr Peet's consent for the footage of him to be filmed. Ofcom acknowledged that the programme makers had the doctor's consent for filming him carrying out his medical duties. It noted that Mr Peet had been filmed openly and that the programme makers had not concealed the fact that they were filming him. It was also clear to Ofcom from the footage that the programme makers had filmed in an unobtrusive manner and had not got in the way of Mr Peet's treatment.

Ofcom recognised that there was disparity in the recollections of Mr Peet and those of the programme makers in relation to precisely when and where Mr Peet became aware that he was being filmed and asked for the filming to stop. Ofcom recognised that Mr Peet believed that he had become aware of filming and asked for it to stop while he was being treated by the doctor in his hotel room. However, having carefully watched the unedited footage of Mr Peet being treated and read the transcript of it, it appeared to Ofcom that at no point during this part of the filming at the hotel was Mr Peet aware that he was being filmed and so was not in a position to request the filming to stop.

Having examined the unedited footage, Ofcom noted the following exchange between the programme makers, the doctor and Mr Peet that took place at the entrance to the clinic:

Programme maker: "George [the doctor] will you just ex..., will you explain to him?"

Doctor: Just here. Yes, yes, yes, here. Here, er, eh?

Mr Peet: It's, it's, I'm being filmed. Please check...

Doctor: Er, it's nothing. It's just for a documentary for er, emergencies. Don't worry.

Mr Peet: Please tell them to turn that film off.

Doctor: You, you don't want it?

Mr Peet: I don't want it".

Ofcom noted that at this point, the camera operator lowered the camera and ceased filming Mr Peet. In Ofcom's view, Mr Peet's comments were unequivocal and it was made clear to the programme makers at that point that Mr Peet's consent to be filmed had not been given. In any event, Ofcom acknowledged that

the broadcaster accepted that Mr Peet's consent to be filmed had not been secured prior to or during filming. Ofcom further acknowledged that, even if consent had been secured prior to or during filming, there would be a question about whether such consent could have been "informed" consent given Mr Peet's intoxicated state.

Taking all these factors into account, Ofcom considered that Mr Peet had a legitimate expectation of privacy in relation to being filmed in the circumstances in which he found himself and without the programme makers having secured his consent. Ofcom therefore considered that in these circumstances, the filming was an infringement of Mr Peet's privacy.

Ofcom then considered, in accordance with Practice 8.9 of the Code, whether this infringement of privacy was warranted and whether the means of obtaining the footage was proportionate in all the circumstances and, in particular, to the subject matter of the programme. In assessing the manner in which the material was obtained, Ofcom noted that the programme makers filmed the footage as they followed doctors attending incidents involving British holidaymakers in Kavos. The filming appeared to be unobtrusive and did not result in the obtaining of any personal information about Mr Peet beyond the footage itself. Ofcom considered whether the footage was relevant to the subject matter of the programme. It took the view that because the programme was about the challenges faced by the doctors treating British holidaymakers for a variety of medical problems, often caused through drinking excessive amounts of alcohol, the filming of Mr Peet in the circumstances was relevant. Ofcom was satisfied therefore that the means of obtaining the footage of Mr Peet was appropriate and proportionate and relevant to the subject matter of the programme. However, Ofcom considered that the fact remained that Mr Peet had made it clear to the programme makers that, once he became aware that he was being filmed, his consent to being filmed had not been given.

Ofcom then went on to consider the broadcaster's competing right to freedom of expression and the public interest in examining the work of the doctors featured in the programme and the audience's right to receive information and ideas without unnecessary interference. In this respect, Ofcom considered whether, in the circumstances there was a sufficient public interest to justify the intrusion into Mr Peet's privacy.

Ofcom considered that there was a genuine public interest in the work of medical professionals abroad in dealing with a wide variety of emergencies and medical problems experienced by young, British holidaymakers abroad and in developing the public's understanding of the nature of the incidents encountered, their associated risks, and their results. Ofcom noted that a doctor was shown trying to treat Mr Peet after he had apparently fallen through a glass door in his hotel room while intoxicated and in circumstances where he was adamant that he wanted to be left alone despite his injuries. Ofcom considered that there was a public interest in making programmes showing the work of the doctors in Kavos, which illustrated the challenges they faced when dealing with situations that required medical intervention (often the direct result of "binge drinking" or intoxication) such as in Mr Peet's case.

In the particular circumstances of this case, Ofcom considered that the programme makers were not in a position to obtain Mr Peet's prior consent to filming him being treated by the doctor, but that there was a public interest in filming the material without having secured his prior consent. Ofcom takes the

view that it would be a disproportionate restriction on programme makers' freedom of expression if they were unduly constrained from filming in circumstances such as those in which Mr Peet found himself i.e. where they are unable to obtain consent from an individual prior to filming taking place (for instance, when medical treatment is being given). However, Ofcom also considered that it is important in circumstances such as those of this complaint, that the broadcaster takes steps to ensure that the subsequent broadcast of any material filmed without consent does not result in an unwarranted infringement of privacy. This issue is dealt with in head b) of the preliminary view below.

Having taken all the factors above into account, Ofcom considered that, on balance, the broadcaster's right to freedom of expression and the audience's right to receive information and ideas without interference, outweighed Mr Peet's expectation of privacy as regards the obtaining of material in the circumstances of this case. Ofcom therefore found that there was no unwarranted infringement of Mr Peet's privacy in connection with the obtaining of material for inclusion in the programme.

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

In considering this complaint, Ofcom had regard to Practice 8.6 of the Code which states that if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted. It also took note of Practice 8.16 as set about in head a) above.

In considering whether or not there had been an unwarranted infringement of Mr Peet's privacy in the programme as broadcast, Ofcom first considered the extent to which Mr Peet could have legitimately expected that the footage of him receiving medical treatment would not be broadcast without his consent.

Ofcom carefully examined the footage of Mr Peet broadcast in the programme. It noted that Mr Peet was shown in his underwear and lying on a bed in his hotel room being treated by a doctor after apparently slipping and falling through a glass door. Mr Peet's face was not shown in the programme, either by it not being visible or by being obscured, but his voice was audible. Ofcom also noted that Mr Peet was shown standing outside the hotel being persuaded by the doctor to go to the clinic to be checked over. Mr Peet was heard to say: *"it can't cost me any money, I've got no money...I'm skint"*. A final image of Mr Peet was shown walking down the street with the doctor towards the clinic. As already stated in head a) above, it appeared to Ofcom that Mr Peet was filmed openly throughout the incident.

As also already explained in head a) above, Ofcom recognised that where an individual has sustained a physical injury and is receiving medical treatment, that individual may have an expectation of privacy. In the circumstances of this case, Ofcom considered that Mr Peet had been filmed in a vulnerable and sensitive situation, i.e. receiving medical treatment for injuries sustained after an accident in his hotel room. Furthermore, the broadcast of that footage of him in his underwear, which also revealed that he was intoxicated at the time he sustained his injuries, had the potential to be embarrassing to him. Ofcom considered that the administration of medical treatment to an individual could reasonably be considered to be a private matter and that it would be reasonable for Mr Peet to

expect that footage of him receiving such treatment would not be revealed to a wider audience in a programme without prior consent. Ofcom concluded therefore that Mr Peet had a legitimate expectation of privacy in these particular circumstances as regards the broadcast of this material.

Moreover, since Mr Peet made it clear to the programme makers, once he became aware that he was being filmed, that he had not given consent to being filmed, he had not in any way waived his legitimate expectation of privacy.

Ofcom then considered whether Mr Peet's privacy had been infringed in this case concerning the broadcast of the material. In this context, Ofcom took into account the fact that Mr Peet was not the focus of the programme and we took the view that the footage of him was used in the programme to illustrate the type of incidents the doctors dealt with and the difficulties sometimes encountered when trying to administer treatment or to get injured people to the clinic.

Ofcom also took account of the character of the information that was revealed in the programme and the context in which it was disclosed. Ofcom recognised that Mr Peet was not identified by name in the programme and that the programme makers had taken steps to reduce the likelihood of his identity being revealed by using a number of shots that did not show his face, and that when his face was visible it was obscured. We noted too that neither the name of the hotel where Mr Peet was staying nor the precise date and time the incident had taken place were disclosed in the programme. However, despite the efforts made by the programme makers to obscure Mr Peet's identity by obscuring his face, Ofcom noted that Mr Peet's voice was not obscured. Having listened very carefully to the footage of Mr Peet included in the programme, Ofcom was not convinced by the broadcaster's submission that due to the effects of alcohol and injuries, Mr Peet's speech was sufficiently distorted so as to make him unidentifiable. Ofcom took the view that the broadcast of Mr Peet's undistorted voice, along with the obscured footage of him, was sufficient when considered together to render Mr Peet identifiable, and that his identity would have been particularly discernible to anyone who knew him.

Having considered that Mr Peet was identifiable in the programme as broadcast, Ofcom went on to consider whether he had consented to the broadcast of the footage of him. As explained under head a) above, Ofcom recognised that there was disparity in the recollections of Mr Peet and those of the programme makers in relation to whether the programme makers had told him that no footage of him would be included at all in the programme or that footage would be shown, but that he would not be identifiable from it. Ofcom was not in a position to determine what exactly Mr Peet was or was not told by the programme makers. However, in any event, Ofcom acknowledged that the broadcaster accepted that Mr Peet's consent for images of him, identifiable or otherwise, to be included in the programme was not secured by the programme makers prior to the broadcast of the programme.

Given this conclusion and the vulnerable and sensitive circumstances in which Mr Peet was filmed, Ofcom considered that the filming was an infringement of Mr Peet's privacy. Ofcom acknowledged that the programme makers and the broadcaster had taken steps to limit the infringement into Mr Peet's privacy. It noted that the broadcaster used a number of shots that did not show his face, and that when his face was visible it was obscured. Also the footage of Mr Peet included in the programme which allowed to be identified was very brief; and to a great extent it was used as an illustrative device to show the varied and

demanding work of the doctors rather than focussing on Mr Peet himself. These factors, in Ofcom's view, reduced the degree to which the broadcasting of the programme infringed Mr Peet's expectation of privacy.

Nevertheless, Ofcom considered on balance that Mr Peet had an expectation that the footage of him would not be broadcast subsequently without his prior consent being obtained by the broadcaster, unless it was warranted to proceed without it.

Ofcom went on to consider the broadcaster's competing right to freedom of expression and the public interest in examining the work of the doctors featured in the programme and the audience's right to receive information and ideas without unnecessary interference. In this respect, Ofcom considered whether, in the circumstances there was a sufficient public interest to justify the intrusion into Mr Peet's privacy.

As already considered in head a) above, Ofcom considered that there was a genuine public interest in the work of medical professionals abroad in dealing with a wide variety of emergencies and medical problems experienced by young, British holidaymakers and in developing the public's understanding of the nature of the incidents encountered and associated risks and consequences. However, Ofcom had to balance the broadcaster's right to freedom of expression against the intrusion into Mr Peet's right to privacy by the inclusion of footage of Mr Peet in a vulnerable state and a sensitive situation, from which he was identifiable, and without his consent. Whilst Ofcom recognised that there was a clear public interest in the broadcast of material of this nature, it considered that in the circumstances of this case the broadcaster could have fulfilled that public interest without needing to reveal Mr Peet's identity and therefore without infringing his expectation of privacy.

Ofcom therefore concluded that, in the particular circumstances of this case, the infringement of Mr Peet's privacy was unwarranted since the broadcaster did not need to reveal his identity in the public interest. Ofcom therefore found that Mr Peet's privacy was unwarrantably infringed in the programme as broadcast.

**Accordingly, Ofcom has not upheld Mr Peet's complaint of unwarranted infringement of privacy in connection with the obtaining of material in the programme. However, Ofcom has upheld Mr Peet's complaint of unwarranted infringement of privacy in the programme as broadcast. Therefore, Mr Peet's complaint to Ofcom is upheld in part.**

**Ofcom found the broadcaster in breach of Rule 8.1.**

## Not Upheld

### Complaint by Mr Yinka Adedeji

*Dispatches: Landlords from Hell, Channel 4, 5 December 2011*

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

The programme investigated “*slum landlords making a killing out of the homeless*” and looked at privately owned “houses of multiple occupancy” (“HMOs”). One of the HMOs featured was the Apollo Guest House (“the Apollo”), owned by Mr Adedeji. An undercover reporter who rented a room at the Apollo filmed the poor conditions there and spoke to a number of residents about their concerns. The programme also included footage of a local authority inspection of the property.

Ofcom found that:

- Material facts in relation to Mr Adedeji’s discussion with the local authority about repairs and in relation to mortgages taken out by his company were not presented, disregarded or omitted in a way that was unfair to Mr Adedeji.
- There was no evidence to suggest that a contributor who had said that the Apollo should be shut down had withdrawn his comment. It was not unfair therefore to include his contribution in the programme.
- The programme made it clear that, while conditions at the Apollo were poor, there was a distinction between conditions at the Apollo and those at another HMO (the Beulah Hotel (“the Beulah”)) that featured in the programme; and, that the Apollo was not as bad as the Beulah.
- Mr Adedeji was given an appropriate and timely opportunity to respond to the allegations made in the programme.
- Mr Adedeji’s statement in response to the programme’s criticisms was not unfairly edited.
- Given the public interest in the condition of properties rented to homeless people and in particular in the nature of local authority inspections of such properties, the secret filming of an inspection at the Apollo and of Mr Adedeji’s discussion of it afterwards was justified and was not an unwarranted infringement of Mr Adedeji’s privacy in the broadcast programme.

### Introduction

On 5 December 2011, Channel 4 broadcast an edition of its current affairs series *Dispatches* entitled *Landlords from Hell*. The programme, presented by Jon Snow, looked at “*the slum landlords making a killing out of the homeless*”.

The programme included footage filmed by a man who had been placed by Lambeth Council in two properties in Croydon, the Apollo and the Beulah. At the Beulah there were cockroaches, a bathroom infested with fungus and generally poor living conditions. The man described the conditions as “*disgusting*” and then described the Apollo, which the resident said was “*better than Beulah but still it was rancid*”.

An undercover reporter then took a room at the Apollo. She found that the door to her room did not lock, the carpet was “*completely mouldy*”, there were stains on the bed and bed bugs. She described the conditions as “*very unpleasant, very disgusting*”. Mr Snow showed footage of the reporter’s room to Mr Bill Rashleigh, Head of Investigations at the homeless and housing charity Shelter, who described what he saw as “*...absolutely atrocious...*”.

