

# **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

## Notice of Sanction

### Various programmes

*Believe TV, 21 and 22 December 2010, 4 January 2011 and 1 February 2011*

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#### Introduction

The service Believe TV is a service which broadcasts Christian programming and is located in the religious section of the Sky Electronic Programme Guide. The channel broadcasts programmes which include “testimony”, where members of the churches featured proclaim how health problems, financial issues or other personal matters have been alleviated through healing from a pastor or other religious leader and their faith in God. Believe TV also features other Christian programming including preaching and healing from churches in the UK and around the world. The licence for Believe TV is held by The Light Academy Limited (“the Licensee”).

#### Summary of Decision

In Ofcom’s finding published on 22 August 2011 in Broadcast Bulletin 188<sup>1</sup>, Ofcom found that a number of programmes and pieces of content broadcast by the Licensee had the potential for harm, because some viewers with serious illnesses – especially more vulnerable ones – may not seek, or may abandon existing, conventional medical treatment on the basis of what they have seen on Believe TV. This breached the following rules<sup>2</sup> of the Code:

- 2.1: Generally accepted standards must be 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 harmful and/or offensive material. Rule.
- 4.6: Religious programmes must not improperly exploit any susceptibilities of the audience.

After considering all the evidence and all the representations made to it by the Licensee, Ofcom decided that the Code breaches were so serious and repeated that a financial penalty should be imposed in accordance with Ofcom’s Procedures for the consideration of statutory sanctions in breaches of broadcast licences<sup>3</sup>. Ofcom then also considered the level of the financial penalty to be imposed, in accordance with Ofcom’s Penalty Guidelines<sup>4</sup>. Having regard to: the serious and repeated nature of

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb188/obb188.pdf>

<sup>2</sup> In the finding, Ofcom stated that Believe also breached Rule 10.2 (Broadcasters must ensure that the advertising and programme elements of a service are kept separate) and Rule 10.3 (Products and services must not be promoted in programmes. This rule does not apply to programme-related material) of the version of the Code which was in force at the time of the broadcasts, which took effect from 20 December 2010. However, Ofcom considered that the breaches of Rules 10.2 and 10.3 were not so serious as to warrant consideration of a statutory sanction.

<sup>3</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/june2011/statutory-sanctions.pdf>

<sup>4</sup> <http://www.ofcom.org.uk/files/2010/06/penguid.pdf>

the breaches; the Licensee's representations; and Ofcom's Penalty Guidelines, Ofcom decided it was appropriate and proportionate in the circumstances to impose a financial penalty of **£25,000** on The Light Academy Limited in respect of the Code breaches (payable to HM Paymaster General). In addition, Ofcom decided to direct the Licensee to broadcast a statement of Ofcom's findings, on a date and in a form to be determined by Ofcom.

The full adjudication is available at:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/light-academy-limited.pdf>

## Standards cases

### In Breach

#### The Dukes of Hazzard

Comedy Central, 23 October 2011, 18:00

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#### Introduction

*The Dukes of Hazzard* is a film based on the popular US television series from the 1980s.

Five complainants alerted Ofcom to this film broadcast in the early evening. It contained multiple uses of the word “fuck” and its derivatives, as well as a scene involving topless college girls.

Ofcom noted that the British Board of Film Classification (“BBFC”) certified both a ‘12’ and ‘15’ version of this film.

Ofcom considered the material raised issues warranting investigation under Rules 1.3 and 1.14 of the Code.

Rule 1.3: “Children must also be protected by appropriate scheduling from material that is unsuitable for them.”

Rule 1.14: “The most offensive language must not be broadcast before the watershed (in the case of television)...”.

Ofcom therefore requested comments from the holder of the licence for Comedy Central, Paramount UK Partnership (“Paramount UK” or “the Licensee”), about how the broadcast of this film complied with these Code rules.

#### Response

The Licensee said the version of this film that was shown was rated ‘15’ by the BBFC and it apologised for any distress caused to viewers. Paramount UK had created a pre-watershed version of the film to be shown at 18:00. However the post-watershed, unedited version of *The Dukes of Hazard* was broadcast in error.

The Licensee said the post-watershed version of the film was inserted into the Comedy Central schedule so that it could construct the timings around the programme. After the pre-watershed version had been prepared, the normal compliance procedures to replace the post-watershed versions were not followed in full. As a result, the post-watershed broadcast was aired.

Following this incident, the Licensee said it had stopped inserting ‘holding’ versions of a programme in order to create a schedule and had “instructed that interdepartmental communications be reviewed and improved in order to prevent a recurrence of this problem.”

## 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 “persons under the age of eighteen are protected”. This duty is reflected in Section One of the Code.

### Rule 1.3

Rule 1.3 requires children to be protected by appropriate scheduling from material that is unsuitable for them. This rule states that “children” means “people under the age of fifteen years.”

Ofcom noted that this ‘15’ version of the film *The Dukes of Hazzard* included one sequence where the central characters, Bo and Luke Duke, went to a girl’s dormitory at a college to find a friend. When looking through different rooms, they found some topless women playing a game of ‘hacky sack’<sup>1</sup> and joined in. Ofcom also noted various other examples of adult humour and sexual references in the film, as well as strong language (see Rule 1.14 below). A BBFC ‘15’ rating means that in the opinion of the BBFC a film is “Suitable only for [young people] 15 years and over”. In the UK, no one younger than 15 years old may see a ‘15’ film in a cinema or rent or buy a ‘15’ rated video work. This broadcast version of the film therefore clearly in Ofcom’s opinion contained material that was unsuitable for children who were 14 years old or younger.

Ofcom went on to consider whether child viewers were protected from this unsuitable material by appropriate scheduling. We noted that this film was broadcast at 18:00 on a Sunday evening when it is highly likely that a number of children - some unaccompanied - would be among the audience. The audience (and in particular parents) would not have expected this type of content to be shown on a channel like Comedy Central at this time. Children were therefore not protected by appropriate scheduling, and there was a breach of Rule 1.3.

### Rule 1.14

Rule 1.14 states that the most offensive language must not be broadcast before the watershed. Ofcom research on offensive language clearly notes that the word “fuck” and derivatives of this word are considered by audiences to be among the most offensive language.

There were multiple uses of “fuck” and its derivatives, often in a sexual context, in this version of *The Dukes of Hazzard* broadcast in the early evening. There was therefore also a clear breach of Rule 1.14.

Ofcom noted that the Licensee broadcast the ‘15’ version of this film by mistake. Human error however cannot excuse broadcasting material well before the watershed which is so clearly unsuitable for children. We welcome the additional measures put in place by Paramount UK to improve compliance and would not expect a repeat of this incident.

Ofcom takes this opportunity to remind the Licensee and all other television broadcasters that it has recently published guidance on the scheduling of material

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<sup>1</sup> two or more players must keep a ‘footbag’ off the ground without using their hands.

broadcast before the watershed, which is available on the Ofcom website at:  
<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/watershed-on-tv.pdf>.

### **Breaches of Rules 1.3 and 1.14**

## In Breach

### **Sol, Fest & Oroliga Föräldrar**

*Kanal 5, 16 September 2011, 19:00 CET*

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#### **Introduction**

Kanal 5 is a Swedish language channel broadcasting to Sweden from the UK. The licence for Kanal 5 is held by SBS Broadcasting Networks Limited (“SBS” or “the Licensee”). SBS holds Ofcom licences for nine television services which it operates. The SBS compliance department based in London manages compliance for all these licensed services centrally.

*Sol, Fest & Oroliga Föräldrar* (Sun, Party and Worried Parents) is a programme in Swedish in which groups of young people go on their first holiday abroad unaccompanied, unaware that their parents are secretly abroad with them and watching everything that occurs. In this episode a group of young men and women from Sweden travelled to the resort of Ayia Napa in Cyprus.

Ofcom received a complaint about the programme. The complainant said that the programme contained content unsuitable for young children, such as nudity, urination and sexual themes. After being alerted to these issues Ofcom obtained a copy of the programme from the broadcaster with translated English subtitles. Ofcom noted that the programme featured the following material:

- a young woman baring her breasts (which were obscured with blurring);
- comments of an offensive and sexual nature, including claims by the young men that one of their objectives on the trip was to “knulla horor” (translated into English as “fuck whores”);
- a young man vomiting after trying a drink;
- a young man urinating in the corner of a hotel balcony, with his back to the camera;
- a young man wearing swimming trunks lying down on his back on the deck of a boat while a young woman (wearing a bikini) licked his bare torso, and then straddled him in a sexual position. The camera later cut back to the pair, and the woman had her head placed over the man’s crotch, and appeared to mime oral sex;
- frequent swearing and offensive language in both Swedish and English, including the Swedish words “knulla” (translated as “fuck”), “horor” (meaning “whores”), “pissa” (“piss”), “javligt” (“damn” or “bloody”), and the English words “fuck” and “motherfucker”; and
- dancing with sexual movements, such as a young man thrusting his crotch at a young woman’s rear.

Ofcom considered that the above material raised issues under the following rules of the Code:

Rule 1.3: “Children must... be protected by appropriate scheduling from material that is unsuitable for them.”

Rule 1.16: “Offensive language must not be broadcast before the watershed (in the case of television)... unless it is justified by the context. In any

event frequent use of such language must be avoided before the watershed.”

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

## **Response**

SBS accepted that it had “made an error”, and that a “human error made by the scheduling department” was behind the failure to edit the programme before broadcast. The Licensee said it did not propose to try and differentiate the language used in the programme in terms of it being “offensive” or “most offensive”. SBS stated that the Swedish representative on its Compliance Committee felt that “the language is inappropriate for pre-watershed viewing and should have been edited out”. SBS also said that “the scenes featuring sexual movements, vomiting and urination were unsuitable in a pre-watershed programme and should have been removed.”

The Licensee added that Kanal 5’s programmes appeal in particular to the teenage and young adult demographic, and that viewers would therefore have expected challenging material from the channel. It believed that the themes dealt with by the programme – in particular the way in which young people “respond to their first taste of freedom from direct parental control” – were “of importance to the target audience and their parents”.

The Licensee went on to state that only 4% of the viewing audience for the programme was aged below 15, and that “the scenes [were not] inappropriate for teenagers in the upper age range”, adding that “the key audience (i.e. children under 15) that may have been distressed by... viewing the inappropriate scenes or hearing the inappropriate language was relatively small”.

In response to this compliance error, the Licensee said all future episodes of *So!, Fest & Oroliga Föräldrar* have been reviewed to ensure suitability for pre-watershed viewing. SBS said that it was conducting further compliance training within its scheduling and programming departments, along with refresher seminars for its Swedish, Danish and London staff in order to avoid repetition of the error.

## **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 duty is reflected in Section One of the Code.

In reaching its decisions, Ofcom must have regard to the need for standards to be applied “in the manner that best guarantees an appropriate level of freedom of expression”. The Code is drafted in accordance with Article 10 of the European Convention of Human Rights, as incorporated in the Human Rights Act 1998, which is the right of a broadcaster to impart information and ideas and the right of the audience to receive them without unnecessary interference by public authority.

### **Rule 1.3**

Rule 1.3 requires children to be protected by appropriate scheduling from material that is unsuitable for them. This rule states that “children” means “people under the age of fifteen years.”

Ofcom noted in particular the following scenes: a close-up shot of a young man vomiting after drinking alcohol (which appeared four times during the course of the episode); a young man urinating in the corner of a hotel balcony; and, offensive language, some of a sexual nature.

In our view the following content in the programme also had a clear sexual theme: the young men's repeated drunken statements of intent to "knulla horor" ("fuck whores") during their nights out; the shot in which a young woman bared her breasts (which were obscured in the broadcast); the repeated shots of sexualised dancing in the clubs; a scene in which the bare torso of a young man was licked by a young woman wearing a bikini, who then straddled him in a sexual position and was shown later with her head placed over his crotch miming oral sex; and a scene in which one of the young men declared that *"our strategy is to be condescending towards the girls. When you get them back to the hotel, you just bang them"* and later that *"it doesn't matter who scores. It's all for one, and one for all. Everyone can have a go if she's up for it."*

Ofcom considered that: the adult themes of a sexualised nature; the graphic nature of certain scenes (e.g. the vomiting and urination); excessive alcohol consumption; and offensive language, all had the clear potential to be unsuitable for children who were viewing. Ofcom considered that the unsuitability of this material for children was increased by the cumulative effect of the inappropriate content.

Ofcom went on to consider whether child viewers were protected from this unsuitable material by appropriate scheduling. We noted that that the programme was broadcast at 19:00 on a mainstream channel with approximately 7,500 viewers between the ages of three and 14 in the audience. We noted the Licensee's submission that only 4% of those viewing the programme were under 15 years of age. However Ofcom considered that the number of child viewers was still a matter of concern and took account of the fact that some of them may have been unaccompanied by an adult.

In considering whether the material was appropriately scheduled, Ofcom noted that the behaviour of the young people detailed above and shown in the programme was not condoned by the programme. The disapproval of the young people's parents was demonstrated several times during the programme: for instance, when the young man was shown vomiting, a mother described it as "disgusting", and in another scene a mother reprimanded her son for his disrespectful use of the phrase "knulla horor". This disapproval however was not in our view sufficient to make the broadcast of the unsuitable material at this time "appropriate scheduling". We noted SBS's statement that the "themes and issues" dealt with in the programme were "not only of interest but also of importance to the target audience and their parents". While Ofcom considers that an exploration of the behaviour of a group of young adults on their first trip abroad without their parents is entirely justifiable before the watershed, we consider that the content was not appropriately edited so as to be suitable for showing before the 21:00 watershed. Further, in Ofcom's view the audience (and in particular parents) would not have expected this type of content to be shown on a general entertainment channel at this time.

We note that the Licensee acknowledged that this programme was unsuitable for broadcast before the watershed and should have been edited before being shown, and has taken various measures to improve compliance in future. However, having regard to all the factors set out above, we concluded that this material was not appropriately scheduled and the Licensee breached Rule 1.3.

### Rule 1.16

Rule 1.16 of the Code states that offensive language “must not be broadcast before the watershed...unless it is justified by the context. In any event frequent use of such language must be avoided before the watershed”.