The reporter was shown discussing the conditions at the Apollo with two women living there with their children. A male resident expressed the view that the property should not even be open. Mr Snow referred to Mr Adedeji having “*taken out several mortgages in Croydon in recent years*”.

Footage was then shown of a council inspection at the Apollo, at which Mr Adedeji was present. Mr Snow said that Mr Adedeji seemed to “*admit that not all the council’s previous requests for improvements have been carried out*” and Mr Adedeji was shown discussing the inspection with the manager of the property.

The programme included extracts from a written statement Mr Adedeji provided to the programme makers.

Following the broadcast of the programme, Mr Adedeji, the director of AFAY Limited (which holds the licence for the Apollo) complained to Ofcom that he was treated unjustly or unfairly in the programme as broadcast and that his privacy was unwarrantably infringed in the programme as broadcast.

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

### Unjust or unfair treatment

In summary, Mr Adedeji complained that he was treated unjustly or unfairly in the programme as broadcast. Details of Mr Adedeji’s specific complaints are set out under heads a) to f) below.

By way of background and in summary, Channel 4 said in response to the complaint that the programme examined how some of the most vulnerable members of society were suffering at the hands of unscrupulous landlords and asked what was being done to try and protect them. Council officials had told the programme makers that many homeless people were living in privately run “houses of multiple occupancy” (“HMOs”), many of which were of a very poor standard with properties being unclean and unsafe.

Channel 4 said that the production team had gathered sufficient evidence, much of which was supplied by Shelter, to justify permission being given by Channel 4 for covert filming. Two HMOs were identified in Thornton Heath, namely the Beulah and the Apollo. There was evidence that both, despite evidence of squalid and unhygienic conditions, were being used to house the homeless by a number of councils and charitable organisations.

Mr Rashleigh, of Shelter, put the programme makers in contact with a former housing solicitor, Ms Madeleine Lindsay, whose house is in between the Beulah and the Apollo and who had complained repeatedly about the condition of the properties. Ms Lindsay told the production team that the properties were in a state of extreme disrepair, infested by mice, bedbugs and cockroaches. Ms Lindsay told the programme makers that she had been in “almost constant” contact with the Council’s Environmental Health Department since 2009, but that they had done very little. She

showed the programme makers email correspondence with the Council in which Ms Lindsay was told that: *"We cannot expect the same conditions in temporary accommodation that we would have in our own homes"*.

The programme makers had interviewed Mr Jody Galliver, a single man who had lived at the Beulah after his flat was destroyed in a fire. Mr Galliver had filmed footage of the Beulah, which showed the property to be unclean and in a state of extreme disrepair. The footage showed cockroaches in the kitchen, electricity power points near the bathroom that were not securely attached to the wall, extremely dirty bathroom and kitchen areas and syringes and broken glass in the garden. Mr Galliver's footage also showed a bedroom he said was inhabited by a disabled man, which seemed to be damp, extremely dirty and had what seemed to be fungus growing in the area behind the toilet. Mr Galliver said that he had a few bed bug bites and had seen other residents covered in bites. He said that anti-social behaviour was common at the Beulah and the Apollo and that residents would openly inject heroin, with their bedroom doors open.

Channel 4 said that Mr Galliver had also resided at the Apollo, where he found the conditions to be substandard, though marginally better than those at the Beulah. The programme makers had spoken to Diana, a single mother who had lived at the Apollo for a year, with her six year old daughter. Having moved out of a flat owned by a private landlord because her daughter suffered an allergic reaction to a carpet that the landlord would not change, Diana had taken a room at the Apollo because it was the only one she could afford. Because of her daughter's fibre allergy, she had to stay in a room with no carpet. The Apollo only had one such room available, which was tiny and had no windows. Diana said the bed provided had bed bugs that bit both her and her daughter. She said she complained to the manager and was given spray for her room, but it had no effect. Diana said the place was dirty and that she had not seen a professional cleaner in there once during the year she had been living there. She had complained to the management, but nothing ever happened. Diana also said the other residents were very noisy and often drunk. A housing officer who visited her had been shocked and said she could not live with a six year old child in a room that small with no windows, but Diana did not know what the outcome of the visit was.

Channel 4 said that the programme makers had evidence that Lambeth and Croydon Councils were sending people to the Beulah and the Apollo. Both properties are HMOs licensed by Croydon Council to house people on council housing benefit. The Beulah is owned by Hanworth Properties Ltd and the Apollo is owned by Afay Limited, which is owned by Mr Adedeji and registered to the Apollo address. Channel 4 said that the most recent Croydon HMO register shows a Bibi Haniff to be the registered manager of the Apollo.

Channel 4 said that on the basis of the evidence gathered, Channel 4 and the programme makers decided that an undercover reporter would take a room at the Apollo and gather further evidence.

The specifics of Mr Adedeji's complaint, with Channel 4's comments in response, were as follows:

- a) Mr Adedeji complained that footage was staged or edited so as to unfairly portray the Apollo. In particular the programme:
  - i) Included footage of Mr Adedeji at the Apollo discussing repairs with a local authority representative that was edited so as to wrongly suggest he had

admitted to not carrying out repairs. In fact the discussions were about what had been done and when on-going works were to be completed.

- ii) A reference in the programme to mortgages secured on the Apollo was irrelevant to the essence of the programme and was included to insinuate fraud or other financial misconduct.

In response and in summary, Channel 4 said that the footage of the local authority representatives' inspection visit to the Apollo was important evidence of the cursory nature of the inspection process, in that the entire visit only lasted 10 minutes and the inspectors had only seen one room, which had been specially cleaned for the occasion. After the inspection team had left, the reporter filmed Mr Adedeji talking to Ms Haniff about his working relationship with the inspection team. He spoke in the dramatic present tense and said, as if speaking to the team:

“Everything that you've asked us to do, *even if it is not done*, you know it will be done. I said, don't come back, I will text you or email you that this is done and I will probably take a picture and send it to you [Channel 4's emphasis added]”.

Channel 4 said that it was clear from the italics that it was justified for the programme to include the following line:

*“Yinka Adedeji, who owns Apollo, seems to admit that not all the Council's previous requests for improvements have been carried out”.*

As regards mortgages, Channel 4 said that the programme did not include any reference to mortgages secured specifically on the Apollo and that there was no suggestion or inference of fraud or financial misconduct over mortgages. The reference to Mr Adedeji's company having taken out several mortgages in Croydon in recent years was intended to give the viewer a sense of the nature, scale and location of Mr Adedeji's property holdings.

- b) Mr Adedeji complained that the programme included footage of someone claiming that the Apollo should be closed down, even though he had withdrawn his comments before the programme was broadcast.

In reply on this point, Channel 4 said that this part of the complaint appeared to refer to the anonymous resident of the Apollo who was filmed saying: “If you went to Environmental Health, this place would be shut down”. Channel 4 said that the reporter said that this was one of several occasions when this particular resident complained of conditions at the Apollo. As regards Mr Adedeji's assertion that this anonymous resident “withdrew” his complaints before broadcast, Channel 4 said that, if this were the case, the programme makers were not notified and that, in any event, it was unclear how Mr Adedeji identified an anonymous contributor to the programme before the broadcast.

- c) Mr Adedeji complained that the programme was deliberately edited in a way that unfairly and inappropriately “lumped” the Apollo in with the Beulah, which was in a much worse condition. This gave the impression that the Apollo was in a worse condition than it was.

Channel 4 said in response that before undercover filming began, the programme makers had extensive evidence of the poor conditions in the Apollo. The

programme made it clear that conditions were not as bad as the Beulah, but that they were still demonstrably substandard. The programme included Mr Galliver's comment that the Apollo was: "... *better than the Beulah, but it was still rancid*". Channel 4 said that the programme made it clear, through the footage filmed by the reporter, that this was correct. The reporter was extensively bitten by bed bugs, her carpets were infested with fungus and she saw no evidence of any regular cleaning. In addition, the evidence supplied to the reporter by two other Apollo residents, Diana and Tanya, another single parent, confirmed widespread infestation of bed bugs, fungus and other pests. Channel 4 also said that when Mr Rashleigh was shown footage from inside the Apollo, he was unequivocal about the conditions there, describing them as "*absolutely atrocious*".

- d) Mr Adedeji complained that he was not given an appropriate and timely opportunity to respond as he was not provided with any evidence of the assertions made in the programme and therefore he was only able to comment in part on some of the assertions made.

By way of background, Mr Adedeji said that the programme makers contacted him before the broadcast and claimed to have evidence that the living conditions at the Apollo were not of an acceptable standard. Mr Adedeji said he had written to the programme makers and explained why he believed the footage should not be broadcast and informed them that he believed the Apollo had been targeted as a result of actions by a neighbour.

Channel 4 said in reply that the programme makers wrote a detailed letter to Mr Adedeji on 24 November 2011, clearly laying out 11 points to which he was invited to respond by 2 December 2011. Mr Adedeji replied on 28 November 2011, in a letter that, according to Channel 4, contained a number of demonstrable inaccuracies. He asserted that the bedroom with the faulty lock was not occupied or allowed to be occupied, despite the fact that it was the room in which the reporter was placed. He stated that there was no record that Mr Galliver had ever stayed at the Apollo. He also asserted that the property was regularly treated for bed bugs and other pests "as a precautionary measure", despite the fact that both the reporter and all the long term residents of the Apollo she spoke to were unaware of any such treatment.

- e) Mr Adedeji's complained that his response was unfairly edited. He had responded in a letter to the programme makers to an allegation about a defective window, but his response was quoted in the programme in relation to structural defects.

Channel 4 said in summary that the transcript of the broadcast programme demonstrated that Mr Adedeji's response was fairly edited and his reply to the issues raised in the programme was fairly reflected. As regards the particular example of a structural fault put to Mr Adedeji, namely the small window that would not open in a room occupied by one of the single parent families, the programme quoted Mr Adedeji's specific response.

#### Unwarranted infringement of privacy

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

- f) The programme included secretly filmed footage of him discussing a schedule of repairs with a local authority representative.

Channel 4 said in summary that the covert filming at the Apollo, including the filming of Mr Adedeji and his manager, Ms Haniff, was justified in the public interest in the context of an important investigation into the provision of substandard accommodation to vulnerable people. On viewing footage of the room the reporter was sleeping in, one usually allocated to families, Mr Rashleigh referred to the conditions as “...*absolutely atrocious*...”.

Channel 4 said that the placing of vulnerable people into properties such as Beulah and the Apollo by local authorities was an essential part of the investigation. Local authority inspections and the attitude of the owners and managers of the relevant accommodation was therefore a crucial part of the programme. The filming of the inspection visit featured in the programme provided significant and important evidence of the cursory nature of such inspections and the undercover reporter was able to document that the entire inspection visit lasted just 10 minutes, with only one room, which had been specially cleaned earlier in the day, being examined by the inspection team. Channel 4 said that Mr Adedeji’s attitude to the inspection and that of Ms Haniff was apparent in the secretly filmed footage featured in the programme. Channel 4 referred Ofcom, by way of further example, to a further exchange between Mr Adedeji and Ms Haniff which was recorded by the programme makers but was not included in the programme as broadcast:

Mr Adedeji: *“He didn’t even go around to all the rooms. He checked... coz I was carrying that. And I was like look that’s about a thousand pound each so if you check. First room second room, upstairs, one of the rooms upstairs. Room 7 there is no alarm sound in room 7.”*

Ms Haniff: *“Yeah I know. They said that the last time. Because when he went up there at the side of the door it had a pull back. You know where the children play with the pull back? He didn’t notice it. He just opened it and it just came back”.*

Channel 4 said that it understood from Ms Lindsay that, following the broadcast, the local authority had taken a greater interest in both Beulah and the Apollo and that the conditions in both premises had improved noticeably.

Neither party chose to make any representations on Ofcom’s preliminary view.

## **Decision**

Ofcom’s statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unjust or unfair treatment and unwarranted infringement of privacy in, or in connection with the obtaining of material included in, programmes in such services.

In carrying out its duties, Ofcom has regard to the need to secure that the application of these standards is in the manner that best guarantees an appropriate level of freedom of expression. Ofcom is also obliged to have regard, in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate and consistent and targeted only at cases in which action is needed. In considering this complaint, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast

and transcript, both parties' written submissions and recordings and transcripts of untransmitted footage.

When considering complaints of unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals or organisations, as set out in Rule 7.1 of Ofcom's Broadcasting Code ("the Code"). Ofcom had regard to this Rule when reaching its preliminary view on the individual heads of complaint detailed below.

- a) Ofcom first considered Mr Adedeji's complaint that footage was staged or edited so as to unfairly portray the Apollo.

In considering this part of the complaint, Ofcom had regard to Practices 7.6 and 7.9 of the Code. Practice 7.6 states that that when a programme is edited, contributions should be represented fairly. Practice 7.9 states that before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

- i) Ofcom considered the complaint that the programme included footage of Mr Adedeji at the Apollo discussing repairs with a local authority representative that was edited so as to wrongly suggest he had admitted to not carrying out repairs. In fact the discussions were about what had been done and when on-going works were to be completed.

Ofcom considered the untransmitted footage of Mr Adedeji's conversation with Ms Haniff after the inspection team had left. In Ofcom's view it was clear that Mr Adedeji was relaying to Ms Haniff his discussion with the inspectors. Ofcom noted that Mr Adedeji said to Ms Haniff:

"I said to be quite honest with you things are quite rough for everyone but everything you asked us to do, even if it's not done, you know it will be done. I said don't even bother let me tell you what has not been done that has not been done [sic], and the one upstairs has not been done because we have paid the money for them to come but they just have not come through. He said OK no problem. And the bins outside, I know you got a letter. I said the bins are half full".

It appeared therefore that Mr Adedeji had reported to Ms Haniff that he had had a conversation with the Council inspection team about maintaining the rooms and the condition of rubbish bins. He told Ms Haniff that he had explained what work had not been done and that he had given some explanations for that to the inspectors.

Ofcom also noted the relevant part of the programme, in which the inspection team was shown briefly at the Apollo. The commentary then stated that the inspectors had attended the Apollo and left after around 10 minutes and that:

*"Afterwards Yinka Adedeji, who owns Apollo, seems to admit that not all the Council's previous requests for improvements have been carried out".*

Mr Adedeji was then shown saying to Ms Haniff:

*"Everything that you've asked us to do, even if it is not done, you know it will be done. I said, don't come back, I will text you or email you that this is*

*done and I will probably take a picture and send it to you”.*

As there was no footage recorded of Mr Adedeji’s conversation with the Council inspectors, Ofcom was unable to determine the nature and focus of that conversation. Ofcom noted that the programme did not therefore include footage of Mr Adedeji speaking to the inspectors. However, from the material available, it appeared that Mr Adedeji had acknowledged to the inspectors that certain works had not been done and had given his reasons for that. In Ofcom’s view, the footage that was included in the programme showed, accurately, that Mr Adedeji had stated that works that had not yet been done would be done. In these circumstances Ofcom did not consider that the programme presented material facts in a way that was unfair to Mr Adedeji.

- ii) Ofcom then considered the complaint that a reference in the programme to mortgages secured on the Apollo was irrelevant to the essence of the programme and was included to insinuate fraud or other financial misconduct.<sup>1</sup>

Ofcom noted that the programme’s commentary stated:

*“We looked into Mr Adedeji and found out that his company, AFAY Ltd, had tangible assets of almost a quarter of a million pounds in 2010, and has taken out several mortgages in Croydon in recent years”.*

This was after a section of the programme that referred to the conditions at the Apollo and the amount of money being made *“by housing vulnerable families in these conditions”*. It was followed by a reference to alleged financial irregularity on the part of Ms Haniff.

Ofcom also noted Channel 4’s position that there was no suggestion or inference of fraud or financial misconduct over mortgages and that the reference to Mr Adedeji’s company having taken out several mortgages in Croydon in recent years was intended to give the viewer a sense of the nature, scale and location of his property holdings.

Ofcom considered that the reference to mortgages could have been construed as alluding to some kind of irregularity but took the view that the most likely and reasonable interpretation was that this was simply a statement of fact in relation Mr Adedeji’s business. Ofcom noted that Mr Adedeji did not challenge the statement relating to AFAY Limited’s mortgages in Croydon. In these circumstances Ofcom did not consider that material facts were presented in a way that was unfair to Mr Adedeji.

Ofcom therefore found that there was no unfairness to Mr Adedeji in this respect.

- b) Ofcom next considered the complaint that the programme included footage of someone claiming that the Apollo should be closed down, even though he had withdrawn his comments before the programme was broadcast.

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<sup>1</sup> Ofcom noted that in his original complaint, Mr Adedeji raised this point under the heading of unwarranted infringement of privacy. However, Ofcom also noted that information concerning mortgages taken out by his company would be publicly available on property and company registers.

In considering this part of the complaint, Ofcom had regard to Practice 7.9 of the Code, as set out under its preliminary view at head a) above.

Ofcom noted that the programme showed the undercover reporter talking to two residents at the Apollo who expressed their concerns about the property. The commentary then said the reporter had met:

*“... another resident who’s more outspoken on the Apollo’s shortcomings”.*

The man, who was not identified in the programme, said:

*“This place shouldn’t even be open, you know if you went to Environmental Health yeah, this place would get shut down”.*

Ofcom noted Channel 4’s position that the programme makers were not notified that the man wished to withdraw his contribution. Having viewed the footage, Ofcom considered that the man appeared to offer his views openly and willingly to the undercover reporter. Ofcom also noted Mr Adedeji had not provided any evidence to support his statement that the man had withdrawn his comments. In these circumstances Ofcom considered that it was open to the programme makers to include the footage in the programme. Ofcom did not therefore consider that material facts were represented in such a way as to cause unfairness to Mr Adedeji in this respect.

Ofcom therefore found that there was no unfairness to Mr Adedeji in this respect.

- c) Ofcom then considered the complaint that the programme was deliberately edited in a way that unfairly and inappropriately “lumped” the Apollo in with the Beulah, which was in a much worse condition. This gave the impression that the Apollo was in a worse condition than it was.

In considering this part of the complaint, Ofcom had regard to Practices 7.6 and 7.9 of the Code, as set out under its preliminary view at heads a) and b) above.

Ofcom noted that Mr Galliver’s footage of the Beulah showed that the kitchen was *“filthy and infested with cockroaches”* and that a bathroom was *“infested with fungus”*. Mr Galliver then referred to the Apollo, which he described as being *“better than the Beulah but still it was rancid”*. The programme also included extensive footage filmed at the Apollo by the undercover reporter, which showed fungus on a carpet, stains on a bed and bed bugs.

It is not Ofcom’s role to determine the precise conditions at the two properties or to reach a finding as to whether the conditions at the Apollo were not as bad as those at the Beulah. Rather Ofcom’s role is to determine whether material facts were presented in the programme in a way that was unfair to Mr Adedeji.

Ofcom noted that the programme included footage of the Beulah filmed by Mr Galliver and footage of the Apollo filmed by the undercover reporter. This footage showed the conditions at each property and suggested that neither property offered good conditions for residents. Ofcom noted that Mr Galliver made it clear that he considered that the Apollo was not as bad as the Beulah, however the programme also showed Mr Rashleigh giving his view that:

*“The conditions [in the Apollo] are absolutely atrocious, there’s no justification for people living in accommodation like that, they are not permitted to put*

*families in there”.*

Taking these factors into account, Ofcom considered that the programme included filmed footage and interviews which demonstrated that conditions at both properties were poor. It also reflected Mr Galliver’s opinion, as someone who had lived at both properties, that conditions at the Apollo were not as bad as those at the Beulah. The programme therefore made a distinction between the two properties.

Ofcom therefore found that there was no unfairness to Mr Adedeji in this respect.

- d) Ofcom considered the complaint that Mr Adedeji was not given an appropriate and timely opportunity to respond as he was not provided with any evidence of the assertions made in the programme and therefore he was only able to comment in part on some of the assertions made.

By way of background, Mr Adedeji said that the programme makers contacted him before the broadcast and claimed to have evidence that the living conditions at the Apollo Guest House were not of an acceptable standard. Mr Adedeji said he had written to the programme makers and explained why he believed the footage should not be broadcast and informed them that he believed the Apollo Guest House had been targeted as a result of actions by a neighbour.

In considering this part of the complaint, Ofcom had regard to Practice 7.11 of the Code, which states that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

Ofcom considered that the programme included a number of significant allegations about Mr Adedeji, for example that: the Apollo, an HMO for which he was responsible, was not in an acceptable condition; although conditions at the Apollo were not suitable for families, there were families living there; there was a serious bed bug problem; and, improvements requested by the local authority had not been carried out. Ofcom therefore considered that Mr Adedeji was entitled to an appropriate and timely opportunity to respond.

Ofcom noted that the programme makers wrote to Mr Adedeji on 24 November 2011 setting out in detail their findings in relation to the Apollo and asking for his response. Mr Adedeji replied on 28 November 2011 and confirmed that he was the director of AFAY Limited, which held the licence for the property, and expressed concerns about the manner in which the property had been investigated. He stated that it was unfair for the programme makers to ask for his response when he had not seen the footage. He then gave responses to specific issues raised in the programme makers’ letter and stated that he was doing so to the limited extent he was able to in the circumstances. Ofcom noted that the following extracts from Mr Adedeji’s letter were included in the programme:

*“We asked Yinka Adedeji, the owner of Apollo Guest House, for his response to our findings. He said the conditions we described were ‘totally at odds with our observations and reports from the local authority on the satisfactory state of the property’. He added ‘The property is routinely treated for bed bugs and other pests. With regard to the structural faults, it is not unusual for tenants to make false and exaggerated complaints’. Mr Adedeji denied that he had admitted that some repairs on the property had not been carried out”.*

Taking the above into account, Ofcom took the view that Mr Adedeji was given an appropriate and timely opportunity to respond to the allegations made in the programme and key elements of his response were included in the programme.

Ofcom therefore found that there was no unfairness to Mr Adedeji in this respect.

- e) Ofcom considered the complaint that Mr Adedeji's response was unfairly edited. He had responded in a letter to the programme makers to an allegation about a defective window, but his response was quoted in the programme in relation to structural defects.

In considering this part of the complaint, Ofcom had regard to Practices 7.6 and 7.9 of the Code, as set out under its preliminary view at head a) above.

As set out under its preliminary view at head d) above, the programme makers wrote to Mr Adedeji on 24 November 2011, setting out details of the proposed programme and putting specific issues to him. One issue raised by the programme makers was:

"Our journalist met one woman...living in a bedroom at Apollo alongside her six year old daughter. The bedroom they lived in had one very small window which she could not open. The woman has told us that she did not feel safe living at Apollo with her daughter because of the behaviour of other residents. This woman also told our journalist she and her daughter had been bitten by bedbugs during her stay".

In his response, Mr Adedeji said:

"There is documentary evidence to refute assertions that a window in a room occupied by a mother and daughter does not open. We do not wish to impugn anyone's character, however, it is not unusual for tenants seeking their own council accommodation to make false or exaggerated complaint which they hope will speed up their application".

Ofcom noted that in summarising Mr Adedeji's response, the presenter said:

*"We asked Yinka Adedeji, the owner of the Apollo Guest house, for his response to our findings. He said '... With regard to structural faults, it's not unusual for tenants to make false and exaggerated complaints'".*

Ofcom noted that neither the programme makers nor Mr Adedeji referred to "structural faults" in general in their respective letters and that the reference in Mr Adedeji's letter to "false and exaggerated complaints" was in relation to a window that could not be opened. While Ofcom accepted that the programme did not quote accurately from Mr Adedeji's letter, it took the view that the way the comment was portrayed in the programme was not materially different from that intended by Mr Adedeji, namely that tenants sometimes exaggerated complaints in the hope that they would be moved to a different property more quickly, was conveyed in the programme. In these circumstances, Ofcom did not consider that material facts were represented in such a way as to cause unfairness to Mr Adedeji in this respect.

Ofcom therefore found that there was no unfairness to Mr Adedeji in this respect.

### Unwarranted infringement of privacy

- f) Ofcom then considered the complaint that the programme infringed Mr Adedeji's privacy by including secretly filmed footage of him discussing a schedule of repairs with a local authority representative.

In Ofcom's view, the individual's right to privacy has to be balanced against the competing rights of the broadcasters to freedom of expression. Neither right as such has precedence over the other and where there is a conflict between the two, it is necessary to intensely focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate.

This is reflected in how Ofcom applies Rule 8.1 of the Code which states that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.

Ofcom noted that the programme included secretly filmed footage of a council inspection team at the Apollo. There was no footage of the conversation between Mr Adedeji and the inspectors, but the programme included footage of Mr Adedeji relaying to Ms Haniff the conversation he had had with the local authority inspection team.

In considering whether Mr Adedeji's privacy was unwarrantably infringed in the programme as broadcast, Ofcom first considered the extent to which he could have legitimately expected that secretly filmed footage of him would not be broadcast without his consent.

Ofcom noted that the reporter filmed secretly in Mr Adedeji's property and that she filmed him in conversations relating to his business with both the inspectors from the local authority and the manager of his property, the Apollo. Footage of the inspection and of Mr Adedeji's conversation with the manager of his property was included in the programme. In Ofcom's view, Mr Adedeji had a legitimate expectation to privacy in respect of conversations secretly filmed at his property as he went about and discussed his business. Having formed the view that Mr Adedeji had a legitimate expectation of privacy in relation to the broadcast of the secretly filmed footage, Ofcom went on to consider whether any intrusion into Mr Adedeji's privacy was warranted.

Ofcom took into consideration Practice 8.6 of the Code, which states that if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted. Ofcom also took into consideration Practice 8.13 of the Code, which states that surreptitious filming or recording should only be used where it is warranted and that surreptitious filming will normally only be warranted if there is prima facie evidence of a story in the public interest and there are reasonable grounds to suspect that further material evidence could be obtained and it is necessary to the credibility and authenticity of the programme.

Ofcom took the view that, in general terms, the investigation of the conditions in which homeless people live in accommodation paid for by local authorities or charities is in the public interest. The investigation by Channel 4 of Mr Adedeji's business and the condition of the properties he rented to homeless people was therefore in the public interest because it illustrated those conditions. In the circumstances, Ofcom considered it reasonable for the programme makers to

have reached the view that there were reasonable grounds to suspect that further material evidence could be obtained by surreptitious filming and that such evidence was necessary to the credibility and authenticity of the programme. Ofcom considered that the inclusion of the surreptitiously filmed footage of the inspection and Mr Adedeji's conversation afterwards with Ms Haniff provided evidence that such inspections could be cursory, with the visit lasting only 10 minutes and with only one room, which had been specially cleaned that day, being examined. In Ofcom's view this footage was included primarily to demonstrate a lack of thoroughness on the part of the local authority inspection team. Given the poor conditions at the Apollo, the inclusion of footage of the inspection was justified by the public interest in showing the conditions at properties such as the Apollo and in the steps being taken by local authorities in relation to such properties. Ofcom also took that view that there was a public interest in showing Mr Adedeji's attitude to the inspection, including his subsequent conversation with Ms Haniff concerning the inspection, namely that he appeared to be suggesting that he discouraged the inspectors from coming back to check that improvements had been carried out.

Ofcom considered that in the circumstances of this case, after carefully balancing Mr Adedeji's expectation of privacy in respect of the footage broadcast against the public interest in showing the footage, the intrusion into Mr Adedeji's privacy was warranted.

In these circumstances, Ofcom found that there was no unwarranted infringement of Mr Adedeji's privacy in the programme as broadcast.

**Accordingly, Ofcom has not upheld Mr Adedeji's complaint of unfair treatment and unwarranted infringement of privacy in the programme as broadcast.**

## Not Upheld

### Complaint by Mr Peter Johnson

*Homes from Hell, ITV2, 26 November 2011*

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**Summary:** Ofcom has not upheld this complaint of unjust or unfair treatment made by Mr Peter Johnson.

This programme featured a story about Mr Peter Johnson who had carried out work on his property without having been granted Council planning permission first. The programme explained the history to the planning dispute between Mr Johnson and the Council and included footage of a discussion between Mr Johnson and Ms Jane Askew, a planning and environment expert from the University of the West of England. Mr Johnson maintained that he did not need planning permission from the Council<sup>1</sup> as he said he had received approval from the Environment Agency to carry out the work on his property. However, Ms Askew believed that Mr Johnson had misunderstood the regulations and that he did, indeed, require planning permission from the Council.

Ofcom found that the programme summarised Mr Johnson's position fairly and presented it in a way that enabled viewers to reach their own conclusions on the issues raised in the programme. Ofcom therefore concluded that Mr Johnson was not treated unjustly or unfairly in the programme as broadcast.

#### Introduction

On 26 November 2011, ITV2 broadcast an episode from its series *Homes from Hell*, which features people who, according to the programme, *"thought they'd found their dream home in paradise, but instead found hell"*.