In judging whether any material was in breach of Rule 1.16 of the Code, Ofcom needed to take into account the meaning of any strong language included in the programme and its potential to cause offence in a Swedish context, since Kanal 5 is only shown in Sweden. Ofcom therefore consulted the views of experts at the Swedish broadcast communications regulator Radio Och TV, and also had regard to submissions from the Licensee.

The programme featured at least nine instances of the Swedish word “knulla”, which loosely translates as “fuck”. Several times, this word was followed by the word “horor”, which translates as “whores”. We noted that the programme also contained frequent instances of the English word “fuck” and its derivatives. There were also occurrences of mild Swedish swearwords such as “javligt” and “pissa”.

Ofcom was informed that “knulla” in particular is considered to be a word with the potential to be offensive. Several times during the programme young people used this term together with the word “horor,” which increased its level of offensiveness.

The English word “fuck” and its derivatives were also used eight times during the programme. Radio Och TV advised Ofcom that the use of the English word “fuck” in Sweden is not regarded as among the most offensive language but is still nonetheless potentially offensive depending on the context. Additionally there were other instances of milder swearing in Swedish, such as “javligt”, which loosely translates as “damn” or “bloody”, and “pissa” (“piss”). It was Ofcom’s view, therefore, that there was frequent use of offensive language in the programme.

With regard to the editorial context, we noted SBS’s statement that the themes dealt with by the programme – in particular the way in which young people “respond to their first taste of freedom from direct parental control” – were “of importance to the target audience and their parents”. However Ofcom considered that the level of offensive language in the programme was not justified by that context given the programme was broadcast on a general entertainment channel at 19:00 when 7,500 children between the ages of three and 14 were in the audience.

We noted the Licensee’s submission that the offensive language was “inappropriate for pre-watershed viewing and should have been edited out”. We also noted the measures taken by SBS to prevent inappropriate offensive language being broadcast in future before the watershed. However in this case, the offensive language used was frequent, gratuitous and not justified by the context. The programme therefore breached Rule 1.16 of the Code.

### **Breaches of Rules 1.3 and 1.16**

Ofcom takes this opportunity to remind the Licensee and all other television broadcasters that it has recently published guidance on the scheduling of material broadcast before the watershed, which is available on the Ofcom website at: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/watershed-on-tv.pdf>.

## In Breach

### Bricking It

Community Channel, 17 November 2011, 16:00

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#### Introduction

A complainant alerted Ofcom to repeated instances of the use of the word “fucking” in this programme broadcast at 16:00.

*Bricking It* is a documentary style factual television series following the experiences of ten unemployed teenagers taking on the construction of a luxury flat in six months, with the incentive of a £50,000 completion bonus, while dealing with the challenges of their day to day lives. The series was originally broadcast on Channel 4. The Community Channel is owned by Media Trust and broadcasts programmes which have a national and international community focus.

On reviewing the material, Ofcom noted during this episode at least 45 instances of the word “fucking” and variations of this word being broadcast.

Ofcom considered the material raised issues warranting investigation under Rule 1.14 of the Code, which states that:

“The most offensive language must not be broadcast before the watershed (in the case of television) ... .”

We therefore sought comments from the Community Channel as to how the material complied with this Code rule.

#### Response

The Community Channel explained that the series had first been broadcast on Channel 4 in two forms: a series of six programmes shown in the morning and so designed for pre-watershed viewing; and a three part post-watershed compilation. The Community Channel decided to schedule the two versions of *Bricking It* in the same way, with the three part version in a post-watershed slot. However, as a result of human error, this information was not provided to the channel schedulers so this particular programme (aimed at a post-watershed audience) was broadcast by mistake in the planned daytime slot.

As soon as the channel became aware of the offensive language broadcast on 17 November, the episodes due for broadcast on 18 and 19 November 2011 were pulled from the schedule immediately. The channel broadcast apologies to viewers on 24 November and 12 December 2011. The broadcaster also re-checked and edited all episodes of *Bricking It* to ensure they were suitable to be shown on the service pre-watershed.

The Community Channel said this was the first time such an incident had occurred in several years of broadcasting and it was “truly regrettable”. The channel has reviewed its compliance systems to make them more robust and updated staff through training.

## Decision

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

Rule 1.14 states that the “most offensive language must not be broadcast before the watershed”. Ofcom research on offensive language<sup>1</sup> notes that the word “fuck” and its derivatives are considered by audiences to be among the most offensive language. Such language is unacceptable before the watershed, whatever the audience profile of the channel.

In this episode of *Bricking It* shown in the late afternoon there were at least 45 instances of “fucking” and variations of this word. There was therefore a clear breach of Rule 1.14.

Ofcom notes that until now the Community Channel has had an excellent compliance record and that the broadcast of this material was an isolated incident resulting from human error. We also note the immediate action taken by the channel to remove the remaining episodes from the schedule, the two on-air apologies made to viewers, and the steps taken to improve compliance systems to prevent a similar incident occurring again. Nonetheless, the repeated broadcast of the most offensive language in this programme was a serious breach of Rule 1.14.

### Breach of Rule 1.14

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

## In Breach

### Rob Birnie

*Planet Rock, 25 October 2011, 09:17*

### Nicky Horne Programme

*Planet Rock, 23 November 2011, 19:00*

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#### Introduction

Planet Rock is a commercial radio station broadcasting nationally on digital audio platforms. It specialises in playing classic rock music. The licence for Planet Rock is held by Planet Rock Limited (“the Licensee”).

Ofcom was alerted to the broadcast on 25 October 2011 of the song ‘Word Forward’ by the Foo Fighters which twice included the lyric *“they’re just fucking words”*.

A second complainant alerted Ofcom to the broadcast on 23 November 2011 of the track ‘Some Girls’ by the Rolling Stones, which contained the lyric: *“...black girls want to get fucked all night...”*.

We first assessed the material under Rule 1.14, which states:

“The most offensive language must not be broadcast ... when children are particularly likely to be listening (in the case of radio).”

Ofcom noted that the programme material broadcast on 25 October and 23 November was played respectively on a Tuesday at 09:17 and a Wednesday at 19:00 during school term time. These are times when historically few children listen to this station. Ofcom considered that children were not particularly likely to have been listening to these broadcasts, and therefore we did not consider this content raised issues warranting investigation under Rule 1.14 of the Code.

However, Ofcom did consider the material raised issues warranting investigation under Rule 2.3 of the Code. This states:

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

Ofcom therefore requested formal comments from the Licensee on how the programme material complied with Rule 2.3.

#### Response

##### Rob Birnie, 25 October 2011

The Licensee said the song was broadcast as a result of human error. The Licensee said the song was not in its database and was played as part of a regular feature in which a listener compiles the track list for half an hour of the station output. The song was taken from a CD of the Foo Fighters which was wrongly assumed to be a different track. The Licensee said the error was “compounded” by the facts that the Programme Director was attending the “weekly station meeting and was unable to hear the output” and the presenter “quite naturally assumed the song to be acceptable as it was in his running order.” The broadcaster said no apology was

given after the track finished because the presenter did not wish to draw attention to the offensive language that had been played in error.

*Nicky Horne Programme, 23 November 2011*

The Licensee explained that the track was broadcast as part of promotion the station was running at the time. It added “the song is not in the active, on-air database and was dragged and dropped into the programme from a storage database without the necessary lyric check being made”. The Licensee said that its song loading procedure states that every song not in regular rotation must be checked before broadcast. In this case the producer failed to follow this procedure.

The Licensee apologised for any offence caused as a result of both broadcasts and explained that, following an internal investigation, it had identified a “loophole” in its procedures which meant that music tracks were loaded onto an “active on air database” without being listened to in real time. The Licensee said it had now introduced a new compliance procedure which means that two members of staff have to check a song before it can be broadcast. The Licensee said it has also made sure all the songs in its playlist are approved for airplay. A daily check is also in place to approve songs for broadcast.

## **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 “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 Rule 2.3 which requires that potentially offensive material must be justified by context.

*Rob Birnie, 25 October 2011*

Ofcom considered first whether the repeated offensive language in this song was potentially offensive. Our research on offensive language<sup>1</sup> indicates that the word “fuck” and its derivatives are examples of the most offensive language. In Ofcom’s view, the broadcast of this language in this programming clearly had the potential to offend.

We then assessed whether the offence was justified by the context. In particular concerning “context” we took into account the editorial content of the programme, the service on which it is broadcast, the time of broadcast and the likely size, composition and expectations of the audience.

In this instance, the term “fucking” was used twice and was clearly audible. Ofcom acknowledged that Planet Rock appeals to listeners aged between 35 and 55 and therefore the station does not have a broad audience base. However, we do not consider that the majority of listeners would expect the most offensive language to be broadcast within a track broadcast as part of a daytime playlist. Ofcom concluded that these instances of the most offensive language were not justified by context.

While we noted that Planet Rock felt it would be wise not to draw attention to the mistake after the event, Ofcom was concerned that the station did not mitigate the

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

offence caused by broadcasting an apology, either on the day of the broadcast or soon afterwards.

*Nicky Horne Programme, 23 November 2011*

The broadcast of the most offensive language in this programme clearly had the potential to offend for the reasons already explained in the case set out above. We therefore went on to consider whether the broadcast of these lyrics was justified by the context.

Ofcom was aware that in playing this track, the Licensee was celebrating the re-release of the Rolling Stones 1978 album 'Some Girls' and was running an on-air promotion for listeners to win a re-mastered version of the album. We also noted that at the time of the original release of this track there was a significant amount of controversy surrounding the lyrics to the title track, 'Some Girls', and in particular the line "*black girls want to get fucked all night*". We considered that the Licensee's compliance staff should have been aware of this controversy and this should have provided them with an additional reason to take care before allowing this track to be played in the early evening, given it was likely to form part of the station playlist during the period that the promotion was running.

Ofcom noted the target audience of Planet Rock is adults aged between 35 and 55 years old. However, we considered that the use of this language was likely to have gone beyond the expectations of the audience for this time of day. Ofcom concluded that this instance of the most offensive language was not justified by context. Additionally Ofcom noted that the Licensee did not transmit an apology in relation the offensive language broadcast on 23 November 2011.

Ofcom noted that the Licensee recognised that the broadcast of the most offensive language in these two cases was the result of mistakes in compliance, and that the Licensee has taken measures to prevent the most offensive language being broadcast in future at inappropriate times. However Rule 2.3 was breached on two occasions.

Ofcom does not expect any recurrence of similar compliance failures by Planet Rock. Any future breaches of this nature may lead to Ofcom considering further regulatory action.

**Breaches of Rule 2.3**

Ofcom takes this opportunity to remind the Licensee and all other radio broadcasters that it has recently published guidance on the broadcast of offensive language on radio, which is available on the Ofcom website at:  
<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/offensive-language.pdf>.

## In Breach

### Music video: Kelly Rowland - “Down for Whatever”

*Flava, 10 November 2011, 13:55*

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#### Introduction

Flava is a music television channel. The licence for Flava is held by CSC Media Group Ltd. (“CSC” or “the Licensee”).

A viewer alerted Ofcom to flashing lights broadcast on the channel, in the music video *Down for Whatever* by the R&B artist Kelly Rowland.

Certain types of flashing images can trigger seizures in viewers who are susceptible to photosensitive epilepsy (“PSE”). Ofcom therefore carried out a technical assessment of the flashing images in the music video. There were various sequences of flashing images within the music video that exceeded the brightness and screen area limits set out in Ofcom guidance to broadcasters on flashing images<sup>1</sup>. In summary, there was a total of approximately 40 seconds of material throughout the music video that was non-compliant. There was no verbal warning before the broadcast or during the broadcast of this music video. The text “*Flashing Warning*” was shown on screen, after 20 seconds of the music video had elapsed.

Ofcom considered the material raised issues warranting investigation under Rule 2.12 of the Code, which states:

“Television broadcasters must take precautions to maintain a low level of risk to viewers who have photosensitive epilepsy. Where it is not reasonably practicable to follow the Ofcom guidance, and where broadcasters can demonstrate that the broadcasting of flashing lights and/or patterns is editorially justified, viewers should be given an adequate verbal and also, if appropriate, text warning at the start of the programme or programme item”.

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

#### Response

CSC said that it had a “reliable procedure” concerning flashing images in music videos: if a music video is unlikely to comply with the Ofcom guidance on flashing images, the Licensee would work with the music label to create a “safe version”. The Licensee said “it is always our preference to broadcast a safe version without the need for a warning to viewers” and that “in the vast majority of cases videos can be reworked to create a compliant version but in some instances that is not possible.”

In this case the Licensee said that the nature of the music video meant that it would be “extremely time consuming” to re-edit the video, pointing to the “time critical nature of the music industry where the release of music videos are eagerly awaited by fans”. Therefore, the decision was taken to broadcast this music video with a “flashing warning”.

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<sup>1</sup><http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/812612/section2.pdf>

CSC noted the requirement in the Code that (where it is not reasonably practicable to follow the Ofcom guidance and where broadcasters can demonstrate that the broadcasting of flashing lights and/or patterns is editorially justified) viewers should be given an adequate verbal and also, if appropriate, text warning at the start of the programme or programme item. The Licensee stated that in its view this requirement for a warning at the start of a programme or item “feels suitable for long form programming, where viewers are likely to see the start of a programme, but for channels made up of lots of clips and lots of channel switching as with music, if a viewer with PSE misses the verbal warning at the beginning of the clip there is no way of them knowing that there is potentially harmful content to follow”. CSC queried whether it might be “inadequate of us to show a flashing warning throughout the content as this feels much better and safer solution” although the Licensee accepted that there was no warning in the first 20 seconds of this particular music video.

The Licensee pointed out that its editorial policy “over the last five years” has been to transmit music videos with “a warning message throughout (except for the first 20 seconds)” without any complaint.

In conclusion, CSC requested confirmation as whether any viewer suffered “a reaction to the flashing images” in this case.

## **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 “generally accepted standards are applied to the content of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and / or offensive material”.