One of the contributors featured in the programme was the complainant, Mr Peter Johnson. The programme explained that in March 2000 Mr Johnson purchased in preparation for his retirement a cottage located near the River Dee in Cheshire. However, as the programme explained, Mr Johnson was aware when he purchased the property that it came with a *"significant drawback"*, namely that it sat on a flood plain. Mr Johnson said in the programme that during the flood season, the water would *"come up the drive and into the house"* and would leave his house an *"isolated island"*. The programme stated that Mr Johnson had consulted with the Environment Agency about how he could protect his home. It said that, according to Mr Johnson, the Environment Agency had recommended that he raised his property above the level of the floodwater, but that he would need planning permission to do so from his local Council, the Cheshire West and Chester Council ("the Council"), formerly the City of Chester Council.

The programme went on to explain that, because Mr Johnson was *"fearful that flood waters could sweep through his home at any moment and ruin his property"*, he started work to raise his property himself, without asking the Council for planning permission first. At the same time, the programme said that Mr Johnson had also bought 3000 tonnes of *"soil"* that he used to raise the level of the land *"immediately around the property"*. The programme stated that Mr Johnson had, again, carried out this work without obtaining prior planning permission. The programme said that

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<sup>1</sup> The Cheshire West and Chester Council, formerly the City of Chester Council.

although he knew that such permission was required, he thought *“he could get it retrospectively”*.

The programme said that the Council did give Mr Johnson planning permission for the raising of his cottage retrospectively, but it did not give planning permission for the raising of the ground around his property. As a consequence, an Enforcement Notice was issued against Mr Johnson that required him to remove the soil around his property. The programme said that Mr Johnson had refused to comply with the notice and had appealed against it which was *“...the start of an eleven year campaign that would take over his life”*. The programme explained that Mr Johnson eventually lost his appeal against the notice and took his case, unsuccessfully, to the High Court. As a result of this legal action, the programme said that Mr Johnson had accumulated court costs of £45,000, which he could not afford to pay. The programme said that the Council was *“happy”* for Mr Johnson to pay the costs by instalments, but that he may need to sell his home to meet this obligation.

At this point in the programme, the programme introduced Ms Janet Askew, who it described as a *“planning and environment expert from the University of the West of England”*. The programme explained that Ms Askew had read all the documentation relating to his case and that she hoped to be able to help Mr Johnson *“reach an amicable solution with the Council”*. Mr Johnson was shown greeting Ms Askew as he disembarked from a dingy, because, as stated in the programme, Ms Askew was unable to drive to Mr Johnson’s home due to flooding around his property.

The programme included an excerpt of the discussion between Ms Askew and Mr Johnson, which took place in a nearby public house. One of the issues Ms Askew raised with Mr Johnson was that the original letter from the Environment Agency had said that he would need consent and planning permission from the Council to raise his property and the ground surrounding it. Mr Johnson was shown disagreeing with Ms Askew’s comments by shaking his head and saying *“no, not at all”*. The programme then stated that the Environment Agency:

*“had advised Mr Johnson that he would need consent from their department in Wales and planning permission from the local authority before proceeding with any work”*.

As the discussion continued, Ms Askew also said:

*“I hope you forgive me for saying this, but you never seem to have taken ‘no’ for an answer and over and over again the planning inspectorate had said that you were in breach of planning law in what you did to your home, but you never seem to have accepted that”*.

The programme also included a statement made by the Council that Mr Johnson had *“no one to blame, but himself”*. It stated that he had ignored *“successive councils’ advice and refused to comply with directions from the local authorities and the courts”*.

The part of the programme featuring Mr Johnson concluded by stating that Mr Johnson maintained that he would not be removing the soil from around his property because he could not afford to do it and that he still had not paid the court costs to the Council.

Following the broadcast of the programme, Mr Johnson complained to Ofcom that he was treated unjustly or unfairly in the programme as broadcast.

## Summary of the complaint and broadcaster's response

In summary, Mr Johnson complained that he was treated unjustly or unfairly in the programme as broadcast in that material facts were presented, disregarded or omitted in a way that was unfair to him even though the programme makers had been given full access to the files of evidence in relation to his dispute with the Council. In particular, Mr Johnson said that:

- i) Ms Askew made derogatory comments in the programme, even though she was not familiar with the facts of his case and had not visited his property. Mr Johnson added that Ms Askew was not able to address key elements of his dispute.
- ii) The programme did not reflect the fact that Mr Johnson did not need planning permission for raising the ground underneath his house. In addition, he was never told that he needed planning permission by anyone at any time because all of the work he had done to his cottage was approved by the Environment Agency on completion.

In response and before addressing each of the particular sub-heads to Mr Johnson's complaint that he was unjustly or unfairly portrayed in the programme, ITV said that the programme followed the typical format of a *Homes from Hell* story that involves a dispute between at least two parties. In this case, the dispute was between Mr Johnson, the Environment Agency, and the Council. ITV said that Mr Johnson had provided a version of events that it was obliged to verify by seeking documentation and responses from the Environment Agency and the Council.

ITV said the following in response to the particular sub-heads of Mr Johnson's complaint:

- i) ITV did not accept that Ms Askew had made derogatory comments to Mr Johnson. The programme included a conversation between them in which Ms Askew was able to respond to any comments he made, which is exactly what he did. ITV said that although Ms Askew was not able to visit Mr Johnson's property due to flooding, she had reviewed a number of documents and correspondence between him, the Council, and the Environment Agency in order to understand the background and nature of his dispute with them.

ITV said that the sequence in the programme showing their discussion commenced with Ms Askew commending his initial approach to the Planning Department to ask if he needed permission was "*a really good thing to have done.*" She went on to say, "*I think that's the kind of thing people should do.*" These comments, ITV said, could not be described as anything other than complimentary.

ITV said that Mr Johnson had said that he was told at the time that the Environment Agency provided the necessary planning permissions, but that Ms Askew had gently interrupted him by saying "*well that's interesting actually because I think that might be a sort of misunderstanding in a way.*" Ms Askew went on to explain that the Environment Agency could not grant planning permission itself, but could only give advice how to go about getting planning permission. Mr Johnson's response to Ms Askew was that he understood this point. ITV said that Ms Askew had then suggested that the original letter from the Environment Agency had said that planning permission was needed to raise the property; however, Mr Johnson denied this was the case.

ITV said that nothing in the exchange between Ms Askew and Mr Johnson could be described as derogatory on her part. It said that the fact that an opportunity to respond was given to Mr Johnson, and that his response was fairly represented in the programme, could only mean that he was treated fairly. ITV said that Ms Askew had also familiarised herself sufficiently with the key aspects of the case so that she was able to discuss them with Mr Johnson and get his point of view.

- ii) ITV said that the programme stated that Mr Johnson obtained retrospective planning permission for the work he had done to raise his property, however the Council had not given its permission for raising the ground around it. ITV also said that in an email from the Council dated 16 November 2010, the Council confirmed to ITV that raising the ground levels around Mr Johnson's property would require separate planning permission.

ITV said, therefore, that it had investigated this point with Mr Johnson and the Council before including it in the programme. It said that Mr Johnson had provided it with a number of letters between him and the Council. One such letter from the Council dated 14 August 2001 stated that "if it is your intention to raise the level of ground within your ownership, then this would require planning permission". It said that Mr Johnson was also warned in an earlier letter from the Council dated 14 June 2000 that "the importation of material on to your land in the quantity you envisage will be regarded as an engineering operation and would require the benefit of planning permission". These letters, ITV said, demonstrated that Mr Johnson had been told that he needed planning permission for the work he intended (at the time) to carry out to protect his house. ITV said that nothing in the correspondence that it had seen in relation to this matter could be understood to have given Mr Johnson the impression that all his work had been approved by the Environment Agency.

ITV said that it had sought further clarification on the issue of planning permission requirements from the Council. In an email to ITV from the Council dated 16 November 2010, it was stated that the Council wished "to make it clear that Mr Johnson was made fully aware of the need to go through the planning applications process and in addition seek the views of the Environment Agency". It went on to say that Mr Johnson was advised by the Environment Agency that his proposal "to raise the level of the land would require planning permission and that failure to obtain permission may result in enforcement action being taken".

ITV also said that it had contacted the Environment Agency regarding the case and in an email dated 27 May 2011 it confirmed that it had "advised Mr Johnson that he would need consent from Environment Agency Wales and planning permission from the Local Authority [the Council] before proceeding with any work". It went on to say that it was "disappointed that Mr Johnson decided to ignore our advice and proceed with the building of an illegal flood defence".

ITV said that it therefore did not have any obligation as a matter of fairness to reflect that Mr Johnson "did not need planning permission for raising the ground". It said that on the basis of the documentation it had seen, the responses of the relevant authorities, and the view of the expert asked to comment on the case (i.e. Ms Askew), Mr Johnson in fact did need planning permission, and had repeatedly failed to argue successfully his opposing view with those authorities or the court.

## Decision

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unjust or unfair treatment and unwarranted infringement of privacy in, or in connection with the obtaining of material included in, programmes in such services.

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

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast and both parties' written submissions. Ofcom also took careful account of the representations made by Mr Johnson in response to being given the opportunity to comment on Ofcom's preliminary view on this complaint. While Ofcom had attentive regard to all of Mr Johnson's comments in finalising this decision, it concluded that none of the further points he raised materially affected the outcome of his fairness complaint. The broadcaster chose not to make any representations on Ofcom's preliminary view.

When considering complaints of unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of Ofcom's Broadcasting Code ("the Code"). Ofcom had regard to this Rule when reaching its decision on the individual heads of complaint detailed below.

Ofcom first considered Mr Johnson's complaint that the programme portrayed him unjustly or unfairly in that material facts were presented, disregarded or omitted in a way that was unfair to him even though the programme makers had been given full access to the files of evidence in relation to his dispute with the Council.

When considering this part of the complaint, Ofcom had regard to whether the portrayal of Mr Johnson was consistent with the broadcaster's obligation to ensure that material facts had not been presented, disregarded or omitted in a way which was unfair to him (as outlined in Practice 7.9 of the Code).

Ofcom considered each of the sub-heads to Mr Johnson's complaint separately in order to reach an overall view as to whether or not he was portrayed unfairly in the programme as broadcast.

- i) Ofcom considered Mr Johnson's complaint that Ms Askew made derogatory comments in the programme, had not visited his property and had not been able to address the key aspects of the dispute.

Having watched the programme, Ofcom took careful note of the part that featured Ms Askew. In particular, Ofcom noted that Ms Askew was first shown meeting Mr Johnson disembarking from his dingy which he had to use owing to the floodwaters around his property. Ofcom noted that Ms Askew had expressed her surprise at the extent of the water by stating in the programme: *"God look at the river here, wow, God it's incredible"*. The programme then went on to explain that:

*“After reading all the documents relating to his case, she hoped she would be able to help Peter reach an amicable solution with the Council...Janet was unable to drive to his house because the area around his home was flooded again, so instead she met him in the local pub”.*

Ofcom considered that the programme made it clear to viewers that Ms Askew had not been able to drive to Mr Johnson’s property and the reason why. It also made it clear that Ms Askew had read all the documents relating to Mr Johnson’s case. In Ofcom’s view, the key elements of the dispute that were explored by the programme were not that Mr Johnson’s property was situated on land prone to extreme flooding or that he had taken measures to protect his property himself. Rather, the key elements of the dispute lay around the fact that Mr Johnson had not sought the necessary planning permission prior to carrying out the work to his property and his belief that he already had the required planning permission to raise the ground level around his property. Therefore, in this context, Ofcom considered that Ms Askew’s ability to assess the strengths, or otherwise, of Mr Johnson’s case was not materially affected by her inability to visit Mr Johnson’s property for herself. Furthermore, having had access to and had read all the relevant documentation to the dispute, Ofcom took the view that Ms Askew would have been well placed to comment on the dispute without having visited Mr Johnson’s property.

Ofcom went on to consider whether Ms Askew’s comments were derogatory towards Mr Johnson and whether their inclusion in the programme amounted to unfairness to him. It is important to note that Ofcom’s role is not to establish the validity or otherwise of Mr Johnson’s case or whether the substance of Ms Askew’s comments are correct or not, but rather to determine whether, in broadcasting her comments, the broadcaster took reasonable care not to present, disregard or omit material facts in a way that was unfair to Mr Johnson. In doing so, Ofcom considered the context in which Ms Askew’s comments were made and whether the programme’s presentation of them resulted in unfairness.

Ofcom noted that Ms Askew made her comments while she was in conversation with Mr Johnson about the dispute. The programme introduced Ms Askew as *“Janet Askew, a planning and environment expert from the University of the West of England”*. Ofcom took the view that the programme presented Ms Askew as an “expert” and that viewers would have understood that the purpose of her contribution to the programme was to express her expert opinion on the dispute and her interpretation of the documents related to Mr Johnson’s case. Based upon Ms Askew’s professional expertise in the subject, Ofcom considered that it was legitimate for the programme to include her expert opinion.

In these circumstances, Ofcom went on to consider whether the presentation of her comments in the programme resulted in unfairness to Mr Johnson. Again, Ofcom noted the manner in which Ms Askew was introduced in the programme (see paragraph above) and was shown expressing her expert opinion on the dispute. Ofcom noted from the extract of the conversation between Ms Askew and Mr Johnson included in the programme that she had recognised his attempt at first in seeking advice from the planning department about the works he planned to carry out on his property. Mr Johnson then explained that he had been told to seek *“advice and permissions”* from the *“Environment Agency Flood Defence Managers office in North Wales”*. Ofcom then noted the following exchange that took place between Ms Askew and Mr Johnson:

Ms Askew: *“Well that’s interesting actually because I think that might be a sort of misunderstanding in a way because, yes, the Environment Agency are the experts on who can effect flood defences, but there’s another set of regulations which would require that you needed planning permission to do that.*

*So, the Environment Agency itself can’t give planning permission, it can only give you advice as to how to do it and then the planners could say whether or not you needed permission.*

Mr Johnson: *I understand.*

Ms Askew: *And I think that original letter did say you needed planning permission to do the lifting of the house.*

Mr Johnson: *No, not at all.*

Ms Askew: *And to raise the level of the land.*

Mr Johnson: *Not at all. No”.*

The programme then stated that the Environment Agency said that it had advised Mr Johnson that he would need consent from its office in Wales and planning permission from his local authority before going ahead with any work. Ms Askew and Mr Johnson were then shown again in conversation:

Ms Askew: *“I think the other things that, and I hope you forgive me for saying this, but you’ve never seemed to have taken no for an answer and over and over again the Planning Inspectorate said that you were in breach of planning law in what you’ve done to your home, but you’ve never accepted that.*

Mr Johnson: *I’ve challenged it - which is my right to challenge it. I can apply to the High Court.*

Ms Askew: *It’s your right of course.*

Mr Johnson: *Which I have done.*

Ms Askew: *You might have challenged it, but you haven’t won yet have you, at the end of it all. You know there’s still, it’s still there, it’s still rumbling away.*

Mr Johnson: *Well yeah, and it’ll continue to rumble away because they’re wrong”.*

After this final exchange, Ms Askew’s contribution to the programme concluded with her saying that:

*“Clearly, he’s given himself an awful lot of pain and anxiety for many, many years, 11 years he says and I still think it was avoidable. People always want to do development in their house, but they never want their neighbours to, and that’s what planning exists for.*

*And in this case, anything that he might do to his house has an impact on the whole landscape and on his neighbours down the road and possibly implications on the flood plain. I honestly don't believe that there's a conspiracy against people by town planners".*

In Ofcom's view, the language and tone used by Ms Askew was not likely to have given viewers the impression that she was being derogatory about Mr Johnson and his case. It considered that Ms Askew's comments would have left viewers in no doubt that her remarks constituted her opinion only based upon her own interpretation of the facts (based on the papers relating to the case) surrounding the dispute between Mr Johnson and the Council. Ofcom considered that the programme's presentation of Ms Askew and the nature and content of her comments would have made it clear to viewers that she was an expert giving an informed opinion on a given set of factors relating to Mr Johnson's case.

Taking into account all the factors referred to above, Ofcom considered that the presentation of Ms Askew's opinion of Mr Johnson's case and her interpretation of the facts known to her by reading the papers relating to the case, was unlikely to have materially and adversely affected viewers' understanding of Mr Johnson in a way that was unfair. It also considered that the broadcaster had taken reasonable care to ensure that the programme did not present, disregard or omit material facts in a way that resulted in unfairness to Mr Johnson.

- ii) Ofcom then considered Mr Johnson's complaint that the programme did not reflect that he did not need planning permission for raising the ground underneath his house, and that he was never told that he needed planning permission by anyone at any time because all the work he had done to his property was approved by the Environment Agency on completion.

Ofcom recognises that programme makers and broadcasters can select and edit material provided by contributors for inclusion in a programme and that, ultimately, such selection is an editorial decision for broadcasters to make prior to the broadcast of a programme. However, broadcasters must ensure that material facts are not presented, disregarded or omitted unfairly. It is in this context that Ofcom considered whether or not it was unfair for the programme not to reflect that Mr Johnson did not need planning permission and that he had never been told that he did need it.

Having carefully examined the programme and the transcript of it, Ofcom noted that the planning permission status of the works carried out by Mr Johnson was clearly stated in the programme. In particular, it noted that after introducing Mr Johnson's story and outlining the history behind his planning dispute with the Council, the programme stated that he had "*consulted the Environment Agency about how he could protect his home*" and that Mr Johnson had said that it had "*recommended raising the cottage*", but that he would also need planning permission from the Council to do so. It was later stated in the programme that the Council had given its permission (albeit retrospectively) for the work Mr Johnson had done to raise his property, but that it had not given its permission for the raising of the level of the land around his property. The programme said that he had not applied for planning permission to carry out this work, nor had he sought the "*necessary consent required by the Council*".

Ofcom noted too that the programme makers had obtained correspondence from both the Environment Agency and the Council in connection with Mr Johnson's case and the dispute. This correspondence was sought and received prior to the

broadcast of the programme and copies of it were provided to Ofcom by the broadcaster. In an email dated 16 November 2010, the Council told the programme makers that since the year 2000, Mr Johnson had submitted a number of planning applications to “regularise the works [already] carried out on his property without the benefit of planning permission”. It said that none of Mr Johnson’s applications had been satisfactorily resolved, that five Enforcement Notices remained outstanding and that his appeals to the Planning Inspectorate had all been dismissed, as had appeals to the High Court and the Court of Appeal. The Council went on to state that Mr Johnson had been made “fully aware of the need to go through the planning application process and, in addition, seek the views of the Environment Agency”. It also said that Mr Johnson was advised by the Environment Agency that he may require planning permission to raise the level of the land around his property, but that he “carried out the work without the benefit of planning permission and clearly against the advice” that he had been given.

Ofcom also took note of an email to the programme makers from the Environment Agency dated 27 May 2011, which stated that it had advised Mr Johnson that he would need consent from the Environment Agency and planning permission from the Council before proceeding with any work. It said that it had been prepared to work with Mr Johnson “on his consent, but he chose not to apply for one”. It concluded by stating that it was disappointed that Mr Johnson had chosen to ignore the advice given to him and to proceed with the building of “an illegal flood defence”.

Ofcom considered that the broadcaster had acted responsibly by seeking and subsequently including (in a paraphrased form) the responses the programme makers had received from the other parties involved in the dispute, namely the Council and the Environment Agency. In Ofcom’s view, these responses supported each other and confirmed that: Mr Johnson had been notified that he needed planning permission before carrying out all the work on his property; he had only been granted planning permission retrospectively for part of the work carried out (i.e. raising his property); and, the Environment Agency had not provided its consent for him to carry out any work on his property. Ofcom also had regard to the expert opinion of Ms Askew given in the programme that: “*the Environment Agency itself can’t give planning permission, it can only give you advice as to how to do it and then the planners could say whether or not you needed permission*”. In Ofcom’s view, the broadcaster was entitled to rely on the responses given by the planning authorities and on Ms Askew’s expert opinion in providing a reasonable and accurate interpretation of the position regarding the planning permission relating to Mr Johnson’s property.

Ofcom appreciated that Mr Johnson held strong feelings about the dispute and his dealings with the Council over the years and that he maintained that “*they’re* [i.e. the Planning Inspectorate and the courts] *wrong*”. The fact that Mr Johnson was in the situation that he was and was determined to continue challenging the decisions relating to the planning dispute demonstrated unequivocally, in Ofcom’s view, that he believed that he was right and that he did not need planning permission. This was clearly reflected in the programme.

Taking all these factors into account, Ofcom was satisfied that the broadcaster had taken reasonable care to satisfy itself that the programme did not present, disregard, or omit material facts (i.e. surrounding the issues as to whether or not Mr Johnson needed planning permission to raise his property, and whether or not he had not been told that he needed planning permission as the work to his

property had been approved by the Environment Agency) in a way that resulted in unfairness to him.

Having considered each sub-head of the complaint made by Mr Johnson that the programme portrayed him unfairly, Ofcom concluded that, overall, the broadcaster had taken reasonable care to satisfy itself that the material facts (as specified in the sub-heads of complaint above) were not presented, omitted or disregarded in a way that portrayed him unfairly. Ofcom also considered that the programme had presented Mr Johnson's story, based largely on his own testimony and comments made in discussion with Ms Askew, and statements made by the Council and the Environment Agency, in a way that reflected both sides to the dispute in a fair way. Ofcom was satisfied that the programme summarised Mr Johnson's position fairly and presented it in a way that enabled viewers to reach their own conclusions on the issues raised in the programme.

Ofcom therefore found that Mr Johnson was not treated unjustly or unfairly in the programme as broadcast.

**Accordingly, Ofcom has not upheld Mr Johnson's complaint of unjust or unfair treatment in the programme as broadcast.**

## Not Upheld

### Complaint by Mr Richard Patterson

*Channel 4 News, Channel 4, 25 January 2012*

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**Summary:** Ofcom has not upheld this complaint of unjust or unfair treatment made by Mr Richard Patterson.

A news report included an item on opposition by the former Lord Chancellor, Lord Mackay of Clashfern, to Government proposals to charge parents to use the Child Support Agency (“CSA”). The item included a case study in which single parent Mrs Lucy Patterson spoke about her experience with the CSA and gave her view on the proposals.

Following the broadcast of the programme, Mr Richard Patterson, Mrs Patterson’s ex-husband, complained to Ofcom that he was treated unjustly or unfairly in the programme as broadcast.

Ofcom found that:

- Mrs Patterson was entitled to give her views in the programme. The circumstances of her marriage and its breakdown were not referred to in detail and no criticisms were made of Mr Patterson. An inaccuracy about the duration of the marriage was not material. Ofcom therefore found that material facts were not presented, disregarded or omitted in a way that was unfair to Mr Patterson.
- No unfairness resulted to Mr Patterson as a result of his lack of consent and/or views regarding the inclusion of footage of his children in the programme, as Mrs Patterson was in a position to give consent for their limited involvement in the item. It was clear that Mr Patterson was responsible for maintenance only in relation to the older two boys and that he was not the father of Mrs Patterson’s youngest child.

#### Introduction

On 25 January 2012, Channel 4 broadcast an edition of its early evening news bulletin. The programme included a report on opposition by former Lord Chancellor, Lord Mackay of Clashfern, to Government proposals to charge parents to use the Child Support Agency (“CSA”). The proposals included a fee of up to £100 to access the CSA and charge of a percentage of maintenance received. The item included footage of a single parent, Mrs Lucy Patterson, and her children.

The report outlined the proposed changes and included interviews with Ms Maria Miller MP, Minister for the Disabled, who said there needed to be less reliance on the state, and with Lord Mackay, who opposed the proposal to charge people for access to the CSA. The report also included two case studies, one of which was Mrs Patterson, who spoke about her experience with the CSA and her concerns about the proposed charges.

Following the broadcast of the programme, Mr Richard Patterson (Mrs Patterson’s ex-husband) complained to Ofcom that he was treated unjustly or unfairly in the programme as broadcast.

## Summary of the complaint and broadcaster's response

In summary, Mr Patterson complained that he was treated unjustly or unfairly in the programme as broadcast.

a) Mr Patterson was portrayed unfairly as a non-cooperative parent. In particular:

- i) Mr Patterson complained that footage of his ex-wife and two sons was used to illustrate the item, despite the fact that he had been paying the CSA for 18 months.

In summary and in response by way of background, Channel 4 said the report concerned the Government's proposals to charge parents to use the CSA and opposition to the changes led by the conservative peer former Lord Chancellor Lord Mackay of Clashfern. The item dealt with this contentious issue and it was argued those who went to the CSA could ill afford the proposed fees.

Channel 4 said in response to the complaint that Mrs Patterson had given consent for the interview and for the filming of her children. Hers was an appropriate case to highlight what was an issue of significant public importance, as payments were being made through the CSA. Channel 4 said that Mrs Patterson was entitled to talk about her experience, her views on how the CSA system worked and her fears about the proposed government changes. Her case was included to highlight what the changes could mean for someone who relied on the CSA and did not involve an in-depth analysis of her former marriage.

Channel 4 said that the item did not name Mr Patterson, show any image of him or focus on him in any way. Nor did it include anything that could be construed as a direct criticism of him. The report was about changes to the CSA and the public interest issues that were engaged and was not a detailed account of Mr Patterson's relationship with his former wife. The report showed that the CSA was working in Mrs Patterson's case, and that her maintenance payments through the CSA provided a good system. There was no criticism of Mr Patterson or any suggestion that he was not paying through the CSA, and the item made it clear that he did pay maintenance through the CSA. Channel 4 said that Mr Patterson accepted that payments over the last 18 months had been made through the CSA, as opposed to being made by mutual agreement between the parties.

- ii) The voiceover wrongly stated that an agreement between him and his wife had gone "*sour*", the payments had stopped and his ex-wife had had "*no choice*" but to go to the CSA, when in fact he and his ex-wife had agreed to go to the CSA.

In response and in summary Channel 4 said that it did not seem to be in dispute that payments had originally been made by agreement between Mr and Mrs Patterson, that payments had ceased and that Mr Patterson had, at the time of the report, been paying child support for 18 months after the CSA got involved. Channel 4 said that there was no suggestion in the item that Mr Patterson did not cooperate with the CSA and it did not say that he was a "non-paying parent".

Channel 4 said that Mrs Patterson's testimony to *Channel 4 News* was reflected in the item, namely that while her ex-husband at first agreed to and paid child maintenance, their relationship later turned sour and the payments stopped and she had to get the CSA to chase him. The report also put the matter in context, making clear it was Mrs Patterson who was making these claims.

Channel 4 said that couples who separated may not always agree on the levels of financial maintenance to be paid, and that merely stating that fact was not of itself a criticism of one or other of the couple involved. Viewers could see that the item included Mrs Patterson's perspective and that adverse conclusions would not have been drawn against Mr Patterson.

- iii) The voiceover stated that Mr Patterson had been married for 13 years, when in fact he was married for five years.

Channel 4 said that the reference to the duration of the marriage reflected what Mrs Patterson told the programme makers during her interview. Channel 4 now understood that Mr and Mrs Patterson were married for five years and had lived as common law man and wife for eight years before that, and had therefore been in a relationship for 13 years. In these circumstances, there could be no dispute that Mr and Mrs Patterson were married for a significant period and had two children together. Channel 4 said that whether it was five or 13 years was not of material significance.

- b) The programme included footage of Mr Patterson's children without consultation with him. It also included footage of his ex-wife's new son, but did not point out that this child was not Mr Patterson's.

Channel 4 said that the children resided with Mrs Patterson, who had day to day custody<sup>1</sup>. The programme makers went to film with Mrs Patterson and her children at their home. The interview was arranged through the single parents' charity Gingerbread and Mrs Patterson gave her consent for the children to be filmed at her home both to Gingerbread and to the programme makers. No interviews with the children were carried out. Ms Patterson had already featured in an article on the CSA in *The Times* newspaper, accompanied by a photograph of her and her children. Channel 4 said that Mrs Patterson gave permission for the children to be filmed and for the footage to be broadcast. Channel 4 said that Mr Patterson's permission was not needed, as Mrs Patterson had custody of the children and was the appropriate person to provide consent.

As regards Mr Patterson's point that he is father to only the two older children, Channel 4 referred to the voiceover, which made it clear that the maintenance issue only affected the two older boys, over a shot of the two older boys.

Neither party chose to make any representations on Ofcom's preliminary view.

## Decision

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

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<sup>1</sup> Ofcom understands from this that Mrs Patterson has a Residence Order in respect of the two eldest children.

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

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

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript and both parties' written submissions.

When considering complaints of unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of Ofcom's Broadcasting Code ("the Code"). Ofcom had regard to this Rule when reaching its preliminary view on the individual heads of complaint detailed below.

- a) Ofcom first considered the complaint that Mr Patterson was portrayed unfairly as a non-cooperative parent.