Given the significant potential harm that can result in viewers with PSE who are exposed to flashing images, Rule 2.12 makes clear that Ofcom expects broadcasters to maintain a low level of risk to viewers who have PSE. Further, Ofcom’s Guidance in this area (and the annexed Guidance Note on flashing images which are based on scientific research) is intended to limit the incidence of seizures. In this context, we noted CSC’s request for confirmation as to whether any viewer suffered “a reaction to the flashing images” in this case. Rule 2.12 requires broadcasters to take precautions to maintain “a low level of risk” to viewers who have PSE, and this low level of risk is assessed by reference to Ofcom’s specific Guidance. This duty is in place to ensure adequate protection for members of the public with PSE. In carrying out its duties in this area, and investigating possible Code breaches, Ofcom does not seek or require evidence of programme material actually causing medical harm.

In this case, Ofcom’s test of this material found that it clearly did not comply with the limits set out in our published Guidance concerning PSE.

Rule 2.12 states that where it is not reasonably practicable to follow the Ofcom guidance, and where broadcasters can demonstrate that the broadcasting of flashing lights and/or patterns is editorially justified, viewers should be given an adequate verbal and also, if appropriate, text warning at the start of the programme or programme item.

In reaching our decision, we took into account CSC’s justifications for not re-editing the video, namely: the fact, in CSC’s view, that it would be “extremely time consuming” and the “time critical nature of the music industry where the release of

music videos are eagerly awaited by fans". In this context, the Licensee cited the example of a "News broadcaster mak[ing] an editorial decision to include a clip from an eagerly awaited awards ceremony by giving a flashing warning" and queried "why is it not editorially justified to likewise run an eagerly awaited music video in the same way".

We considered that the time required to re-edit content to ensure compliance with the Code and the commercial pressures of a particular industry were not sufficient editorial justification for the Licensee not to take appropriate steps to re-edit the content in this case to ensure compliance with Rule 2.12. In relation to the comparison, cited by CSC, between the use of flashing images in news broadcasts and their use in music videos, Ofcom would judge each individual case on the facts. However, we consider that there would be likely to be greater editorial justification for a news broadcaster including flashing images in a news item and preceding this with a verbal warning (as Ofcom notes happens quite frequently), compared with a music broadcaster including flashing images in a music video in its scheduled programming with a flashing warning contained only within the item itself.

Ofcom went on to assess the warning given by the broadcaster. We took account of CSC's representations that, in their view, the requirement under the Code to give adequate warnings at the start of a programme "feels suitable for long form programming". However, the Code makes clear that this requirement applies to any "programme item" including music videos and not just long-form programmes.

We noted that in this case there was no verbal warning before the broadcast or during the broadcast of this music video. The text "*Flashing Warning*" was shown on screen, but only after 20 seconds of the music video had elapsed. We noted the Licensee's stated editorial policy has been to transmit music videos with "a warning message throughout (except for the first 20 seconds)". However, we considered that even if there had been editorial justification for the broadcast of flashing images in this case, the absence of adequate warnings in both sound and vision from the beginning of the music video would not have ensured that viewers would have been appropriately made aware of the flashing images in this particular music video.

We therefore considered that the broadcast of this music video was in breach of Rule 2.12 of the Code.

### **Breach of Rule 2.12**

## In Breach

### Sponsorship of *Zaika he Zaika*

*DM Digital, 12 November 2011, 13:00*

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#### Introduction

DM Digital is a free-to-air general entertainment channel (available on the Sky platform), which broadcasts mainly in Urdu to the UK Asian community. The licence for the channel is held by DM Digital Television Limited (“DM Digital” or “the Licensee”).

*Zaika he Zaika* is a cookery programme. It is sponsored by Shaheen’s food products.

The sponsorship credit consisted of the following:

Voiceover: *“Brought to you by”*  
Image: Pack shots of Shaheen’s food products including Balti Masala, and Rice ‘n’ Easy Pilau Masala.  
On-screen text: *“Available At All Food Stores. For Trade Enquiries Please Call [telephone number] sales@shaheen.co.uk www.shaheen.co.uk”*

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

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

We therefore sought DM Digital’s comments on how the sponsorship credit complied with this rule.

#### Response

DM Digital said “we acknowledge that the sentence ‘For trade enquiries please call’ could be construed as a ‘call to action’ and as such DM Digital will ensure this sentence is never included in any on-screen texts in the future.”

However, DM Digital considered that a mitigating factor was that there was no accompanying voiceover which could be considered to be a call to action.

DM Digital added that “there is no prohibition on the company name; web address or telephone number being shown” and it considered that “in this instance, on balance, the focus of the credit was still the sponsorship arrangement itself.”

DM Digital explained that a meeting of all relevant staff has been held to discuss this issue and to reiterate the requirements of the Code in relation to sponsorship credits.

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

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

Rule 9.22(a) of the Code therefore requires that sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action, and that credits must not encourage the purchase or rental of the products or services of the sponsor or a third party.

In this case, Ofcom considered that the sponsorship credit contained a claim that the sponsor’s products are “*Available At All Food Stores*”. A claim is promotional for the sponsor and is therefore an advertising message which is prohibited from inclusion in sponsorship credits.

In addition, Ofcom noted that the credit contained a call to action to encourage trade sales of the sponsor’s products, i.e. “*For Trade Enquiries Please Call* [telephone number]”. If a viewer is directly invited to call a telephone number, that is clearly a call to action. Ofcom considers it very clear that Rule 9.22(a) prohibits calls to action in sponsorship credits, and this is also set out in detail in the accompanying guidance.<sup>1</sup>

Ofcom was concerned that DM Digital regarded the fact that there was no accompanying voiceover to be a mitigating factor in this case. As Rule 9.22(a) prohibits calls to action in sponsorship credits, no call to action in any form (i.e. on-screen text or voiceover) should be included. Therefore, Ofcom did not consider it to be a mitigating factor that the credit in question contained a call to action only in the form of on-screen text.

Ofcom noted that a sponsorship credit previously broadcast on DM Digital was found to have breached the Code in November 2010<sup>2</sup>. That case was similar to this one in that Ofcom found that the sponsorship credit contained a call to action for viewers to use the sponsor’s service.

Ofcom has published a number of findings in relation to sponsorship credits in recent years, and has made clear the need for broadcasters to exercise care to ensure that credits do not contain advertising messages. Ofcom is concerned that despite the

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

<sup>2</sup> See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb169/issue169.pdf>

N.B. In the September 2010 Code, the relevant rule was Rule 9.13.

guidance provided in these findings and a previous similar breach recorded against DM Digital that it has again broadcast a sponsorship credit which breached the Code.

In this case, the credit contained two advertising messages: a claim; and a call to action. Ofcom therefore found the credit in breach of Rule 9.22(a) of the Code.

Ofcom does not expect a recurrence of issues relating to sponsorship credits on DM Digital.

**Breach of Rule 9.22(a)**

## In Breach

### Provision of recording

*New Style Radio, 17 August 2011, 11:30*

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#### Introduction

New Style Radio is a community radio station for Afro Caribbean communities based in northwest Birmingham. The licence for this service is held by Afro Caribbean Millennium Centre (ACMC) Ltd (“ACMC” or “the Licensee”).

Two listeners alerted Ofcom to a discussion on the channel about the August 2011 riots in Birmingham which the complainants believed could incite violence.

Ofcom requested a recording of the programme from the Licensee to assess the content. However, the broadcaster only provided one hour’s recording from a two hour programme. This recording had been obtained from one of the presenters, ACMC said, because the computer hard drive, which stored the station’s output, became full and had not recorded the station’s output between 13 and 17 August 2011.

Ofcom considered the matter raised issues under Licence Condition 8(2) (Retention and production of recordings) of ACMC’s community radio licence issued by Ofcom. This requires the Licensee to:

- (a) “make and retain or arrange for a period of 42 days from the date of its inclusion therein, a recording of every programme included in the Licensed Service...” and
- (b) “...at the request of Ofcom forthwith produce to Ofcom any such recording for examination or reproduction”.

Ofcom therefore asked the Licensee for its comments under this Licence Condition.

#### Response

The Licensee accepted that it had not complied with Licence Condition 8 but said there were some key factors which led to recordings not being kept between 13 and 17 August 2011. The Technical Manager of the station had undergone serious heart surgery during the period in question. The Licensee said that normally other colleagues would have been given the responsibility to ensure recordings were retained. However, there was rioting in Birmingham at this time, and three men were killed on 10 August while trying to protect their shop from looters. The Licensee said this incident occurred “just doors away” from the radio station.

The Licensee said given the close relationship between the radio station, the police and ethnic groups in that area of Birmingham, staff and directors of New Style Radio were “extremely proactive in ensuring that these tragic events did not lead to inter-ethnic tensions.” As a result of the focus of the staff being on the disturbances, “the technical monitoring of the station was not temporarily maintained.”

ACMC stressed that the failure to provide a recording was as a result of these specific circumstances and “not a general failure to comply with (its) obligations

under Licence Condition 8.” The Licensee said it has since instigated new procedures “which will categorically ensure that such a lapse... will never occur again” and the Station Manager will make sure that recordings and retention of programmes are formally monitored on a daily basis.

### **Decision**

Ofcom noted that the Licensee failed to provide the recording required by Ofcom to assess the complaint we had received. We noted the very particular circumstances explained by the Licensee, and its assurances about introducing new procedures to ensure compliance with Licence Condition 8 in future. Nevertheless, the failure by the Licensee to provide a complete recording as requested by Ofcom is a serious breach of Condition 8 of ACMC’s licence because it resulted in Ofcom being unable in this case to fulfil its statutory duty to assess and regulate potentially problematic output.

### **Breach of Licence Condition 8(2)(a) and (b)**

## Resolved

### The Wright Stuff

Channel 5, 6, 7 and 8 December 2011, 09:15

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#### Introduction

*The Wright Stuff* is a weekday morning topical magazine programme broadcast live on Channel 5. It is presented by Matthew Wright and includes a different panel of guests each day.

Ofcom received 2,358 complaints regarding comments made by Matthew Wright and a guest during the daily newspaper review included in the programme on 6 December 2011, and Matthew Wright's subsequent apology on 7 December 2011. In summary, complainants considered Matthew Wright and the guest (Charlie Baker) made insensitive and inappropriate comments when discussing an article in the Daily Mail regarding the first murder case in the Hebrides for 40 years.

While Matthew Wright ("MW") and Charlie Baker ("CB") discussed the news item, there was a graphic on screen showing the newspaper article with the headline: 'First murder hunt in Hebrides for 40 years as teenager's body found' and a photo of the murdered 16 year old youth, Liam Aitchison. Ofcom noted the following exchange took place:

CB: *"There's been the first murder, this is very sad, in the Hebrides on the Isle of Lewis"* [newspaper article is shown with photograph of the victim].

MW: [mock Scottish accent] *"There's been another murder"*.

CB: *"Not another one, the first one for 40 years"*.

MW: [mock Scottish accent] *"Well that's another one then, another murder"*.

[Audience laughter]

CB: *"The longest episode of Taggart of all time [MW laughing] there's lots of down-time in between"*.

MW: *"That is extraordinary isn't it? [on-screen graphic of newspaper article replaced by shot of the studio panel] Because it's not the most populous place on earth is it"?*

CB: *"No. Have you ever been to the Hebrides"?*

MW: "No".

CB: *"Can you fish on the Hebrides"?*

MW: "Yeah".

CB: *"What do you fish for on the Hebrides"?*

- MW: "Fish".
- CB: "Oh really? I'm the world's worst fisherman you know that? I've been fishing in Scotland on a loch, next to a salmon farm, about four or five times, never caught anything..."
- MW: "I'll take you out in May; I promise you you'll catch something".
- CB: "...the world's worst."

On 7 December, Matthew Wright made the following apology:

*"Now I know that some of you have been upset by some comments during yesterday's newspapers review about the murder of Liam Aitchison in Stornoway. I'd like to apologise if that was the case, certainly no intention on my part to belittle the seriousness or tragedy of the story, or to offend anyone who knew Liam. You know me - touched by death too many times in my life to belittle anything like that. Not helped though by people running campaigns - report Matthew Wright to Ofcom. I mean, grow up, folks ... I'm very sorry all the same".*

On 8 December, a further apology was broadcast:

*"Understandably, I know many of you were upset by comments made in Tuesday's newspaper paper review with regard to the tragic murder of 16-year old Liam Aitchison in Stornoway. I would like to say again that I had absolutely no intention of causing any distress to anyone involved in this tragic event or to upset viewers. I deeply, deeply regret my thoughtless comments, and very sincerely apologise to Liam's family and his community. I truly apologise ok, from the bottom of my heart if I have made their suffering worse. I should add that Charlie Baker also wishes to apologise unreservedly, he's not here this morning and is genuinely sorry for the upset this has caused".*

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

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

Ofcom sought comments from Channel 5 Broadcasting Limited ("Channel 5" or "the Licensee") on how this broadcast complied with the above rule of the Code.

### **Response**

Channel 5 said that it entirely accepted that the comments made by Matthew Wright and Charlie Baker on the programme were "unfortunate, misjudged and entirely inappropriate".

Channel 5 added the story was running in a number of newspapers that morning because it was the first murder on the Western Isles for more than 40 years. The Licensee explained that the newspaper review is unscripted, but is structured and prepared by the production team in conjunction with Matthew Wright, the programme's guests and the programme's compliance lawyer. In this instance

Charlie Baker confirmed to the producers of the programme that he “intended to review the story in the most serious manner”. Channel 5 stated however, that when it came to the point in the programme to review this news item, Charlie “introduced it appropriately ... Matthew then interjected in an unplanned and highly inappropriate manner, which producers have confirmed was entirely unforeseen by the production team. In light of Matthew’s words, Charlie reacted in a similarly thoughtless fashion”.

Upon hearing the comments made by Matthew Wright, the series editor acted immediately to remind Matthew through his ear-piece that this was a serious news story “covering the death of a 16 year old and the conversation moved onto a more general discussion of the Western Isles, notably its fishing”. Channel 5 added that “this switch of topic was largely due to the presence on the panel of naturalist Jeremy Wade, with whom Matthew had spoken at length about fishing earlier in the programme” and was an attempt to change the topic of the discussion.