In considering this part of the complaint, Ofcom had regard to Practice 7.9 of its Broadcasting Code ("the Code"), which states that before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

Ofcom first noted the content of the relevant part of the item, in which the reporter said:

*"A comfortable life, but it's been a struggle to achieve it according to single mother Lucy Patterson. After her 13 year marriage broke up, she and her ex-husband agreed maintenance for the two eldest boys, but things turned sour and the payments became irregular then stopped altogether. She says she had no choice but to turn to the CSA. If she'd had to pay, she says it would be the children who lost out".*

Mrs Patterson then said:

*"The £100 would be quite difficult to find up front and even if we did receive that the reduced income that we're getting from the payments would affect the children. We use the money to balance the bills, to clothe them. Every penny that comes in goes out, so if that money is going to be reduced it's going to affect the children, it's going to affect the school uniform that I buy, the food that I put on the table. We don't have any luxuries as it is".*

Ofcom then went on to consider the specific issues raised under this head of complaint.

- i) As regards the complaint that footage of Mr Patterson's ex-wife and two sons was used to illustrate the item, despite the fact that he had been paying the CSA for 18 months, Ofcom first noted that the main thrust of Mrs Patterson's contribution was her concerns about the proposed charges for use of the CSA.

Ofcom considered that Mrs Patterson was entitled to contribute to the programme and to set out her concerns about the proposed charges and the likely impact on families like her own. In Ofcom's view, Mrs Patterson's contribution was used to illustrate the concerns of someone currently receiving maintenance through the CSA about the impact the proposed fee of £100 would have had on her had she been subject to it and the impact that the proposed payment to the CSA of a proportion of the maintenance paid to her would have on her family. In making her contribution to the programme, it was inevitable that Mrs Patterson would refer to her own situation. However, she did not do so in detail, and neither she nor the reporter made any criticisms of Mr Patterson. Ofcom therefore considered that material facts were not presented, disregarded or omitted in a way that was unfair to Mr Patterson.

- ii) Ofcom next assessed the complaint that the voiceover wrongly stated that an agreement between Mr Patterson and his ex-wife had gone "*sour*", the payments had stopped and his ex-wife had had "*no choice*" but to go to the CSA, when in fact he and his ex-wife had agreed to go to the CSA.

Ofcom took the view that the programme made no statement or suggestion, either through the commentary or Mrs Patterson's contribution, that Mr Patterson was not paying maintenance for his sons, nor did it suggest that he was not co-operating with the CSA or Mrs Patterson. Ofcom also noted that, although the reporter referred to the relationship having gone "*sour*", there was no analysis of the marriage, the reasons for the breakdown of the marriage or any reasons for the post-marriage relationship allegedly going "*sour*". It was clear from the item that maintenance was now being paid to Mrs Patterson and that this was through the CSA. It would also have been clear to viewers that the item was referring only to Mrs Patterson's perspective and that, although there are likely to be two versions to the breakdown of a marriage, Mr Patterson had not contributed. In Ofcom's view, in the context of an item about the CSA and the proposed charges, it was not necessary for the case study to include an in-depth analysis of Mr and Mrs Patterson's dealings with the CSA or each other. Ofcom also considered that it was unlikely that viewers would have drawn any material and adverse inferences about Mr Patterson from the item. Ofcom therefore considered that material facts were not presented, disregarded or omitted in a way that was unfair to Mr Patterson in this respect.

- iii) As regards the complaint that the voiceover stated that Mr Patterson had been married for 13 years, when in fact he was married for five years, Ofcom noted that Channel 4 acknowledged that Mr and Mrs Patterson were married for five years rather than 13 years. However, given that they had lived as common law husband and wife for eight years, and then been married for five years and had had two children together, Ofcom took the view that this inaccuracy in the commentary was not material. Therefore material facts were not presented, disregarded or omitted in a way that was unfair to Mr Patterson.

Ofcom found no unfairness to Mr Patterson in this respect.

- b) Ofcom then considered the complaint that the programme included footage of Mr Patterson's children without consultation with him. It also included footage of his ex-wife's new son, but did not point out that this child was not Mr Patterson's.

In considering this part of the complaint, Ofcom had regard to Practice 7.4 of the Code, which states that “if a contributor is under sixteen, consent should normally be obtained from a parent or guardian, or another person of eighteen or over in loco parentis”. Ofcom also had regard to Practice 7.9 as set out under its Preliminary View at head a) above.

In Ofcom’s view a person is not a contributor to a programme simply because some shots of that person are included in the programme, without that person being interviewed or for example providing some material research contribution. In this context, Ofcom noted that the programme included footage of Mrs Patterson and her sons out for a walk and at home, and that the children did not give interviews. In Ofcom’s view the footage of the children was background to the case study provided by Mrs Patterson. Ofcom did not therefore consider the children to be contributors to the programme, for whom the informed consent of a parent was required. In any event, Ofcom took the view that Mrs Patterson, as the parent with whom the children were residing at the time the footage was filmed, was able to consent to them being filmed, albeit that this was limited to general shots to illustrate her interview. Where parents are separated or divorced, broadcasters must ensure that programme makers have the appropriate consent for the involvement of children in a programme. In this particular case, in Ofcom’s view, given the limited footage of the children in the item and given that their mother consented to the filming, no unfairness arose to Mr Patterson as a result of his consent and/or views not being sought.

As regards Mr Patterson’s point that he is father to only the two older children, Ofcom noted that the voiceover said:

*“After her 13 year marriage broke up, she and her ex-husband agreed maintenance for the two eldest boys...”*

This was accompanied by a shot of the two older boys. In these circumstances, Ofcom took the view that it was sufficiently clear that the question of maintenance affected the two older boys and the implication was that the youngest child was not Mr Patterson’s. Ofcom did not therefore consider that material facts were represented in such a way as to cause unfairness to Mr Patterson in this respect.

Ofcom therefore found no unfairness to Mr Patterson in this respect.

**Accordingly, Ofcom has not upheld Mr Patterson’s complaint of unfair treatment.**

## Not Upheld

### Complaint by Dr Daljit Singh Virk

*Dastar Day, Sikh Channel, 23 September 2011*

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**Summary:** Ofcom has not upheld this complaint of unjust and unfair treatment made by Dr Daljit Singh Virk.

This programme featured a panel of contributors who discussed a proposed demonstration outside the Houses of Parliament in London on Dastar (i.e. the Sikh turban) Awareness Day and the issues surrounding the wearing of the turban which caused divisions of opinion within the Sikh community. Part of the discussion included comments by one contributor, Mr Jasbir Singh Dhillon. Mr Dhillon made comments about a “*professor*” who had contributed to a debate about the wearing of turbans the previous day on another programme broadcast on another television channel.

Dr Virk complained that Mr Dhillon’s comments referred to him and that they were derogatory and abusive and he complained to Ofcom that, as a result, he was treated unjustly and unfairly in the programme as broadcast.

In summary, Ofcom found that: although Ofcom recognised the potentially offensive, insensitive and personally hurtful (i.e. to Dr Virk) nature of Mr Dhillon’s comments, Mr Dhillon did not refer to Dr Virk by his name; and, the comments were unlikely to materially and adversely affect viewers’ understanding of Dr Virk in the context in which the comments were made in such a way that Dr Virk was treated unfairly.

#### Introduction

On 23 September 2011, the Sikh Channel broadcast a discussion programme in advance of a proposed demonstration outside the Houses of Parliament in London on Dastar (i.e. the Sikh turban) Awareness Day held on 25 September 2011. The programme featured a panel of contributors who discussed the aim of the day and the issues surrounding the wearing of the turban which caused divisions of opinion within the Sikh community. Part of the discussion included comments by a contributor to the programme, Mr Jasbir Singh Dhillon.

During the programme, Mr Dhillon said the following (in Punjabi):

*“No matter how much truth we utter, they [i.e. the Sangat Channel, which is a competitor to the Sikh Channel] will keep saying it is a lie [or they will keep telling lies]. Yesterday, a man from Derby had come there [i.e. assumed to refer to an appearance on the Sangat Channel]. He calls himself a professor [i.e. he thinks he is a professor] and he said without paying much attention [to what he was saying], “A Singh can walk without his turban as well”. I did not see him [i.e. the “professor”, whom the complainant asserts referred to him, Dr Virk] or question him: I say what [money] his mother and father [spent on] educating him he has thrown it in a well [i.e. wasted it] by saying such as thing”.*

Following the broadcast of the programme, Dr Virk complained to Ofcom that he was treated unjustly and unfairly in the programme as broadcast.

The programme was broadcast in Punjabi. An independent English translation was obtained by Ofcom and circulated for comment to the complainant and broadcaster. It was then revised to take account of queries as to the translation of various words and phrases made by Dr Virk (hence the notes and possible variations in meaning in square brackets in the translation above). Ofcom has relied on the revised, independent English translation to prepare this Decision.

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

In summary, Dr Virk complained that he was treated unjustly and unfairly in the programme in that Mr Dhillon, a contributor to the programme, used derogatory and abusive language against him the day after Dr Virk had voiced his views against the Dastar Day demonstration on Sangat TV. Dr Virk said that Mr Dhillon had referred to him by his title "*Professor*". Dr Virk said that he was the only Sikh Professor in Derby and that he was often addressed as "Professor". Therefore, Dr Virk said that he believed that viewers would have understood Mr Dhillon to be referring to him.

By way of background, Dr Virk said Mr Dhillon's comments had been derogatory and had an adverse affect on him and his family's reputation in the community. He said he had received a number of telephone calls from friends with regard to the broadcast. Dr Virk added that he has many qualifications, including a PhD, and an international reputation as a scientist. He also said he is the Head of Education at the Singh Sabha Gurdwara (temple) in Derby and regularly lectures on Sikhism.

In summary and in response to Dr Virk's complaint, the broadcaster said that the statements made by Mr Dhillon could have been taken as a personal slur on Dr Virk's integrity. However, it asserted that at no time did Mr Dilbagh Singh, the programme's presenter, endorse the sentiments expressed by Mr Dhillon. In fact, the broadcaster said that the presenter made it clear that the comments expressed were Mr Dhillon's sentiments.

In terms of the broadcaster's responsibility to challenge the sentiments expressed by Mr Dhillon, the Sikh Channel stated that as Dr Virk was not mentioned by name it would have been inappropriate for the presenter to have speculated on the matter. The broadcaster said that to do so would have exacerbated the situation.

The broadcaster went on to say that it was customary at the end of all Sikh Channel discussion programmes for the presenter Mr Singh to make a general statement to the effect of:

*"if in presenting the programme I have made any mistakes and if any individual feels that any offence has been caused, then I would like to humbly apologise for this in a personal capacity and on behalf of the Sikh Channel".*

The broadcaster stated that they were aware that from time to time some viewers will feel aggrieved by the nature and quality of programme content. To address this issue, the broadcaster said that it had instituted a new programme which allowed viewers to give "feedback on camera without any fear or favour about any family/community based channel".

The broadcaster said that if Dr Virk felt that his name had been adversely affected directly or indirectly by the comments made by Mr Dhillon, then it would be happy to discuss a process with him so that he could "put the record straight".

In reply to the Sikh Channel's response, in summary, Dr Virk repeated that in his view although he was not referred to directly by name he was identifiable and that Mr Dhillon's comments were "obnoxious and highly derogatory". He also said that a general apology at the end of the programme had no significance as it did not relate to any specific comment.

## Decision

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

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

In reaching its decision, Ofcom considered all the relevant material provided by both parties. This included a recording of the broadcast and a revised independent English translation of the relevant part of the programme, and written submissions and supporting material from both parties. Ofcom also took careful account of all the representations made by Dr Virk in response to being given the opportunity to comment on Ofcom's preliminary view on this complaint. The Sikh Channel did not make any representations in response to the preliminary view. Ofcom recognises that in response to the preliminary view Dr Virk said he did not fully accept Ofcom's findings and the decision not to uphold the complaint. Ofcom had regard to all Dr Virk's further representations in finalising the current Decision, although Ofcom concluded that none of the further points Dr Virk raised materially affected the outcome of Ofcom's final adjudication on the complaints made by Dr Virk.

When determining complaints of unfair treatment, Ofcom considers whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of the Code. In this case we also considered whether the portrayal of Dr Virk was consistent with the broadcasters' obligation to ensure that material facts have not been presented in a way that was unfair to him (as outlined in Practice 7.9 of the Code).

Against this background, Ofcom assessed the complaint that Dr Virk was subjected to derogatory and abusive language by Mr Dhillon's comments in the programme.

In reaching a decision on Dr Virk's complaint of unjust or unfair treatment, Ofcom first considered whether or not the comments made by Mr Dhillon in the programme (set out in the "Introduction" above) were, in fact, directed at Dr Virk or if viewers would have been able to ascertain from the comments that it was Dr Virk to whom he referred.

The broadcaster said that Dr Virk was not mentioned by his name. Having read the revised independent English translation, it was clear to Ofcom that at no point during the programme was Dr Virk referred to by his name.

Ofcom noted that the comments Mr Dhillon made during the programme, which included referencing the Sangat Channel, mentioned that "*yesterday a man from Derby*" had appeared on the channel. Mr Dhillon went on to say: "he calls himself a

professor”; and, “*what [money] his mother and father [spent on] educating him he has thrown it in a well [i.e. wasted it] by saying such as thing*”.

Ofcom acknowledges that Dr Virk is from Derby and that he appeared on the Sangat Channel a day before the broadcaster’s programme. Ofcom noted too that Dr Virk said in his complaint that he was a professor and that he was the only Sikh professor in Derby and that he was often referred to as “Professor”.

Ofcom recognised that Dr Virk was not named explicitly in the programme. We considered however that in light of the specific references made by Mr Dhillon and the fact that Dr Virk recognised them to be references to him (and that this was the basis for him to make a complaint to Ofcom), Ofcom believed it was reasonable to conclude that the comments made by Mr Dhillon did, in fact, refer to Dr Virk. It also considered that Mr Dhillon’s comments had been made in the context of Dr Virk’s views regarding the wearing of the turbans as expressed in the programme broadcast on the Sangat Channel the previous day.

Ofcom considered that there was no doubt that Dr Virk found the comments made by Mr Dhillon offensive, derogatory and personally hurtful. There is always potential for comments such as these and made by contributors to a live discussion programme to cause unfairness. In this case there was also the potential for the offensiveness of Mr Dhillon’s remarks to be heightened by the cultural context and cultural sensitivities.