Channel 5 said “with the benefit of hindsight, and in subsequent discussions with Channel 5’s legal and editorial teams..., it would have been better to issue an apology in the 6 December programme and it is regrettable that this did not occur”. Instead the Licensee explained that an agreed form of words was “carefully drafted to represent the sincere sentiments of Matthew, Channel 5 and the producers” to be broadcast the following day. On 7 December 2011, Matthew issued an apology during the live broadcast of *The Wright Stuff*. Channel 5 noted however that the apology included the additional “ad-libbed” comments: “*You know me - touched by death too many times in my life to belittle anything like that. Not helped though by people running campaigns - report Matthew Wright to Ofcom. I mean, grow up, folks ... I’m very sorry all the same*”.

Channel 5 explained that the additional comments made by Matthew were intended to highlight the fact that he was aware of an organised online campaign against him urging people to complain to Ofcom, and that in his opinion this “only served to fuel the hurt felt by the Liam’s family and the local community, and threatened the opportunity to remedy the hurt and distress he unintentionally caused Liam’s family and friends and community the previous day”. The Licensee added that these ad-libbed words used by the presenter clearly failed to convey his intended meaning and instead only led to further distress. It was therefore agreed, by the senior producers, Channel 5 and Matthew Wright that another, scripted apology was required and this further apology was broadcast during *The Wright Stuff* on 8 December 2011.

The Licensee removed the editions of *The Wright Stuff* broadcast on 6 and 7 December 2011 from Channel 5’s online catch up service (‘Demand 5’) to minimise the potential to cause further offence to viewers. Channel also launched a review of the editorial and compliance guidelines and processes in place between Channel 5 and the production company responsible for *The Wright Stuff*, in addition to conducting further compliance training with all senior members of the production team. Channel 5 added that Matthew Wright had personally written and telephoned Liam Aitchison’s family and issued a public apology in his weekly column in the “Star on Sunday” newspaper.

## **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 “generally accepted standards” are applied so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material.

These standards are reflected in Section Two of the Code. In particular under Rule 2.3 broadcasters must ensure that material which may cause offence is justified by the context.

In applying Rule 2.3, Ofcom must have regard to the need for standards to be applied “in the manner that best guarantees an appropriate level of freedom of expression”. The Code is drafted in accordance with Article 10 of the European Convention of Human Rights, which sets out the right of a broadcaster to impart information and ideas and the right of the audience to receive them without unnecessary interference by public authority. In accordance with the fundamental right to freedom of expression, the Code does not prohibit broadcast content from referring to any particular topic, subject or group of people. However, broadcasters are required to ensure that potentially offensive material is justified by the context.

In reaching a decision as to whether a broadcaster has contravened the Code, Ofcom can either: record a breach of the Code; resolve the issue (where the broadcast material breaches the Code, but the broadcaster has taken sufficient corrective steps to remedy the breach); or, decide that there was no breach of the Code.

We noted that the news article concerned a recently launched murder investigation which had received extensive media coverage not only in the Western Isles but also more widely in the UK.

Ofcom noted that Matthew Wright’s comments included a phrase (“*There’s been another murder*”) commonly associated with the fictional Scottish detective Jim Taggart from the television series *Taggart*, and delivered in a mock Scottish accent. Ofcom also noted Charlie Baker’s subsequent response “*The longest episode of Taggart of all time there’s lots of down-time in between*” and his remarks regarding the quality of fishing in the Western Isles. Our view was that all these comments were clearly capable of causing offence to viewers given the sensitivity surrounding the very recent murder of a 16 year old teenager in an isolated Scottish community.

Ofcom went on to consider whether these remarks about the murder of Liam Aitchison were justified by the context. As set out in the Code, “context” includes such factors as the editorial content of the programme and the likely expectations of the audience.

We noted that this is a weekday morning topical magazine programme broadcast live and is hosted by Matthew Wright, an experienced broadcaster and journalist. The newspaper review is a regular item on the programme and the newspaper article being discussed related to the murder investigation into the death of the teenager, Liam Aitchison. The story had been reported in a number of newspapers that day, notably because it was the first murder investigation in the Western Isles for 40 years.

Ofcom took account of the fact that *The Wright Stuff* is a live programme, and comments made by Matthew Wright and Charlie Baker during the news review were clearly unscripted and made spontaneously. Charlie Baker’s remarks in particular were made in response to a comment by the presenter of the programme, which according to Channel 5 was unexpected to the production team and to Charlie Baker given the briefing exercise before the programme started.

Notwithstanding this editorial context, Ofcom considered that the degree of offence that the comments caused was considerable. This was mainly because Matthew Wright responded to Charlie Baker's introduction to the news story by making a joke that made light of the murder. He then went on to laugh loudly with the audience as the conversation continued. In doing so, he appeared to pay no regard to the unfortunate circumstances of this murder case concerning the killing of a 16 year old well known to many within the local community in which he lived. The potential for offence was heightened because Matthew Wright made his joke while a photograph of the victim Liam Aitchison was being shown on-screen.

Ofcom noted Channel 5's submission that the change in topic to fishing in the Hebrides was intended to minimise the risk of causing further offence to viewers. However, we considered that the continuing light hearted tone may to some extent have increased the degree of offence caused.

We also observed that no apology was broadcast on 6 December in the programme itself. The absence of a timely apology was likely to have increased the degree of offence.

The audience for *The Wright Stuff* is accustomed to Matthew Wright and his guests discussing a variety of topics in the news and making controversial remarks, often on the spur of the moment and to stimulate a response from guests and the studio audience. In Ofcom's opinion however, and as Channel 5 has acknowledged, the comments made by Matthew Wright on this occasion went beyond the likely expectations of the audience for this programme.

Ofcom therefore concluded that there was insufficient context to justify the offence that Matthew Wright's comments caused to viewers, and in this instance Channel 5 did not apply generally accepted standards.

Absent of any mitigation, the programme would have been in breach of the Code. However, Ofcom noted that: Channel 5 broadcast two apologies on 7 and 8 December 2011 (although the apology broadcast on 7 December was not made in its intended form and the additional comments made by Matthew Wright potentially caused further offence to viewers), and the presenter has apologised directly to Liam Aitchison's family; Channel 5 removed the 6 and 7 December programmes from its on demand service; and, Channel 5 has taken steps to improve compliance in response to this incident, in particular reviewing the editorial and compliance guidelines and processes in place between Channel 5 and the production company responsible for producing *The Wright Stuff*.

Ofcom recognises that the comments caused considerable offence, particularly to viewers in Scotland. On balance, however, and in light of the steps taken by Channel 5 to mitigate this offence, Ofcom considered the matter resolved.

## **Resolved**

## Fairness and Privacy Adjudications

### Upheld

#### Complaint by Dr Parvinder Singh Garcha on behalf of The Falcon Group

*Live: Guru Ghar Diyan Praptiyan, The Sikh Channel, 23 February 2011 and Discussion Programmes, The Sikh Channel, 4 and 5 March 2011*

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**Summary:** Ofcom has upheld this complaint of unjust or unfair treatment made by Dr Parvinder Singh Garcha on behalf of The Falcon Group.

The Sikh Channel broadcast a series of discussion programmes relating to a forthcoming election of the Executive Committee of Trustees to the Gurdwara<sup>1</sup> Sri Guru Singh Sabha (“the Gurdwara”) in Southall, west London which is the largest Sikh Gurdwara outside India. In the programmes broadcast on 23 February 2011 and 5 March 2011, representatives from the then incumbent Executive Committee (“the Lion Group Committee”) were featured discussing the achievements of the Lion Group Committee and its management of the Gurdwara’s finances. In particular, Mr Gurmail Singh Malhi (the leader of the Lion Group) referred to a number of examples that he claimed demonstrated financial mismanagement on the part of the previous Committee. The previous Committee was represented by an opposition group in the Gurdwara election, the Falcon Group, (“the Falcon Group Committee”).

On 4 March 2011, a further discussion programme was broadcast in which representatives of the Falcon Group talked for 45 minutes about its election manifesto and the forthcoming Gurdwara election. However, the Falcon Group said that they were unable to comment on the remarks made by Mr Malhi in the programme broadcast on 23 February 2011 as the programme was cut short by 15 minutes.

Dr Parvinder Singh Garcha, the General Secretary of the Falcon Group Committee, complained to Ofcom on behalf of the Falcon Group that they had been treated unjustly or unfairly in the programme as broadcast.

Ofcom found the following:

- The broadcaster did not take reasonable care to satisfy itself that material facts surrounding the allegations made by Mr Malhi and the Falcon Group Committee’s management of the Gurdwara’s treasury were not presented, disregarded or omitted in a way that was unfair to the Falcon Group. Ofcom therefore found that the Falcon Group Committee was portrayed unfairly in the programmes as broadcast in this respect.
- While Ofcom recognised that the Sikh Channel had taken steps to give representatives of the Falcon Group an opportunity to respond the allegations made by Mr Malhi, in Ofcom’s view, the seriousness of the allegations, the potential impact and the timing in relation to the imminent Gurdwara elections, and the failure to ensure that the Falcon Group had the chance to address the allegations in the programme broadcast on 4 March 2011 resulted in unfairness to the Falcon Group. In all these circumstances, Ofcom considered that the

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<sup>1</sup> Gurdwara is the name of a Sikh place of worship.

broadcaster failed to provide the Falcon Group with an appropriate and timely opportunity to respond.

## Introduction

The Sikh Channel is a television service providing educational and religious programming for the Sikh community. It can be accessed throughout the UK and Europe via Sky television with selected programming available around the world via the internet.

A transcript in English (translated from the original Punjabi) of the relevant part of the programme broadcast on 23 February 2011 was prepared by an independent translation company for Ofcom. Also, the complainant provided Ofcom with a translated transcript of the relevant part of the programmes broadcast on 23 February and 5 March 2011. Both parties to the complaint confirmed that the translated transcripts fairly represented the content in the programmes relevant to the complaint and that they were content for Ofcom to rely on the transcripts in considering the complaint. The translated transcripts have been used to construct the following introductory paragraphs.

### *23 February 2011*

On 23 February 2011, the Sikh Channel broadcast a programme entitled *Guru Ghar Diyan Praptiyan*, in which a panel of guests discussed the arrangements for running Sikh Gurdwaras and the responsibilities of the management committees. Part of the discussion focussed on the management of the Gurdwara Sri Guru Singh Sabha (“the Gurdwara”<sup>2</sup>) in Southall, west London, which is the largest Sikh Gurdwara outside India. Among the discussion panel members were representatives from the then incumbent Executive Committee of Trustees of the Gurdwara (“the Lion Group Committee”). The members of this Committee were also members of the Lion Group, a particular section within the Gurdwara community. During the programme, the achievements of the Lion Group Committee were highlighted as was its efficient management of the Gurdwara’s finances. (This programme was broadcast in the run up to the election of a new Executive Committee of the Gurdwara which was to be held on 6 March 2011)<sup>3</sup>.

References were made in the programme to the financial management of the previous Committee (which was constituted by an opposition group in the Gurdwara election, the Falcon Group, “the Falcon Group Committee”). In particular, a reference was made to the collection of donations in the year 2007 to 2008 and a discrepancy (some £28,000) between the amount collected in 2007 to 2008 and the following year. The reason for the discrepancy was questioned in the programme and a panel member said “*we don’t say anything about it, but there is a question mark*”.

The discussion continued to look at the financial history of the Falcon Group Committee and a question was raised about what had happened to an amount of money that had been collected in donations intended for the Gurdwara. The amount of money raised by the Falcon Group Committee was also compared with the amounts raised by the Lion Group Committee. Criticism was made of the Falcon Group Committee for paying too much in bank interest and charges by saying that

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<sup>2</sup> Gurdwara is the name of a Sikh place of worship.

<sup>3</sup> The Falcon Group won the Gurdwara election.

*“they [the Falcon Group Committee] did not negotiate with the banks because the management has to be good to do so”.*

The programme went on to state that the Lion Group Committee had managed to negotiate a new building maintenance contract which had brought the charges for maintenance down and that they had secured building insurance for £18,000, rather than the £38,000 paid by the Falcon Group Committee. It was said in the programme that *“people need to think why it was so expensive in the past”* and *“why specific insurance companies were used”*.

Reference was made in the programme to the Falcon Group Committee having employed two people on salaries of £70,000 for *“opening and writing letters, legal notices etc”*. It was said in the programme that the Lion Group Committee did such work itself and employed volunteers and that the Lion Group Committee had reduced Gurdwara running costs and expenses while it managed to provide weddings at reduced rate, free funeral services and still collect more donations than the Falcon Group Committee. The discussion continued to compare examples of savings in expenditure between the Lion Group Committee and the Falcon Group Committee. It was also said in the programme that the Falcon Group Committee used *“a security camera”* when donation money was being counted and that the Falcon Group Committee had spent money on legal actions, thereby incurring unnecessary legal expenses. The discussion concluded with the representatives of the Lion Group Committee calling on people to *“elect the Lion Group because they are doing good work and they are expected to do good work”*.

Relying on the information provided to it by the independent translation of the programme, Ofcom noted that only the representatives of the Lion Group appeared in the programme. The Falcon Group was not referred to by name, nor were any individual representatives of the Falcon Group referred to.

#### *4 March 2011*

On 4 March 2011, the Sikh Channel broadcast a further discussion programme in which representatives of the Falcon Group talked for 45 minutes about its election manifesto and the forthcoming Gurdwara election. However, the Falcon Group did not comment on the remarks made by the Lion Group in the programme broadcast on 23 February 2011.

#### *5 March 2011*

On 5 March 2011, the eve to the Gurdwara election, the Sikh Channel broadcast another discussion programme in which only representatives of the Lion Group Committee took part. During the programme, it was stated that *“In the time of the current Committee nobody had a turban taken off. However, in the previous 14 years at every AGM, turbans were taken off”*. It was stated that requests for the accounts of the Falcon Group Committee had been requested by the Lion Group Committee, but that no response had been received. The programme also stated that the Falcon Group Committee had broken the religious code of conduct and that for the past 14 years the Falcon Group Committee had the same people as its President and General Secretary. The programme concluded with a *“request”* for people to vote for the representatives of the Lion Group.