Ofcom however first took careful note of all the factors cited above, and in particular that there was no direct reference to Dr Virk by name. We also had regard to the facts that: the remarks of Mr Dhillon were very brief; the comments were the expression of an individual’s personal opinion on another individual, and did not purport to be a serious or reasoned critique of that other individual’s abilities or professional qualifications; the remarks were made during a live discussion programme about a topic causing some controversy in the UK Sikh community where the broadcaster’s and audience’s right to freedom of expression needed proportionate recognition; and, the exact meaning of the remarks themselves and consequently their potential level of offensiveness is subject to some interpretation (as reflected in the translation above).

As a result, in the circumstances of this case, and after taking all the above factors into careful consideration, Ofcom did not consider that Mr Dhillon’s comments (though personally hurtful and offensive to Dr Virk) would have materially and adversely affected viewers’ understanding of Dr Virk or his views regarding the wearing turbans in such a way that Dr Virk was treated unfairly or unjustly in the programme as broadcast. Therefore, Ofcom’s decision is that there was no unfairness to Dr Virk in the programme as broadcast.

Although in this case Ofcom’s decision is that we did not find unfairness to the complainant, nonetheless Ofcom considers that it is not sufficient to avoid the potential for unfairness to individuals referred to in programmes for the broadcaster to rely on the inclusion of a general disclaimer at the end of the broadcast of live programmes, dissociating the channel from comments that may have been made by contributors.

**Accordingly, Ofcom has not upheld Dr Virk’s complaint of unfair treatment in connection with the obtaining of material in the programme and in the programme as broadcast.**

## Other Programmes Not in Breach

Up to 21 May 2012

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>
Advertising minutage	DM Digital	11/11/2011	Advertising minutage
Peace FM	Peace FM community radio	15/03/2012	Sexual orientation discrimination/offence
PM	BBC Radio 4	18/04/2012	Suicide and self harm
Teen Mom 2	MTV	03/04/2012	Violence and dangerous behaviour
The Food Hospital	Channel 4	20/12/2011	Generally accepted standards
The Keiser Report	Russia Today	14/09/2011	Due impartiality/bias
Various	Fashion One	01/02/2011	Advertising/editorial distinction

## Complaints Assessed, not Investigated

### Between 1 May and 21 May 2012

This is a list of complaints that, after careful assessment, Ofcom has decided not to pursue because they did not raise issues warranting investigation.

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
4thought.tv	Channel 4	25/04/2012	Generally accepted standards	44
5 Live Breakfast	BBC Radio 5	n/a	Outside of remit / other	1
5 News at 5	Channel 5	02/05/2012	Disability discrimination/offence	1
888.com advertising	BBC 1	10/04/2012	Outside of remit / other	1
A Girl's Guide to 21st Century Sex	Five	n/a	Gender discrimination/offence	1
Advertising scheduling	ITV Player	n/a	Out of remit/other	1
A Town Called Eureka/ Human Centipede	SyFy	n/a	Television access services	1
Alan Carr: Chatty Man	Channel 4	11/05/2012	Disability discrimination/offence	1
Alan Carr: Chatty Man	Channel 4	15/05/2012	Generally accepted standards	1
BBC Breakfast News	BBC 1	17/05/2012	Outside of remit / other	1
BBC Election Policy	BBC	n/a	Elections/Referendums	1
BBC News	BBC	n/a	Outside of remit / other	1
BBC News Update	BBC 1	02/05/2012	Harm	1
Biggest Hottest Loudest	MTV Rocks	03/05/2012	Outside of remit / other	1
Breakfast Show	BFBS	17/04/2012	Outside of remit / other	1
Breakfast Show	Free Radio Birmingham	03/05/2012	Materially misleading	1
Bridalplasty	Sky Livingit	13/04/2012	Harm	1
Britain's Got Talent	ITV1	21/04/2012	Harm	2
Britain's Got Talent	ITV1	28/04/2012	Competitions	1
Britain's Got Talent	ITV1	28/04/2012	Gender discrimination/offence	2
Britain's Got Talent	ITV1	28/04/2012	Generally accepted standards	1
Britain's Got Talent	ITV1	28/04/2012	Under 18s in programmes	5
Britain's Got Talent	ITV1	29/04/2012	Under 18s in programmes	1
Britain's Got Talent	ITV1	05/05/2012	Flashing images/risk to viewers who have PSE	1
Britain's Got Talent	ITV1	05/05/2012	Materially misleading	1
Britain's Got Talent	ITV1	06/05/2012	Generally accepted standards	1
Britain's Got Talent	ITV1	06/05/2012	Promotion of products/services	2
Britain's Got Talent	ITV1	06/05/2012	Scheduling	1
Britain's Got Talent	ITV1	08/05/2012	Disability discrimination/offence	1

Britain's Got Talent	ITV1	08/05/2012	Drugs, smoking, solvents or alcohol	2
Britain's Got Talent	ITV1	08/05/2012	Generally accepted standards	7
Britain's Got Talent	ITV1	08/05/2012	Offensive language	2
Britain's Got Talent	ITV1	08/05/2012	Scheduling	2
Britain's Got Talent	ITV1	09/05/2012	Generally accepted standards	9
Britain's Got Talent	ITV1	09/05/2012	Scheduling	2
Britain's Got Talent	ITV1	09/05/2012	Under 18s in programmes	4
Britain's Got Talent	ITV1	10/05/2012	Generally accepted standards	2
Britain's Got Talent	ITV1	10/05/2012	Nudity	1
Britain's Got Talent	ITV1	12/05/2012	Generally accepted standards	1
Britain's Got Talent	ITV1	12/05/2012	Offensive language	1
Britain's Got Talent	ITV1	12/05/2012	Outside of remit / other	1
Britain's Got Talent	ITV1	12/05/2012	Voting	3
Britain's Got Talent	ITV1	12/05/2012	Outside of remit / other	2
Capital Breakfast	Capital FM	08/05/2012	Violence and dangerous behaviour	1
Cardinal Burns (trailer)	E4	30/04/2012	Harm	1
Cardinal Burns (trailer)	E4	06/05/2012	Harm	1
Casualty	BBC 1	28/04/2012	Race discrimination/offence	1
CBS Drama (Trailer)	CBS Drama	21/04/2012	Violence and dangerous behaviour	1
CBS Drama (Trailer)	CBS Reality	19/05/2012	Violence and dangerous behaviour	1
Celebrity Juice	ITV2	03/05/2012	Generally accepted standards	2
Celebrity Juice	ITV2	07/05/2012	Race discrimination/offence	1
Champions League Football	Sky Sports 2	24/04/2012	Race discrimination/offence	6
Channel 4 News	Channel 4	27/03/2012	Due impartiality/bias	1
Channel 4 News	Channel 4	03/05/2012	Due impartiality/bias	4
Channel 4 News	Channel 4	08/05/2012	Religious/Beliefs discrimination/offence	1
Channel 4 Racing	Channel 4	17/05/2012	Gender discrimination/offence	1
Channel 4's Comedy Gala	Channel 4	20/05/2012	Generally accepted standards	5
Channel promotion	Comedy Central	07/05/2012	Hypnotic and other techniques	1
Channel promotion	Playboy TV Chat	04/05/2012	Sexual orientation discrimination/offence	1
Channel Report	Channel TV	29/03/2012	Fairness	1
Chat Box	Chat Box	15/05/2012	Offensive language	1
Cheeky Bingo's sponsorship of The Jeremy Kyle Show	ITV1	n/a	Generally accepted standards	4

Cheeky Bingo's sponsorship of The Jeremy Kyle Show	ITV1	n/a	Gender discrimination/offence	2
Come Dine with Me	Channel 4	23/04/2012	Animal welfare	1
Come Dine with Me	Channel 4	24/04/2012	Scheduling	1
Come Dine with Me	Channel 4	09/05/2012	Generally accepted standards	1
Come Dine with Me	Channel 4	21/05/2012	Religious /Beliefs discrimination/offence	1
Commercial references	BBC	n/a	Outside of remit / other	1
Competition	Heart FM	n/a	Competitions	1
Competition	Heart FM Devon	02/04/2012	Competitions	1
Competition	LBC 97.3FM	30/04/2012	Due impartiality/bias	1
Competition	Metro Radio	14/04/2012	Competitions	1
Competitions via ITV.com	ITV	n/a	Competitions	1
Coraline	Channel 4	22/04/2012	Violence and dangerous behaviour	1
Coronation Street	ITV1	29/03/2012	Television access services	1
Coronation Street	ITV1	03/05/2012	Information/warnings	1
Coronation Street	ITV1	09/05/2012	Disability discrimination/offence	1
Coronation Street	ITV1	14/05/2012	Drugs, smoking, solvents or alcohol	1
Coronation Street	ITV1	18/05/2012	Harm	1
Cowboy Traders	Channel 5	04/04/2012	Fairness & Privacy	1
Cowboy Traders	Channel 5	11/04/2012	Fairness	1
Crimewatch	BBC 1	01/05/2012	Generally accepted standards	1
Criminal Minds	Sky Living	13/04/2012	Scheduling	1
CSI: NY	Channel 5	04/04/2012	Scheduling	1
Dangerous Drivers' School	Channel 5	04/05/2012	Crime	1
Das Boot	Film 4	21/04/2012	Information/warnings	1
Daybreak	ITV1	26/04/2012	Competitions	1
Daybreak	ITV1	27/04/2012	Generally accepted standards	1
Daybreak	ITV1	02/05/2012	Generally accepted standards	1
Daybreak	ITV1	07/05/2012	Competitions	2
Daybreak	ITV1	08/05/2012	Competitions	1
Daybreak	ITV1	14/05/2012	Religious/Beliefs discrimination/offence	1
Deadly 60	BBC 1	04/05/2012	Outside of remit / other	1
Deal or No Deal	Channel 4	25/04/2012	Race discrimination/offence	1
Deal or No Deal	Channel 4	30/04/2012	Sexual material	1
Deal or No Deal	Channel 4	09/05/2012	Fairness	1
Deal or No Deal	Channel 4	10/05/2012	Fairness	7
Deal or No Deal	Channel 4	15/05/2012	Generally accepted standards	1

Dickinson's Real Deal	ITV1	n/a	Competitions	1
Diddy Movies	CBBC	20/05/2012	Generally accepted standards	1
Djurens Drottning	Kanal 5	28/03/2012	Animal welfare	1
Don't Blame the Dog	BBC 3	02/05/2012	Animal welfare	5
EastEnders	BBC 1	03/05/2012	Animal welfare	2
EastEnders	BBC 1	n/a	Drugs, smoking, solvents or alcohol	1
EastEnders	BBC 1	11/04/2012	Outside of remit / other	1
EastEnders Omnibus	BBC 1	05/05/2012	Animal welfare	1
Embarrassing Bodies	Channel 4	15/05/2012	Nudity	17
Embarrassing Bodies (trailer)	Channel 4	14/05/2012	Generally accepted standards	1
Emmerdale	ITV1	03/05/2012	Generally accepted standards	3
Emmerdale	ITV1	03/05/2012	Race discrimination/offence	1
Emmerdale	ITV1	04/05/2012	Generally accepted standards	1
Emmerdale	ITV1	08/05/2012	Generally accepted standards	1
Emmerdale	ITV1	08/05/2012	Nudity	1
Emmerdale	ITV1	10/05/2012	Offensive language	1
Emmerdale	ITV1	17/05/2012	Race discrimination/offence	1
Ennill dy Deulu	S4C	11/04/2012	Under 18s in programmes	1
Euro 2012 promotion	STV	12/05/2012	Generally accepted standards	1
Even Stevens	Pop Girl	18/05/2012	Offensive language	1
Extreme Survival	Discovery	13/05/2012	Animal welfare	1
F1: Grand Prix	BBC 1	22/04/2012	Outside of remit / other	1
FA Cup Final	ITV1	05/05/2012	Generally accepted standards	1
FA Cup Final Highlights	ITV1	05/05/2012	Outside of remit / other	1
Farming Today	BBC Radio 4	n/a	Outside of remit / other	1
Fat Families	Sky Living	21/04/2012	Animal welfare	1
Fleabag Monkeyface	CITV	28/04/2012	Generally accepted standards	1
Fords of Winsford's sponsorship of ITV Regional Weather	ITV1 Border	18/04/2012	Sponsorship credits	1
Format	Atlantic FM / Global Radio		Format	1
Four Rooms	Channel 4	02/05/2012	Generally accepted standards	1
Four Rooms	Channel 4	02/05/2012	Offensive language	2
Foxes Live: Wild in the City	Channel 4	30/04/2012	Animal welfare	1
Foxes Live: Wild in the City	Channel 4	05/05/2012	Materially misleading	1
Foxes Live: Wild in the City	Channel 4	07/05/2012	Animal welfare	2
Friday Download	BBC 2	20/05/2012	Scheduling	1
Gateway 97.8 FM	Gateway 97.8 FM	02/05/2012	Scheduling	1

General programming	BBC Radio 4 Extra	n/a	Scheduling	1
General programming	Radio Scilly 107.9	n/a	Due impartiality/bias	1
Geoff Lloyd's Hometown Show	Absolute Radio	10/05/2012	Generally accepted standards	1
Great British Menu	BBC 2	03/05/2012	Animal welfare	1
Great British Menu	BBC 2	08/05/2012	Generally accepted standards	1
Great British Menu	BBC 2	15/05/2012	Animal welfare	1
Great British Menu	BBC 2	n/a	Animal welfare	1
Grey's Anatomy	Channel 5	13/05/2012	Scheduling	1
Halfords' sponsorship of Happy Motoring on Dave	Dave	17/05/2012	Generally accepted standards	1
Hawksbee and Jacobs	Talksport	08/05/2012	Sexual orientation discrimination/offence	1
Hidden Talent (trailer)	Channel 4	22/04/2012	Privacy	1
Hollyoaks Omnibus	E4	29/04/2012	Drugs, smoking, solvents or alcohol	1
Homeland	Channel 4	06/05/2012	Violence and dangerous behaviour	1
iCarly	Nickelodeon	n/a	Advertising/editorial distinction	1
ITV News	ITV1	02/05/2012	Generally accepted standards	1
ITV News	ITV1	05/05/2012	Flashing images/risk to viewers who have PSE	1
ITV News	ITV1	12/05/2012	Due accuracy	2
James O'Brien	LBC 97.3FM	04/05/2012	Due impartiality/bias	1
James Whale	LBC 97.3 FM	14/05/2012	Generally accepted standards	1
Jeff Randall Live	Sky News	14/05/2012	Generally accepted standards	1
Jeremy Vine	BBC Radio 2	01/05/2012	Generally accepted standards	1
Jeremy Vine	BBC Radio 2	01/05/2012	Race discrimination/offence	1
Jeremy Vine (trailer)	BBC Radio 2	18/04/2012	Age discrimination/offence	1
Joop Homme's sponsorship of Drama on FX	FX	28/04/2012	Nudity	1
Keith Lemon's LemonAid	ITV1	28/04/2012	Outside of remit / other	8
Keith Lemon's LemonAid	ITV1	12/05/2012	Animal welfare	4
Kevin Bridges - The Story So Far	BBC 1	19/05/2012	Offensive language	1
Kevin Bridges - The Story So Far	BBC 1	19/05/2012	Sexual orientation discrimination/offence	1
Kundli Aur Kismat/Future & Fortune	Sunrise TV	30/04/2012	Materially misleading	1
Ladyboys (Trailer)	Sky1	07/05/2012	Generally accepted standards	1
Last of the Summer Wine	Yesterday	14/05/2012	Transgender discrimination/offence	1
Lee Mack Live	Dave	28/04/2012	Race discrimination/offence	1