The complainant, Dr Parvinder Singh Garcha, held the position of General Secretary of the Falcon Group Committee alluded to in the programmes. Dr Garcha is also the current General Secretary of the Executive Committee of Trustees to the Gurdwara.

Following the broadcast of the programmes, Dr Garcha complained to Ofcom that the previous Committee was treated unjustly or unfairly in the programmes as broadcast.

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

In summary, Dr Garcha complained that the Falcon Group (as the previous Committee) was treated unjustly or unfairly in the programmes as broadcast in that:

- a) In the programme broadcast on 23 February and 5 March 2011, representatives of the Lion Group (the only group of the Gurdwara community to be represented on the programme) made allegations of financial "impropriety" and mismanagement against the Falcon Group when it formed the previous Committee to the Gurdwara. In particular, Dr Garcha said that the allegations related to the management of the Trust and financial impropriety in connection with the use of donations, which the Falcon Group has always refuted.

In summary and in response to the complaint that allegations of impropriety were made against the Falcon Group, the Sikh Channel said that the allegations of financial impropriety were made by all parties in the Gurdwara election and this was a matter being alleged by all the groups. It said that sufficient time was given to the complainant in the "joint programming" to deal with the allegations.

The Sikh Channel said that it was asked to provide additional programming by the complainant and that this was agreed to. It said that the reasons why the additional programming did not occur may have been due to an inability to agree schedules or times for the programming. However, with the passage of time, the Sikh Channel said that it could not confirm whether this was the reason. Nevertheless, the Sikh Channel said that the complainants had confirmed that the channel did agree and did offer them additional programming in which to address their concerns.

- b) Representatives of the Falcon Group were deliberately not allowed an opportunity to respond to the serious allegations made in the programmes.

By way of background, Dr Garcha said that the broadcaster had promised representatives of the Falcon Group an opportunity to respond to the remarks made by the Lion Group in the programme broadcast on 23 February 2011 but the representatives of the Falcon Group did not have the opportunity to comment at the end of the programme broadcast on 4 March 2011. Dr Garcha said that the plan for the 4 March 2011 hour long programme had been that the first 45 minutes of it would be given over to election and manifesto discussion by the Falcon Group and then the final 15 minutes would address the allegations made by the Lion Group. However, Dr Garcha said that the programme makers had told the Falcon Group that they had to cut the programme short by 15 minutes. This resulted in the Falcon Group not having their opportunity to address the allegations made by the Lion Group in the earlier programme.

Dr Garcha said that on the eve of the Gurdwara election on 5 March 2011, the broadcaster had offered the Falcon Group an opportunity to voice their comments, but the Falcon Group had to decline the offer as it was given too late and on the eve of the election which was a very busy time for its representatives.

In response to this complaint, the Sikh Channel said that it recalled that the Falcon Group was unhappy because they alleged that the channel did not

provide them with a sufficient opportunity to respond to the allegations made by the Lion party in the election. The Sikh Channel said that this was a subjective view and that the programme broadcast on 23 February 2011 had a scheduled length and so it was not possible for the broadcaster to extend this arbitrarily. The important issue the Sikh Channel said was that the Falcon Group was given an opportunity to appear and present their case and deal with all issues between the two groups.

The Sikh Channel said that it had acted reasonably, fairly and completely impartially throughout its dealings with the different Groups during the election and it asked the complainant to provide any motive or incentive for the channel to favour the Lion group over the others. It said that it had no connections with the Lion Group and, in fact, the Lion Group were closely involved with a competitor channel. The Sikh Channel also said that it rejected completely Dr Garcha's assertions which, it said, were made out of "misguided personal hurt" over "a general debacle" that it said occurred between members of the Lion and the Falcon Groups.

## Decision

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

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

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included recordings of the programmes as broadcast and translated transcripts of them. It also considered both parties written submissions.

In considering the complaints, Ofcom had regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals, as set out in Rule 7.1 of the Ofcom Broadcasting Code ("the Code"). Ofcom took account of Practice 7.9 of the Code, which states that broadcasters must 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. It also took account of Practice 7.11, which states that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

- a) Ofcom considered the complaint made on behalf of the Falcon Group that the programmes broadcast on 23 February and 5 March 2011, which took place in the run up to the Gurdwara elections in 2011, were unfair in that the Lion Group made allegations of financial "impropriety" and mismanagement against the Falcon Group when it formed the previous Committee to the Gurdwara.

Having watched, and read the translated transcripts of, the programmes broadcast on 23 February and 5 March 2011, Ofcom noted the following extracts from both programmes that related directly to the financial management of the

Gurdwara's treasury by the Falcon Group Committee specifically raised in the complaint.

*23 February 2011*

Ofcom noted that in response to a question by the presenter of the programme as to how the Lion Group committee had kept the Gurdwara's treasury "*financially strong*", Mr Malhi (who was the "Group Leader" of the Lion Group Committee) spoke about a discrepancy in the accounting for cash collections made by the Gurdwara for the Pinglewara, a charity in Amritsar in India, in the period between 2007 and 2008 (when the Falcon Group formed the Gurdwara committee). In particular, Mr Malhi said:

Mr Malhi: *"In 2007-2008, the collection which they have shown in the accounts was £3,807 for one year. From January 2009 to January 2010, it was £32,586.*

Presenter: *Such a huge difference?*

Mr Malhi: *The difference is £28,789. We are comparing only one year... Why there is a difference of £28,000 within one year? There is a question mark [over this discrepancy]. We cannot say anything about it".*

Mr Malhi went on to say that between the years 2001 to 2006, the Falcon Group Committee claimed that it had raised and sent 1,311,000 Indian Rupees to the Pinglewara, but that between 2007 and 2008 no money was actually sent. Mr Malhi stated:

*"...But during 2007-2008, they [the Falcon Group Committee] surely collected £3,800 and did not send it there. Where did the money go? Only they can verify this because we do not have it..."*

Mr Malhi said that, in comparison, the Lion Group Committee had raised approximately 4.2 million India Rupees in two years.

Ofcom noted that in response to the presenter's questions relating to the reduction of the Gurdwara's expenses by the Lion Group Committee, Mr Malhi explained that this was owing to the amount being paid in bank interest. He said that:

*"We can only tell you what we did. As to why the bank charges were higher in the past; perhaps they [the Falcon Group Committee] did not negotiate with the banks. It is essential to have good management".*

Mr Malhi also referred to the Gurdwara's building maintenance and insurance costs and said that the premium paid had been £138,000 for a three year period. In particular, Mr Malhi said:

*"It [the building maintenance and insurance policy] was a tied-up contract with a notice period of three months. If no notice was given within three months, the contract would automatically renew for the next three years. When this committee took over [i.e. the Lion Group Committee], it immediately gave the notice and cancelled it. We sought quotations and now our maintenance and insurance costs are down from £47,000 to £25,000 [annually]... For buildings*

*insurance, £37,000 had already been paid, but now we have done it for only £18,900. The fellowships [i.e. the Gurdwara membership] need to think on their own why this was so, why particular companies were chosen for insurance purposes, for what reason £18,000 extra was paid”.*

Ofcom then noted the following exchange between Mr Malhi and the presenter:

Mr Malhi: *“Then, there were two employees at the Guru’s House whose task was to open letters, write letters, serve legal notices, etc. These were being paid £70,000 per year. In our two years, we did not have paid employees for these tasks but these were done by the committee and volunteers. We took help from volunteers from the fellowship.*

Presenter: *Were these men employed just to open letters?*

Mr Malhi: *Their task seemed to be opening letters, but we cannot explain because we do not have their job contracts written, with job descriptions. It seems to us that they were supposed to write letters and serve notices to keep some individuals away from the Guru’s House – they performed such tasks. They were paid £70,000.*

Presenter: *You paid nothing for this in two years.*

Mr Malhi: *We paid nothing for this in two years. The total amount saved, if we count it all, is £601,873.*

Presenter: *Saved in two years?*

Mr Malhi: *Saved in one year. £601,873”.*

Later in the programme, Ofcom noted that Mr Malhi said that there had been a dispute between the Lion Group Committee and the Falcon Group Committee over accounts that Mr Malhi claimed had not been submitted by the Falcon Group Committee. He said that the president and general secretary of the Falcon Group did not explain the reasons for not providing the full accounts to the Lion Group Committee when it was elected. Mr Malhi then said a decision was made by the Lion Group Committee to expel the president and general secretary of the Falcon Group from membership of the Gurdwara. He said that this decision led to legal proceedings being instigated by the Falcon Group and that the Lion Group Committee was obliged to defend the action. Mr Malhi said that:

*“We could have resolved this dispute by sitting [and talking] and there was no need to spend so much money [on legal proceedings]. But the committee [the Lion Group Committee] had no option. When the case was filed against the Guru’s House [the Gurdwara], the committee was bound to defend it. They [the Falcon Group] are responsible for this expenditure. The committee is not responsible. They took the case to the court and made us incur expenses.”*

Towards the end of the programme, the presenter asked Mr Malhi directly “[d]o you want to speak more about the finances?” to which Mr Mail replied:

*“In the end the truth will win...The previous committees [i.e. constituted by members of the Falcon Group] before 2008, had paid £70,000 in legal*

*expenses just to stop two fellowship members from praying in the Guru's House [the Gurdwara]. We collected these figures and questions were asked about this in 2006 and 2007, but we received no replies. It is the same people who claim that £500,000 expense has been incurred. It is the same people who burdened the Guru's House [the Gurdwara] with this expense".*

5 March 2011

In the programme broadcast on the eve of the Gurdwara election, Ofcom noted that the programme again featured representatives from the Lion Group including Mr Malhi. During the programme, Mr Malhi referred to the achievements he claimed had been made by the Lion Group Committee in increasing the Gurdwara's income. Mr Malhi compared the amounts raised in donations by the Lion Group Committee and the Falcon Group Committee and said that:

*"In the Pinglewara [collection] box, from 2001 to 2008, only Rs 1,300,000 [Indian Rupees] was collected. But in two years, from 2008 to 2010, we collected Rs 4,200,000. The [Falcon Group] Committee for 2007-2008 showed only £3,800 in this box. We are not saying this for nothing. These are written in the AGM reports, which clearly show that even this small amount is missing. There is no clarification about it. We do not accuse anyone".*

Further into the programme, Ofcom noted comments made by Mr Malhi comparing the amounts spent on expenses between the Lion Group and the Falcon Group Committees:

*"I return to the issue of finance because the main issue of every temple is finance. The [Lion Group] Committee has to scrutinize and see things in detail so that people's donated money is not wasted. If we look at buildings insurance, the previous committee was paying £37,000. Now it is £18,900. The maintenance charges for the Havelock Road building were £47,000 per year. Now it is done in £25,000. Bank charges have been brought down by £15,000. Rubbish collection expenses have been reduced by £18,000. We need to look at all these things as to how these expenses have been brought down. Likewise, they were paying £70,000 to employ two persons for opening letters. We did that work by using volunteers. It all counts".*

Towards the end of the programme, Ofcom noted the following response by Mr Malhi to the presenter's invitation to him to comment about the accusation made by some people that the Lion Group Committee had spent money on legal proceedings:

*"When the legal notice was served [by the Falcon Group on the Gurdwara], the two previous treasurers came [forward] to clarify but the general secretary and the [president] did not come to clarify. The [Lion Group] Committee had the right to take action... They [the Falcon Group] had been running the system for 14 years and they did not submit the accounts. They just handed over the keys".*

Ofcom observed that during the lead up to the Gurdwara election, the Sikh Channel had broadcast a number of programmes relating to the elections and had given several interested parties (including the Lion and Falcon Groups) the opportunity of presenting their manifestoes and statements on how they would manage the future of the Gurdwara. Ofcom recognised that the Falcon Group had taken part in a programme broadcast on 4 March 2011 in which that had set

out their manifesto details but had not been able to respond to the allegations made by the Lion Group, in the programme broadcast on 23 February 2011, owing to the programme being cut short by the programme makers by 15 minutes.

In Ofcom's view, the clear inference arising from the comments and comparisons made by Mr Malhi in the programmes broadcast on 23 February and 5 March 2011 was that the Falcon Group had not managed the Gurdwara's finances properly when its representatives had formed the Gurdwara's Committee. In Ofcom view, Mr Malhi's comments amounted to serious allegations of, at worst, wrongdoing or, at the least, incompetence on the part of the Falcon Group Committee. Ofcom considered that the allegations were made more serious because of the sensitive time at which they were broadcast, namely the build up to the elections to the Committee of the Gurdwara. Ofcom noted that Mr Malhi's remarks went unchallenged by the presenter at the time they were made and that the programmes were broadcast with no other information to counter the allegations being included.

Ofcom recognised the broadcaster's right of freedom of expression and the rights of members of the Gurdwara community to debate issues and exchange views on topics surrounding the management of the Gurdwara and the election of a new Gurdwara Committee (sometimes in a robust way questioning the conduct and motives of those holding office). However, with such rights comes the responsibility for the broadcaster to ensure that material facts are not presented, omitted or disregarded in a way that creates unfairness to an individual or organisation.

Ofcom took account of the fact that the comments relating to the Falcon Group Committee's management of the Gurdwara's treasury were made by a contributor to the programme, namely Mr Malhi who was the leader of the rival Lion Group, and that the programmes were broadcast live. While Ofcom was aware that the programme's presenter did not himself make the comments relating to the alleged mismanagement of treasury finances, it noted however, that he did not at any point challenge or query Mr Malhi's remarks. Nor did the presenter make it clear in the programmes for the benefit of the viewers that representatives of the Falcon Group were not present to respond to the allegations or, in the case of the programme broadcast on 23 February 2011, to explain the Falcon Group would be given an opportunity to respond to Mr Malhi's comments in a future programme.

Ofcom considered that Mr Malhi's allegations went unchallenged in the programme, and no possible alternative reasons for the why the Falcon Group Committee had managed the treasury finances in the way it had were given, nor was it pointed out that the channel proposed to give the Falcon Group an opportunity to state its case in a future programme. In Ofcom's view, Mr Malhi's allegations were presented as not being disputed. In Ofcom's view, the presentation of these allegations in the programme was likely materially and adversely to affect viewers' perception of the Falcon Group Committee's performance. Consequently, taking all these factors into account, Ofcom concluded that in the circumstances of this case the broadcaster did not take reasonable care to satisfy itself that material facts surrounding the allegations made by Mr Malhi and the Falcon Group Committee's management of the Gurdwara's treasury were not presented, disregarded or omitted in a way that was not unfair to the Falcon Group.

Ofcom therefore found that on balance and on the facts of this particular case the Falcon Group Committee was portrayed unfairly in the programmes as broadcast in this respect.

- b) Ofcom then considered the complaint that the Falcon Group was deliberately not given an appropriate and timely opportunity to respond to the allegations.

For the reasons already given in Head a) of the Decision above, Ofcom considered that Mr Malhi's comments made in the programmes broadcast on 23 February and 5 March 2011 amounted to allegations of wrongdoing or incompetence against the Falcon Group Committee for its management of the Gurdwara's treasury. Normally, where significant allegations are made about an individual or organisation in a programme, as they were in this particular case, then that individual or organisation should be given an appropriate and timely opportunity to respond to them. However, Ofcom recognised that in certain formats of programming, such as news reporting or live events coverage, and in particular live interviews and studio discussions, it is not always possible for the broadcaster to obtain responses from others prior to or during the broadcast. However, in such circumstances, Ofcom considers that when including material that has the potential to amount to a significant allegation, reasonable care must be taken by the broadcaster to ensure that the presentation of the broadcast material is consistent with the requirements of the Code and that it does not mislead viewers or portray individuals in a way that is unfair.

Ofcom noted that the programmes were part of the Sikh Channel's coverage of the Gurdwara elections and understood, due to the nature of this type of programming, that each programme need not reflect all perspectives. However, as set out above, Ofcom took the view that as significant allegations were made in the broadcast about the Falcon Group Committee's handling of the Gurdwara treasury, it was incumbent on the Sikh Channel to provide them with an appropriate and timely opportunity to respond to those allegations. Ofcom noted from the Sikh Channel's statement in response to the complaint and from the complainant's submission that the Falcon Group was offered an opportunity to respond to the allegations in the programme broadcast on 4 March 2011, but that they were unable to address the allegations owing to the programme being cut short by 15 minutes. Ofcom also noted that the Sikh Channel offered the Falcon Group a further opportunity to respond in the programme broadcast on 5 March 2011, but that the offer was declined by the complainants because according to the complainants it was given too late and on the eve of the election which was a very busy time for its representatives.

Ofcom recognised that the Sikh Channel had taken steps to give representatives of the Falcon Group an opportunity to respond to the allegations made by Mr Malhi. However, in Ofcom's view, the seriousness of the allegations, their potential impact and their timing in relation to the imminent elections, and the failure to ensure that the Falcon Group had the chance to address the allegations in the programme broadcast on 4 March 2011 resulted in unfairness to the Falcon Group. In all these circumstances of this case, Ofcom considered that the Sikh Channel failed to provide representatives of the Falcon Group with an appropriate and timely opportunity to respond.

Taking into account all of the above, Ofcom considered that on balance the programme included serious allegations about the Falcon Group Committee. As a result of the Sikh Channel's failure to take reasonable care to satisfy itself that material facts had not been disregarded or omitted in a way that was unfair to the

complainants, or to provide them with an appropriate and timely opportunity to respond to the allegations, the programmes resulted in unfairness to the complainants in the circumstances of this case.

**Accordingly, Ofcom has upheld Dr Garcha's complaint made on behalf of the Falcon Group of unjust or unfair treatment in the programmes as broadcast.**

## Upheld

### Complaint by Ms B

*Reporting Scotland, BBC1 Scotland, 14 September 2011*

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**Summary:** Ofcom has upheld this complaint of unwarranted infringement of privacy in the programme as broadcast made by Ms B.

A news item included footage taken at the Canongate Youth Project (“the Project”) in Edinburgh which provides educational and personal development opportunities for young people. Footage of a number of young people sitting at computer screens was shown in the report, including a close-up image of one computer screen on which could be seen the first page of a curriculum vitae (“CV”). The CV shown in the report belonged to Ms B’s daughter, whose full name, address, email address and mobile telephone number were clearly visible from the footage. Her academic qualifications and her “personal profile” paragraph were also clearly visible. Along with the footage of the computer screen, footage of Ms B’s daughter herself sitting at the computer screen was also shown. Ms B’s daughter was 15 years old at the time the footage was broadcast.

Ms B complained to Ofcom that her daughter’s privacy was unwarrantably infringed in the programme as broadcast in that footage of her daughter and her daughter’s CV, which contained personal information, was included in the programme without consent.

In summary, Ofcom found that Ms B’s daughter had a legitimate expectation of privacy in relation to the broadcast of the footage of her and the disclosure of the private and personal information contained in her CV. In the circumstances of this case, and in the absence of appropriate consent, 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 the report unwarrantably infringed Ms B’s daughter’s privacy in the programme as broadcast.

#### Introduction

On 14 September 2010, BBC1 Scotland broadcast at 18:30 hours an edition of its regional news programme, *Reporting Scotland*. This edition included a report about proposals for the reform of the training and education sector in Scotland and the possible merger of some universities and colleges. The report included footage taken of the Canongate Youth Project (“the Project”) in Edinburgh which provides educational, recreational and personal development opportunities for young people. In particular, it reported on its work in preparing young people for employment and how it was helping them with interview techniques, job application forms and in creating a curriculum vitae (“CV”).

Footage of a number of young people sitting at computer screens was shown in the programme, including a close-up image of one computer screen on which could be seen the first page of Ms B’s daughter’s CV. Ms B’s daughter’s full name, address, email address, and mobile telephone number were clearly visible from the footage, as were her academic qualifications and a “personal profile” paragraph. Along with the footage of the computer screen, footage of Ms B’s daughter herself was also shown in profile sitting at the computer. The footage included in the programme

clearly identified Ms B's daughter, who was 15 years old at the time the footage was broadcast.

Following the broadcast of the programme, Ms B complained to Ofcom that her daughter's privacy was unwarrantably infringed in the programme as broadcast.

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

Ms B complained that her daughter's privacy was unwarrantably infringed in the programme as broadcast in that footage of her daughter and her daughter's CV, which contained personal information such as her name, address and qualifications, was included in the programme without consent.

By way of background to the complaint, Ms B said that she was concerned about the impact on her daughter's privacy and her safety.

In response, the BBC said that it regretted the inclusion of footage containing Ms B's daughter's personal information and offered its unreserved apologies to Ms B and her daughter.

The BBC said that it had explained to Ms B that neither the cameraman nor the reporter realised that the details had been filmed. It said that the information was subsequently broadcast as the result of an oversight by the programme makers, who fully accepted that they should have noticed what was on screen and acted to prevent the footage being included in the programme. The BBC said that the programme makers had assured Ms B that the programme would not be repeated and that it would not be made available online.

The BBC said that at no point during filming did Ms B's daughter inform the programme makers that she did not wish to be filmed. However, it accepted that, in any case, parental consent would normally have been sought since at the time of filming Ms B's daughter was 15 years old. The BBC said that the programme makers had sought to ensure before filming that everyone being filmed was at least 16 years old and that a member of staff had specifically asked all those in the room to confirm that they were of age and that they were content to be filmed. It had also been confirmed by the Project that it was specifically aimed at 16 to 19 year olds.

The BBC said that it had made efforts to ensure that this mistake is not repeated. The BBC said that the matter had been discussed with the programme makers, as well as with the wider BBC Scotland news team, who had been reminded of their obligation to prevent the disclosure of such personal details.

### **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 a transcript of the programme as broadcast, and both parties' written submissions.

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

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

Ofcom considered Ms B's complaint that her daughter's privacy was unwarrantably infringed in the programme as broadcast in that footage of her daughter and her daughter's CV, which contained personal information such as her name, address and qualifications, was included in the programme without 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 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 8.20 of the Code which states that broadcasters should pay particular attention to the privacy of people under sixteen. Ofcom also took account of Practice 8.21 of the Code which states that where a programme features an individual under sixteen or a vulnerable person in a way that infringes privacy, consent must be obtained from: a parent, guardian or other person of eighteen or over in loco parentis; and wherever possible, the individual concerned; unless the subject matter is trivial or uncontroversial and the participation minor, or it is warranted to proceed without consent.

In considering whether or not Ms B's daughter's privacy was unwarrantably infringed in the programme as broadcast, Ofcom first considered the extent to which she could have had a legitimate expectation of privacy in the footage of her and her personal details which were broadcast without consent.

With particular reference to Practices 8.20 and 8.21 of the Code, Ofcom considered that particular attention must be paid to the privacy of people under the age of 16 years and noted that Ms B's daughter was 15 years old at the time of the broadcast of the programme in which she appeared.

Ofcom also considered the nature of the footage of Ms B's daughter and the details on her CV (which appeared in the programme for approximately 12 seconds) and the context in which the footage was used in the programme. Ofcom noted that Ms B's daughter was shown sitting at a computer screen with another young woman. Ms B's daughter was shown both from the back and in profile and her face was not obscured. The footage also included an image of the computer screen which clearly showed elements of Ms B's daughter's CV, including her full name, address, email address and mobile telephone number. Also visible were her academic qualifications and her "personal profile" paragraph. This information was visible in the item for approximately four seconds. Ofcom considered that the information contained in Ms B's daughter's CV and disclosed in the programme was private in nature and revealed personal information about her.

Ofcom took the view that Ms B's daughter was not the focus of the report and that no specific reference was made to her or the information contained in her CV. However, it considered that she was, nevertheless, focussed upon in that her face and CV details were shown in close-up in the programme. Ofcom therefore considered that the unobscured footage of Ms B's daughter rendered her identifiable.

Given that Ms B's daughter's was under the age of 16 at the time of the broadcast and taking into account the fact that she and the personal details contained in her CV were included unobscured in the footage report, Ofcom considered that she had a legitimate expectation of privacy, in relation to the footage of her and her personal details.

Having found that Ms B's daughter had a legitimate expectation of privacy in relation to the inclusion of the footage of her and the disclosure of personal information contained in her CV without appropriate consent, Ofcom went on to consider the broadcaster's competing right to freedom of expression and the need for broadcasters to have the freedom to broadcast matters of genuine public interest without undue interference. In this respect, Ofcom considered whether there was sufficient public interest to justify the intrusion into Ms B's daughter's privacy by including the material complained about without appropriate consent.

Ofcom considered that the report was a serious piece of broadcast journalism and that there was a legitimate public interest in reporting on the proposals for the reform of the training and education sector in Scotland and to include footage taken of the Project in this context. Ofcom recognised that the inclusion of the footage of young people at the Project was an effective way of illustrating the issues being discussed in the report and the work carried out by initiatives like that provided by the Project. However, Ofcom considered that the broadcaster's right to freedom of expression to include footage of Ms B's daughter and to disclose personal and private information from her CV in the programme without have secured appropriate consent could not be justified as being in the public interest.

Therefore, on balance and given all the factors set out above, Ofcom concluded that the broadcaster's right to freedom of expression and to impart information and ideas and the audience's right to receive the same without interference, in the circumstances of this particular case, did not outweigh Ms B's daughter's expectation of privacy. Ofcom therefore found that the inclusion of footage of Ms B's daughter along with footage of a computer screen displaying private and personal information was not warranted without consent and that there was therefore an unwarranted infringement of Ms B's daughter's privacy in the programme as broadcast.

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

## Not Upheld

### Complaint by Dr David Southall

*Cutting Edge: A Very Dangerous Doctor, Channel 4, 12 May 2011*

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**Summary:** Ofcom has not upheld this complaint of unfair treatment made by Dr David Southall.

An edition of *Cutting Edge* looked at the story of Dr Southall, described in the programme as being “*recognised as one of Britain’s leading paediatricians and an expert in child abuse*”. The programme charted Dr Southall’s career, during the course of which he has been both respected for his work looking into child abuse and heavily criticised by some of the parents he accused of abusing their own children. The programme looked at the long running dispute between Dr Southall and a number of women he had accused of abuse and at his “striking off” the Medical Register by the General Medical Council (“the GMC”), his appeals against the striking off and his later reinstatement. It also examined the stories of some of the mothers he had accused of abusing their children and included interviews with some of those mothers and with Dr Southall and his supporters.

In summary, Ofcom found the following:

- The absence of a question mark from the title of the programme was not unfair, as the programme itself was clearly an investigation of the question as to whether Dr Southall was “*A Very Dangerous Doctor*”.
- Dr Southall was not unfairly portrayed in the programme, which set out in detail his position and that of his supporters and that of his opponents and critics. He was able to respond to the criticisms made of him.
- Criticisms made of Dr Southall by Dr Paul Johnson were clearly his professional opinion and Dr Southall was able to give his responses to those criticisms.
- Neither footage of an interview with Dr Southall nor archive footage of him and his partner outside the High Court was unfairly edited.

### Introduction

On 12 May 2011, Channel 4 broadcast an edition of its current affairs documentary series *Cutting Edge*. This edition looked at the story of Dr David Southall, described in the programme as being recognised “*as one of Britain’s leading paediatricians and an expert in child abuse*”. The programme explained that, early in his career, Dr Southall began to try to “*unravel the mystery of cot death*” and obtained permission for secret filming in hospital in an attempt to obtain evidence that, as he suspected, the parents were responsible in some cot death cases. The filming showed some incidents of abuse by parents and was followed by a number of diagnoses of parents with Munchausen’s Syndrome by Proxy (“MSBP”), in which attention-seeking parents induce accidents or illness in their children.

The programme charted Dr Southall’s career, during the course of which he was both respected for his work and heavily criticised by some of the parents he accused of abusing their own children. The programme looked at the long running dispute between Dr Southall and a number of women he had accused of abuse and at Dr

Southall's "striking off" the Medical Register by the General Medical Council ("the GMC"), his appeals against the striking off and his later reinstatement. It examined the stories of some of the parents Dr Southall had accused of abusing their children as a result of suffering MSBP and included interviews with them. It also included interviews with Dr Southall and some of his supporters<sup>1</sup>.