Lip Service	BBC 3	04/05/2012	Sexual material	1
Lip Service	BBC 3	14/05/2012	Sexual material	1
Live Monday Night Football	Sky Sports 1	30/04/2012	Race discrimination/offence	1
Loose Women	ITV1	13/04/2012	Crime	1
Loose Women	ITV1	27/04/2012	Scheduling	2
Loose Women	ITV1	01/05/2012	Offensive language	3
Lorraine	ITV1	17/04/2012	Outside of remit / other	1
Lorraine	ITV1	04/05/2012	Competitions	1
Luke Nugent Greater Meyong (trailer)	Gold	05/05/2012	Animal welfare	1
Made in Chelsea	E4	14/05/2012	Generally accepted standards	3
Made In Chelsea (Trailer)	E4	29/04/2012	Scheduling	1
Mantracker	Extreme Sports	03/04/2012	Offensive language	1
Match of the Day	BBC 1	28/04/2012	Race discrimination/offence	19
Mayoral Election debate	Salford City Radio	26/04/2012	Elections/Referendums	1
McCain sponsorship credits	ITV	n/a	Gender discrimination/offence	1
Monday Night Football	Sky Sports 1	07/05/2012	Animal welfare	1
More Foxes Live	More4	08/05/2012	Due impartiality/bias	1
More Sex Please, We're British (trailer)	Channel 4	08/05/2012	Scheduling	1
My Big Fat Gypsy Wedding	Channel 4	07/05/2012	Race discrimination/offence	1
News	BBC Radio 5 Live	11/05/2012	Outside of remit / other	1
News	Wave 105 FM	16/04/2012	Due accuracy	1
News programming	BBC News Channel	06/05/2012	Outside of remit / other	1
News, Sport, Weather	Sky News	06/05/2012	Generally accepted standards	1
Newsnight	BBC 2	20/04/2012	Offensive language	1
Newsnight	BBC 2	15/05/2012	Race discrimination/offence	1
Newsnight Scotland	BBC 2 Scotland	03/05/2012	Outside of remit / other	1
Nick Ferrari	LBC 97.3FM	11/04/2012	Race discrimination/offence	1
Nihal	BBC Asian Network	13/03/2012	Religious/Beliefs discrimination/offence	1
Once Upon a Time	Channel 5	13/05/2012	Outside of remit / other	1
Our Crime	BBC 3	09/04/2012	Fairness & Privacy	1
Our World	BBC News Channel	13/05/2012	Violence and dangerous behaviour	1
Outnumbered	Gold	30/04/2012	Animal welfare	1
Parelli: World Tour	Horse & Country TV	15/05/2012	Animal welfare	1
Party Election Broadcast by the British National Party	BBC 1	24/04/2012	Generally accepted standards	1

Party Election Broadcast by the British National Party	ITV1	24/04/2012	Generally accepted standards	2
Party Election Broadcast by the Green Party	ITV1	26/04/2012	Under 18s in programmes	2
Party Election Broadcast by the Liberal Democrats	BBC 1	19/04/2012	Elections/Referendums	1
Party Election Broadcast by the Liberal Democrats	ITV1	12/04/2012	Due impartiality/bias	1
Piers Morgan's Life Stories	ITV1	11/05/2012	Gender discrimination/offence	2
Planet Earth Live	BBC 1	17/05/2012	Materially misleading	1
Playboy (Trailer)	Playboy TV	04/05/2012	Sexual orientation discrimination/offence	1
Playboy TV Chat	Playboy TV Chat	03/05/2012	Nudity	1
Postcode	CBBC	12/04/2012	Scheduling	1
Premier League Darts	Sky Sports 1	10/05/2012	Drugs, smoking, solvents or alcohol	1
Premier League Football	Sky Sports 1	30/04/2012	Offensive language	1
Premier League Football	Sky Sports 1	13/05/2012	Due impartiality/bias	1
Question Time	BBC 1	26/04/2012	Religious/Beliefs discrimination/offence	1
Question Time	BBC 1	12/05/2012	Race discrimination/offence	1
Real Radio News	Real Radio NW	08/05/2012	Scheduling	1
Revolution Through Arab Eyes: The Factory	Al Jazeera English	25/02/2012	Television access services	1
Russell Howard's Good News Extra	BBC 3	11/05/2012	Sexual orientation discrimination/offence	1
Scott and Bailey	ITV1	30/04/2012	Transgender discrimination/offence	1
Scott Mills	BBC Radio 1	30/04/2012	Offensive language	1
Secret Millionaire Australia	Channel 4	27/04/2012	Offensive language	1
Sex, Lies and Rinsing Guys	Channel 4	15/05/2012	Animal welfare	1
Sex, Lies and Rinsing Guys	Channel 4	15/05/2012	Harm	1
Silent Witness	BBC 1	22/04/2012	Violence and dangerous behaviour	11
Silent Witness	BBC 1	23/04/2012	Violence and dangerous behaviour	1
Silent Witness	BBC 1	30/04/2012	Generally accepted standards	5
Silent Witness	BBC 1	06/05/2012	Outside of remit / other	1
Silk	BBC 1	15/05/2012	Generally accepted standards	2
Six Nations	BBC	n/a	Outside of remit / other	1
Sky News at 5 with Andrew Wilson	Sky News	13/05/2012	Offensive language	1
Sky News at Seven with Andrew Dixon	Sky News	13/05/2012	Generally accepted standards	1
Slacker's Club (Trailer)	E4	06/05/2012	Generally accepted standards	1
Soaps	Various	n/a	Generally accepted standards	1

Songs of Praise	BBC 1	29/04/2012	Generally accepted standards	1
Spanish Grand Prix	Sky Sports F1	13/05/2012	Generally accepted standards	1
SPL Football	Sky Sports 4	29/04/2012	Religious/Beliefs discrimination/offence	1
Sports programming	BBC Channels	n/a	Outside of remit / other	1
Sports programming	Sky Sports	n/a	Outside of remit / other	1
Starz Music	Starz TV	27/04/2012	Scheduling	1
Steve Allen	LBC 97.3 FM	15/04/2012	Generally accepted standards	1
Straight Dialogue	Channel i	04/01/2012	Due impartiality/bias	1
Sunday Brunch	Channel 4	29/04/2012	Scheduling	1
Sunrise	Sky News	09/05/2012	Generally accepted standards	1
Supersize v Superskinny	Channel 4	24/04/2012	Materially misleading	1
Sure's sponsorship of Sky Sports News	Sky Sports News	n/a	Sponsorship credits	1
The 16-Year-Old Killer: Cyntoia's Story	BBC 3	15/05/2012	Materially misleading	1
The 70s	BBC 2	30/04/2012	Outside of remit / other	1
The Archers	BBC Radio 4	29/04/2012	Animal welfare	1
The BBC London Boxing Hour	BBC Radio London	03/05/2012	Outside of remit / other	1
The Big Bang Theory	Channel 4	06/05/2012	Religious/Beliefs discrimination/offence	1
The Big C	Channel 4	n/a	Religious/Beliefs discrimination/offence	1
The Breakfast Show with Peter Mac	Channel 103	n/a	Commercial communications on radio	1
The British Soap Awards 2012	ITV1	02/05/2012	Violence and dangerous behaviour	1
The British Soap Awards 2012	ITV2	02/05/2012	Disability discrimination/offence	1
The British Soap Awards 2012	ITV2	02/05/2012	Generally accepted standards	1
The British Soap Awards 2012	ITV2	05/05/2012	Scheduling	1
The Chase	ITV1	02/05/2012	Competitions	1
The Chase	ITV1	10/05/2012	Competitions	1
The Gadget Show	Channel 5	30/04/2012	Scheduling	1
The Gadget Show	Channel 5	05/05/2012	Scheduling	1
The Hoarder Next Door	Channel 4	03/05/2012	Animal welfare	1
The Jeremy Kyle Show	ITV1	26/04/2012	Generally accepted standards	1
The Jeremy Kyle Show	ITV1	30/04/2012	Harm	1
The Jeremy Kyle Show	ITV1	01/05/2012	Generally accepted standards	1
The Jeremy Kyle Show	ITV1	14/05/2012	Generally accepted standards	1
The Jeremy Kyle Show	ITV1	n/a	Fairness & Privacy	1
The Matt Lucas Awards	BBC 1	17/04/2012	Race discrimination/offence	1

The Matt Lucas Awards	BBC 1	04/05/2012	Generally accepted standards	1
The Matt Lucas Awards	BBC 1	08/05/2012	Religious/Beliefs discrimination/offence	1
The National Lottery: In It to Win It	BBC 1	12/05/2012	Materially misleading	2
The One Show	BBC 1	30/04/2012	Outside of remit / other	4
The Only Way Is Essex (trailer)	ITV2	n/a	Hypnotic and other techniques	1
The Sports Bar	Talksport	26/04/2012	Generally accepted standards	1
The Voice - Results Show	BBC 1	29/04/2012	Materially misleading	3
The Voice UK	BBC 1	12/05/2012	Nudity	2
The Voice UK	BBC 1	12/05/2012	Outside of remit / other	1
The Voice UK	BBC 1	19/05/2012	Offensive language	3
The Voice UK	BBC 1	20/05/2012	Offensive language	1
The Voice UK	BBC 1	n/a	Advertising/editorial distinction	1
The Walking Dead (trailer)	Channel 5	08/05/2012	Generally accepted standards	1
The Walking Dead (trailer)	Channel 5	13/05/2012	Scheduling	1
The World's Largest Snake	Channel 4	03/05/2012	Generally accepted standards	1
The Wright Stuff	Channel 5	11/05/2012	Generally accepted standards	2
The Xfm Drivetime Show With Eoghan McDermott	XFM Manchester	14/05/2012	Generally accepted standards	1
This Morning	ITV1	27/04/2012	Under 18s in programmes	1
This Morning	ITV1	01/05/2012	Sexual orientation discrimination/offence	1
This Morning	ITV1	02/05/2012	Due impartiality/bias	1
This Morning	ITV1	08/05/2012	Competitions	1
This Morning	ITV1	09/05/2012	Drugs, smoking, solvents or alcohol	1
This Morning	ITV1	14/05/2012	Generally accepted standards	133
Thought For The Day	BBC Radio 4	11/05/2012	Generally accepted standards	2
Time Team	More 4	05/05/2012	Advertising/editorial distinction	1
Timothy Spall: Back at Sea	BBC 4	02/05/2012	Offensive language	1
Titanic	Channel 4	19/05/2012	Offensive language	1
Titanic	Channel 4	19/05/2012	Violence and dangerous behaviour	1
Top of the Pops: 1977	BBC 2	12/05/2012	Generally accepted standards	2
Traffic Cops	BBC 1	09/05/2012	Scheduling	1
Turtle Boy: A Bodyshock Special	More 4	15/05/2012	Generally accepted standards	1
TV Licensing promotion	BBC 1	29/04/2012	Generally accepted standards	1
TV Licensing promotion	BBC 1	27/04/2012	Generally accepted standards	1

UEFA Champions League Final	ITV1	19/05/2012	Advertising scheduling	2
UEFA Champions League Final	ITV1	19/05/2012	Generally accepted standards	1
UK Hot 40	4Music	11/05/2012	Generally accepted standards	1
UTV Live Tonight	UTV	09/05/2012	Due accuracy	1
Various	BBC	n/a	Religious/Beliefs discrimination/offence	1
Various	BBC Channels	n/a	Outside of remit / other	1
Various	R4 Extra	n/a	Race discrimination/offence	1
Various	Various	n/a	Generally accepted standards	1
Vera	ITV1	13/05/2012	Outside of remit / other	1
Victorious	ITV1	29/04/2012	Offensive language	1
Victorious	Nickelodeon	n/a	Advertising/editorial distinction	1
Virtual advertising	n/a	n/a	Advertising/editorial distinction	1
Wales This Week	ITV1 Wales	24/04/2012	Materially misleading	1
Wales Tonight	ITV1 Wales	09/05/2012	Outside of remit / other	1
Waterloo Road	BBC 1	25/04/2012	Violence and dangerous behaviour	1
Weekend Anthems	Massive R&B	15/04/2012	Outside of remit / other	1
Wheeler Dealer	Discovery UK	01/05/2012	Competitions	4
William Hill's sponsorship of ITV FA Cup Coverage	ITV1	15/04/2012	Sponsorship credits	1
Wonga.com's sponsorship of Channel 5 Drama	Channel 5	n/a	Scheduling	1
WWE (trailer)	Viasat 6	01/02/2012	Scheduling	1

## Investigations List

If Ofcom considers that a broadcast may have breached its codes, it will start an investigation.

Here is an alphabetical list of new investigations launched between 17 May and 6 June 2012.

Programme	Broadcaster	Transmission Date
Advertising minutage	UMP Movies	various
Britain's Got Talent	ITV1	6 May 2012
Cancer Forbidden Cures	Showcase 2	8 May 2012
Jerry Springer	Sky Living	3 May 2012
Keith Lemon's LemonAid	ITV1	28 April 2012
London Live: Youth Show	Sikh Channel	26 April 2012
Nizam e Mustafa	Ummah Channel	12 April 2012
Question Everything	Controversial TV	6 May 2012
Saturday Live	BBC Radio 4	19 May 2012
Starz Music	Starz TV	27 April 2012
The Secret Millionaire	Channel 4	18 May 2012

**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 Codes being recorded.**

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

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

For fairness and privacy complaints go to:

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