The programme included interviews with Mr Dave Hollisey-Maclean and Mrs Dee Hollisey-Maclean, who sought Dr Southall's help with their son Ben after Mrs Hollisey-McLean saw him on a television chat show. Ben was subsequently taken away from his family for a period of time due to concerns raised by Dr Southall and other professionals that his parents were responsible for his health problems. The programme explained that Mr and Mrs Hollisey-Maclean believed that Dr Southall had used Ben illegally for his research and that he was, in fact, responsible for brain damage suffered by Ben. It explained that their allegation that Dr Southall had assaulted Ben had been investigated by the police, but that the Crown Prosecution Service ("the CPS") had decided not to charge Dr Southall with any offences.

The programme also looked at the case of Ms Janet Davis, whose son suffered from a number of severe allergies. Ms Davis said that Dr Southall had tried on several occasions to instigate investigations into her alleged role in her son's health problems, but that social services had protected her and her family from him. She expressed her opinion that Dr Southall had been interested in using her son for research purposes. The programme said that she eventually took her case to the House of Lords<sup>2</sup>, which had acknowledged that she had been wrongfully accused and misdiagnosed as suffering from MSBP. Dr Southall said in the programme that the decision did not necessarily prove Ms Davis' innocence.

The programme also included interviews with Mrs Penny Mellor, who was described in the programme as Dr Southall's "*most lethal enemy, the main organiser of the campaign against him*". The programme explained that she had campaigned against Dr Southall for a number of years and represented families in their pursuit of him. The programme said that Mrs Mellor had been sentenced to two years' imprisonment for conspiracy to abduct a child and that she continued, after her release, to represent parents who she thought had been wrongly accused by Dr Southall.

The programme also included footage of Dr Paul Johnson, who criticised Dr Southall for his research methods, in particular his use of occlusion testing, which Dr Southall described as a "*standard lung function test*". Dr Johnson also criticised Dr Southall for his failure to get written consent from some parents for research.

The programme concluded by saying that the High Court had upheld Dr Southall's second appeal against his striking off and that he was, "*temporarily*", back on the Medical Register, but said that the victory could be a fleeting one, as he would now have to face a second GMC hearing that could result in him being struck off a second time.

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<sup>1</sup> By way of background, Ofcom noted a statement from the GMC, received on 8 February 2012, that "The GMC has no outstanding concerns about Dr Southall, who has remained registered and licensed to practice since May 2010".

<sup>2</sup> The House of Lords considered the question as to whether the parent of a minor child falsely and negligently said to have abused or harmed the child may recover common law damages for negligence against a doctor or social worker who, discharging professional function, has made the false and negligent statement, if the suffering of psychiatric injury by the parent was a foreseeable result of making it and such injury has in fact been suffered by the parent.

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

### **Summary of the Complaint and Channel 4's response**

Dr Southall complained that he was treated unjustly or unfairly in the programme as broadcast.

- a) Dr Southall complained that the title of the programme, without a question mark, implied that he was a dangerous doctor, without evidence being forthcoming in the programme.

Channel 4 said that the phrase "a very dangerous doctor" had been widely used about Dr Southall. He had been described as such during high-profile GMC Professional Conduct Committee hearings in 2004 and this had been widely reported in the media.

Channel 4 said that Dr Southall and the programme's director had a good, collaborative working relationship throughout the production of the programme. The director had ensured that Dr Southall was aware of allegations and criticisms made about him, on occasion showing him sequences from untransmitted interview footage so he could give his considered response. Dr Southall viewed the edited programme prior to transmission and, in consultation with him, some final changes were made to it to ensure it was entirely factually accurate. Dr Southall had indicated that he was happy with the final programme and told the director more than once that he thought the programme was "fair and balanced".

The programme makers felt that the title was powerful and fair in the context of the programme as a whole. It was not meant to be understood literally or as an endorsement of the description of Dr Southall, but was simply a reference to how he had been repeatedly described and was still considered by some. One of the primary aims of the programme was to examine whether or not the description of Dr Southall was justified. Channel 4 said that the title could not be considered in isolation and that it would have been clear to viewers that the title was not intended to be a statement of fact, to express any opinion about Dr Southall or to endorse such an allegation.

Channel 4 said that the programme explored in detail the controversy surrounding Dr Southall's work. He and his critics were given a platform to set out their sides of the argument and the programme also highlighted the important and pioneering contribution Dr Southall had made to medicine. It was clear that there was no easy answer as to who was right and who was wrong and that both sides were firmly entrenched in their belief that they were right.

Channel 4 said that the BBC had broadcast an edition of *Panorama* about Dr Southall in June 2009, also entitled "A Very Dangerous Doctor" and also without a question mark. Around the time the *Panorama* programme was broadcast, Dr Southall told the *Cutting Edge* director that he was delighted with it and thought the title was "very good". The *Cutting Edge* director told Dr Southall that Channel 4 was going to call the programme something like "A Very Dangerous Doctor" and Dr Southall had said that he did not care about the title. A few weeks later Dr Southall told the director that he did not like the title. Eventually, Dr Southall accepted that the title of the *Panorama* programme had not been followed by a question mark. Channel 4 said that he appeared to accept the title of the programme, without a question mark, and had made no further objection.

b) Dr Southall complained that he was unfairly portrayed in the programme in that:

- i) The programme was biased in favour of the mothers who appeared in the programme and little was made of Dr Southall's successful appeal to the High Court against the decision of the GMC to strike him off the Medical Register and the decision of the CPS not to take action over allegations made by Mr and Mrs Hollisey-Maclean.

Channel 4 said the director had been clear with Dr Southall from the start that the programme would examine the views of the people who had made complaints about him. It said that Dr Southall had accepted and welcomed this.

Channel 4 said that the programme emphasised Dr Southall's ground-breaking work in child protection and included extremely powerful, covertly recorded footage that highlighted how he had successfully challenged orthodox medical opinion and exposed incidents of MSBP. The programme also included a number of supporters of Dr Southall and his work. Throughout the programme, Dr Southall was given an opportunity to defend himself against critics and his responses were included.

Channel 4 said that both Dr Southall's successful appeal to the High Court and the CPS decision not to prosecute him in relation Mr and Mrs Hollisey-McLean's allegations were significant turning points in the programme's narrative and conclusion. The programme made it clear that Dr Southall's appeal had been successful, that he had been reinstated onto the Medical Register and that he still faced sanction from the GMC for certain other allegations which remain proved.

Channel 4 said that the programme also included a sequence about the CPS's decision not to prosecute Dr Southall in relation to allegations made by the Hollisey-McLean family and explored the impact of the decision on them.

Channel 4 said that when Dr Southall watched the programme before transmission he had raised no objections about the significance or prominence of his successful appeal or the CPS decision not to prosecute him.

- ii) Although the programme said that the CPS decided not to take forward Mr and Mrs Hollisey-Maclean's allegations against Dr Southall on the grounds that there was "insufficient evidence", this did not conform to what the police told Dr Southall.

Channel 4 said that the commentary stated that the CPS had decided not to pursue the Hollisey-McLean's' case against Dr Southall and that the police had told the family that the CPS believed there was "*insufficient evidence to secure a conviction*". Mrs Hollisey-McLean had shown the programme makers a confidential letter to her from the CPS, the relevant part of which confirmed this. Dr Southall had questioned this line of commentary when he viewed the programme prior to transmission and the director had explained that he had seen the letter from the CPS which stated that there was insufficient evidence. Dr Southall had accepted this explanation.

- iii) Dr Southall had informed the director that the House of Lords' judgment used to back up Ms Davis' allegation that he had negligently misdiagnosed abuse

was based on an “assumed set of facts”, so that the House of Lords could debate the merit of whether, if he and two other doctors had negligently misdiagnosed abuse, this could represent a failed duty of care. The director told Dr Southall that he had discussed this with Channel 4’s lawyers, who had decided that his interpretation, which was based on the advice of two legal teams advising him, was incorrect and that they would not be changing the programme to reflect the true situation applying to the comments of the law lords criticising him concerning his allegations against Ms Davis.

Channel 4 said that, in the Davis case, the House of Lords had noted that there had not been a trial as to whether the doctors had been negligent in their diagnoses, because the issue of whether Dr Southall had had a duty of care to Ms Davis had been dealt with as a “preliminary issue”. The House of Lords had ultimately found no duty of care and so Ms Davis’ action was halted. There was therefore no trial of whether Dr Southall had been negligent in diagnosing MSBP and suggesting that Ms Davis was harming her son. However, the House of Lords had acknowledged that Ms Davis had been wrongly accused, irrespective of whether there was negligence.

Channel 4 said that the commentary did not say Dr Southall had been negligent, but referred to the House of Lords’ clear acknowledgment that Ms Davis had been wrongfully accused of harming her son and that no suspicion remained against her.

When Dr Southall viewed the programme before the broadcast, he queried the proposed commentary on this. Although the director considered that the commentary fairly reflected both Dr Southall’s interpretation of the judgment and that of Ms Davis, the programme makers agreed to alter the commentary slightly. The commentary in the broadcast programme reflected Dr Southall’s position that the judgment did not necessarily prove Ms Davis’ innocence. In a conversation with the director before the broadcast, Dr Southall accepted that the judgment did acknowledge that Ms Davis had been wrongfully accused of harming her son. Dr Southall told the director he was happy that the programme now included his response and gave the clear impression that he accepted the amendments to the script.

- iv) The air time given to Mrs Mellor was inappropriate, given the sensitive nature of the programme’s content. Dr Southall said that Mrs Mellor had been convicted and imprisoned for conspiracy to abduct a child and that, as was clear from judicial review papers that Dr Southall had shown to the director, she continued to post confidential information from the courts on her various websites.

Channel 4 said that Dr Southall was told at the start that the programme would examine the opposing views of the families and campaigners and he had accepted this. It was important to explore Mrs Mellor’s role, as she was one of Dr Southall’s most trenchant critics and led a very public campaign against him. The programme made clear the “somewhat extreme” nature of Mrs Mellor’s campaigning and the details of her criminal past and her views were examined and challenged in the programme. The degree of Mrs Mellor’s prominence in the programme was an editorial matter for the programme makers and Channel 4. Dr Southall was given the opportunity to respond to any criticisms of him by Mrs Mellor and, where relevant and appropriate, his responses were included.

Channel 4 added that Dr Southall had viewed a “fine cut” of the programme on 11 April 2011, which included all the other interviewees, including Mrs Mellor, and made no objection to her appearance, the nature or extent of her contribution or anything she said about him.

- c) Dr Southall complained that the inclusion of footage of Dr Johnson in which he was critical of Dr Southall was unfair.
- i) Obtaining written consent for research was not standard in the 1980s, as Dr Johnson stated, but was a matter of concern to the research ethics committee.

Channel 4 said that Dr Johnson had been openly critical of Dr Southall’s work for many years and had challenged his research methods many times, in the media and as an expert witness in court cases. The programme makers felt that it was vitally important to include Dr Johnson’s comments, to help viewers understand the issues raised and the fact that there was a dispute between medical professionals and not just between Dr Southall and parents.

Channel 4 said that Dr Johnson did not claim in the programme that obtaining written consent for research was “standard” in the 1980s, but said that “*occlusion testing*” was not standard in the 1980s. He had also raised concerns about the way Dr Southall carried out occlusion testing, referring to it as “*a very liberal extension of occlusion testing*”.

As regards consent and Dr Southall’s letter to the hospital medical ethics committee seeking permission to conduct research without getting parents’ written consent, Channel 4 said that Dr Johnson was shown giving his opinion, as an expert medical practitioner, on the basis of the facts and Dr Southall responded in the programme. Dr Johnson and Dr Southall then gave their divergent views regarding patient consent with regard to these particular tests. Dr Johnson gave his opinion based on the facts and Dr Southall was given the opportunity to respond and his responses were included. Again, Channel 4 said that when Dr Southall viewed the programme prior to transmission, he did not object to this sequence.

- ii) Dr Johnson stated that Dr Southall harmed some children with his research, but produced no evidence to this effect.

Channel 4 said that, in response to a question from the director, Dr Johnson said he thought that Dr Southall’s research had “*probably*” damaged some children. It would have been clear to viewers that this was Dr Johnson’s professional opinion, based on his knowledge of the facts, the evidence before him about the way Dr Southall conducted occlusion testing and on the evidence of the complainants he was acquainted with, some of whom were included in the programme.

Channel 4 said that Dr Southall was aware of Dr Johnson’s contribution and was given the opportunity to respond to any criticisms made about him. On this specific point, it said that the commentary stated that: “*David dismisses Dr Johnson’s claim as nonsense*”. When he viewed the programme before transmission, Dr Southall said “... fine keep it in ...”, indicating that he may take legal action directly against Dr Johnson.

- iii) The programme did not make clear that Dr Johnson was not on the GMC Medical Register, even though Dr Southall had informed the director that this was the case before the programme was broadcast. This meant that Dr Johnson could criticise Dr Southall without fear of being sanctioned by the GMC, whereas Dr Southall could face sanctions if he criticised Dr Johnson.

Channel 4 said that Dr Johnson was not currently working in the UK and that it was not unusual for doctors to cancel their annual subscription fee and remove their names from the GMC Medical Register. Dr Johnson had informed the director that he was likely soon to go back on to the Medical Register. However, Channel 4 argued that whether or not Dr Johnson was on the GMC Register at the time he was interviewed was irrelevant, as he had spoken out many times against Dr Southall's methods, including at times when he was on the Register, and stood by his comments. Even if Dr Johnson had been on the Register, Channel 4 said that this would not have prevented him from saying what he did or led to him being placed under threat of sanction by the GMC.

Channel 4 said that on a number of occasions prior to broadcast, when Dr Johnson's comments were put to Dr Southall for response, Dr Southall stated merely that he did not care what Dr Johnson had said. However, Dr Southall's responses were included where appropriate.

- d) The programme was unfairly edited, in particular:

- i) When Dr Southall was asked why the parents were pursuing him, he was shown saying "*revenge*", when, in fact, he was unsure about this but believed that he had used this word in relation to Mrs Mellor's campaign against him.

Channel 4 said that the untransmitted footage of the interview showed that Dr Southall was responding to the question as to why the parents remained so intent on pursuing Dr Southall. He replied "*revenge*". It was clear from his references to "they" and "their" that he was talking about "the parents".

- ii) It included footage of Dr Southall and his partner leaving the High Court following his second, successful, appeal, but the programme suggested that it was following his first, unsuccessful, appeal.

Channel 4 said that the programme used archive footage of Dr Southall entering the High Court to illustrate the commentary about his on-going appeal. The footage was filmed with Dr Southall's permission during his second appeal, as the programme makers had no archive footage of him entering the High Court during his first, unsuccessful, appeal. Channel 4 said that the footage was simply used to illustrate the judicial process and had no material bearing on the narrative of the programme. The use of the footage was openly discussed and explained when Dr Southall viewed the programme prior to transmission and he said he fully understood and he accepted its use in this context.

## Decision

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

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

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, both parties' written submissions and a recording and transcript 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 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 decisions on the individual heads of complaint detailed below.

- a) Ofcom first considered the complaint that the title of the programme, without a question mark, implied that Dr Southall was a dangerous doctor, without evidence being forthcoming in the programme.

In considering this part of the complaint, Ofcom had regard to Practice 7.9 of the Code, which states that when 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 noted Channel 4's position that the title of the programme was not intended to be understood literally or as an endorsement of the description of Dr Southall and that Dr Southall had accepted the title.

Ofcom considered that the title, taken on its own, without a question mark, would have been likely to give prospective viewers the impression that the programme would present evidence that Dr Southall was indeed "*A Very Dangerous Doctor*". In Ofcom's view, it would have been preferable if the title had included a question mark, in order to alert viewers to the fact that the programme would be weighing up the arguments as to whether Dr Southall was or was not dangerous.

However, notwithstanding that the title appeared to be a statement, Ofcom considered that the programme itself clearly was an investigation of the question as to whether Dr Southall was "*A Very Dangerous Doctor*". It included extensive contributions from Dr Southall and his critics and it allowed viewers to form their own opinion of Dr Southall and his work. In these circumstances, Ofcom did not consider that the absence of a question mark in the title of the programme caused unfairness to Dr Southall.

Ofcom therefore found no unfairness to Dr Southall in this respect.

- b) Ofcom then considered the complaint that Dr Southall was unfairly portrayed in the programme.

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

Ofcom noted that Dr Southall worked closely with the director in the making of most the programme, was made aware of the allegations and criticisms that would be made in the programme and saw some of the untransmitted footage. Dr Southall saw the edited programme prior to broadcast and, following his input, some final changes were made to the programme. Ofcom noted that, on seeing the broadcast programme, Dr Southall was not happy with certain elements of the programme, as set out below. Ofcom considered the complaint of unfair treatment against the background of Dr Southall's involvement and input during the making of the programme.

- i) As regards the complaint that the programme was biased in favour of the mothers who appeared in the programme and little was made of Dr Southall's successful appeal to the High Court against the decision of the GMC to strike him off the Medical Register and the decision of the CPS not to take action over allegations made by Mr and Mrs Hollisey-Maclean, Ofcom first considered the content of the programme.

Ofcom noted that the programme opened with the following commentary:

*"This doctor has been recognised as one of Britain's leading paediatricians, an expert in child protection. He has accused these women of abusing their children and demanded their kids be separated from them".*

As set out in the introduction to this adjudication, the programme chartered Dr Southall's work looking into cot death, his diagnoses of MSBP, his striking off the Medical Register and subsequent reinstatement and the long running dispute between him and some of the parents he accused of abusing their children. Ofcom noted that throughout the programme, Dr Southall was given opportunities to put his side of the story. For example, it noted that after footage of Mr and Mrs Hollisey-McLean explaining how their son had been taken away from them for a time because of concerns Dr Southall and others had that they were causing their son's health problems, Dr Southall was shown saying:

*"It's unfortunately a very common problem and it's not something that society wants to know about really. They want mothers to always love their children, at all costs, never to hurt them because that's how you want society to be. The reality is very different".*

After a reference in the programme to Dr Southall having had 47 cases against him, he said in the programme:

*"Every time that a paediatrician is involved in child protection produces evidence that ends up with a conviction either in the criminal court or a child is taken into care, you have arranged in front of you a bunch of enemies. Serious enemies. These are not minor issues you're doing. You're not upsetting the neighbours. This is somebody could go to jail, somebody could lose their children for ever on the basis of something that you've contributed to. The more you do, and I did about 120 cases, the more there is a build-up of people who do not like you and who have reasons to be against you".*

In addition to Dr Southall's input throughout the programme, a number of people spoke in his defence. For example, Ofcom noted that Dr Paul Davis, a

consultant paediatrician and member of Professionals Against Child Abuse, said:

*“There’s a strong sense amongst paediatricians that the, the top man, the man who had published some of the best research in this area had been targeted and had been systematically defamed”.*

Ofcom also noted that in a later section of the programme which looked at parents’ concerns that Dr Southall had improperly included their children in his research, Professor John Warner, a professor of paediatrics, said:

*“He did some incredibly important and very very good research there in beginning to understand more about sudden infant death syndrome which has saved a lot of lives of babies with quite severe breathing difficulties”.*

Ofcom took the view that, throughout the programme, Dr Southall and his supporters were able to put their point of view and counter the arguments of his opponents. Ofcom therefore did not consider that the programme was biased in favour of the mothers.

As regards Dr Southall’s successful appeal to the High Court against the GMC’s decision to strike him off the Medical Register, Ofcom noted that the commentary said:

*“It turns out he’s had some good news. The High Court have upheld his second appeal and temporarily he’s back on the medical register”.*

Dr Southall then said:

*“A unanimous verdict of three Appeal Court judges has quashed the serious professional misconduct and the erasure from the medical register. That’s quite something. This is a major breakthrough”.*

When the director asked him if he had anything to say to the parents, Dr Southall replied:

*“I think they should put all this behind them and try and lead the rest of their lives without trying to blame somebody for what’s happened. Easier said than done but I think that’s what should happen. I’ve had twelve years or more of very serious trouble, harassment, whatever you want to call it but it is nothing compared with what happens to the children who are being abused, nothing, and that’s what keeps you going and if I give up now, knowing that I have the expertise to help, then that would be a mistake”.*

The commentary then said:

*“This is only a fleeting victory. David has been told by the GMC that he must now face further sanctions which could see him struck off for a second time”.*

Ofcom considered that it would therefore have been clear to viewers that, although there were still some outstanding issues to be considered by the GMC, Dr Southall had successfully appealed against his striking off the Medical Register. In the context of a lengthy and detailed analysis of a

complex story, involving two very different standpoints, Ofcom did not consider that this part of the programme made little of the High Court decision and considered that viewers would have clearly understood the decision.

Ofcom then considered the way the programme dealt with the decision by the CPS not to pursue Mr and Mrs Hollisey-McLean's case against Dr Southall. It noted that, earlier in the programme, the commentary had stated that Dr Southall had been asked to attend a police station to be formally interviewed in relation to an alleged assault on Ben Hollisey-McLean. The commentary stated a little later:

*"After deliberating for over a year, the Crown Prosecution Service has come to a decision. It's decided not to pursue the case against David Southall. The police have told Dee and Dave that the CPS believes there's insufficient evidence to secure a conviction".*

Again, in the context of a lengthy and detailed analysis of a complex story, Ofcom considered that it would have been clear to viewers that the CPS had decided not to proceed with a prosecution against Dr Southall in relation to Ben Hollisey-McLean and it did not consider that little had been made of the CPS decision.

- ii) As regards the complaint that, although the programme said that the CPS decided not to take forward Mr and Mrs Hollisey-McLean's allegations against Dr Southall on the grounds that there was *"insufficient evidence"*, this did not conform to what the police told Dr Southall, Ofcom first noted the relevant commentary, as set out under decision head b) i) above.

Ofcom noted Channel 4's position that Mrs Hollisey-McLean had shown the programme makers a confidential letter to her from the CPS, which stated:

*"I have concluded that the evidence which we could present to a criminal court is insufficient for there to be a realistic prospect of securing a conviction and so I have advised South Wales Police that no charges should be brought against Dr Southall".*

In Ofcom's view, it was reasonable for the programme makers to rely on the content of this letter in setting out the CPS decision. It also considered that the programme's commentary fairly and accurately summarised the content of the letter.

- iii) Ofcom then considered the complaint that Dr Southall had informed the director that the House of Lords' judgment used to back up Ms Davis' allegation that he had negligently misdiagnosed abuse was based on an "assumed set of facts", so that the Lords could debate the merit of whether, if he and two other doctors had negligently misdiagnosed abuse, this could represent a failed duty of care. The director told Dr Southall that he had discussed this with lawyers for Channel 4 and that they had decided that his interpretation, which was based on the advice of two legal teams advising him, was incorrect and that they would not be changing the programme to reflect the true situation applying to the comments of the law lords criticising him concerning his allegations against Ms Davis.

Ofcom noted the relevant section of the programme, which looked at the case of Ms Davis, whose son suffered a number of severe allergies. Dr Southall

tried on several occasions to institute a child protection investigation and Ms Davis spoke in the programme about her concerns about Dr Southall's involvement with her family. Dr Southall said he was unable to go into details because of confidentiality issues. The commentary said:

*“Janet eventually took her case to the [House of] Lords of Appeal who acknowledged she had been wrongfully accused but David insists that doesn't necessarily prove her innocence”.*

Ofcom noted that the director discussed this wording with Dr Southall, as he was not happy with a previous version. Ofcom noted the final paragraph of the House of Lords' judgment, in which Lord Brown of Eaton-Under-Heywood said:

*“I return to where I began, readily acknowledging the legitimate grievances of these particular appellants, against whom no suspicions whatever remain, sufferers from a presumed want of professional skill and care on the part of the doctors treating their children. It is they, I acknowledge, who are paying the price of the law's denial of a duty of care”.*

Ofcom acknowledged that Dr Southall and the director differed in their interpretations of the judgment, but it considered that it was clear from this that the House of Lords had found that Ms Davis had been wrongfully accused of abuse and that Dr Southall maintained that the decision did not prove that she was innocent. In the context of a complex and lengthy examination of Dr Southall's work and the criticisms of him, Ofcom considered that it was not incumbent on the programme makers to examine in detail the House of Lords consideration of the case.

- iv) The air time given to Mrs Mellor was inappropriate, given the sensitive nature of the programme's content. Dr Southall said that Mrs Mellor had been convicted and imprisoned for conspiracy to abduct a child and that, as was clear from judicial review papers that Dr Southall had shown to the director, she continued to post confidential information from the courts on her various websites.

Ofcom noted that a significant amount of footage of Mrs Mellor was included in the programme and that her vehement opposition to Dr Southall was apparent. The commentary introduced her as follows:

*“Penny Mellor is considered David Southall's most lethal enemy. Although she was never accused of abuse by him, she is the main organiser of the campaign against him”.*

The commentary also referred to her as a “self-proclaimed extremist”, who believed that the results justified the means. Mrs Mellor said that she “fed the media story after story” and the commentary said:

*“Penny's activism has wreaked havoc on the lives of many, including her own...She was sentenced to two years in prison for conspiracy to abduct a child, and it was Dr Southall who tipped off the police. Since coming out of prison, she's stopped doing street protests and concentrates on bombarding government bodies with legal challenges and complaints”.*

When looking at the Hollisey-McLean case, Ofcom noted that the commentary said:

*“Penny Mellor is convinced she can find the evidence to help prove the parents’ case. She has utilised freedom of information legislation to hound hospitals for any documentation relating to Dr Southall’s research studies. She’s already filled her garage with thousands of files stretching back over twenty years”.*

Mrs Mellor then said:

*“I know what he’s done to children during his research projects, and I know he’s procured children using allegations of child abuse in order to get them into his research projects when parents have refused to allow those children to go in there. And knowing that, I can’t just sit back and not do anything. I can’t. And it eats you alive, you know. It eats at you, it eats at you, this. It just – you’re alright and then you get into the detail and then you’re not alright. I know what he’s done, I know what he’s done. Proving it’s another bloody matter though”.*

Ofcom considered that the decision to include Mrs Mellor in the programme and the extent of inclusion was an editorial matter for the programme makers, provided that her inclusion did not result in any unfairness to Dr Southall. In Ofcom’s view, it would have been clear to viewers that Mrs Mellor had taken an extreme position against Dr Southall and they would have been able to weigh up her views and form their own opinion of her and the weight they wished to give to her views. It was clear from the programme that Dr Southall had a number of supporters, whose views were also included in the programme.

Taking all the above factors into account, Ofcom found no unfairness to Dr Southall in these respects.

- c) Ofcom next considered the inclusion of footage of Dr Johnson in which he was critical of Dr Southall was unfair.

In considering this part of the complaint, Ofcom had regard to Practice 7.9, as set out under decision head b) above.

- i) Ofcom considered the complaint that obtaining written consent for research was not standard in the 1980s, as stated by Dr Johnson, but was a matter of concern to the research ethics committee.

Ofcom noted the relevant section of the programme, in which Mrs Hollisey-McLean explained her concerns at having discovered information in her son’s file about a research study that included occlusion testing. The commentary said that the police investigating Ben Hollisey-McLean’s case were interested in a letter from Dr Southall to the ethics committee seeking permission to conduct research without getting parent’s written consent. Ofcom noted that Dr Johnson did not state that obtaining written consent for research was standard, but, when asked what he, as “a veteran of many research studies”, he made of Dr Southall’s letter to the ethics committee said:

*“The outcome of this should have been that they should have had a letter explaining it, to sign, or the project should have not been allowed...I think*

*it's arrogant, it's outrageous. I mean that, that is, that's 19<sup>th</sup> century thinking, not even 20<sup>th</sup> century thinking. I am truly astonished to see this".*

Dr Southall responded by saying:

*"A lot of research was done on the basis of, I ask permission and they say yes or no. The word 'written' is the key here, written consent... then they would say I don't like the sound of that, or I like, I'm happy to help you if it's going to help other babies, without any signed consent being undertaken at that time. The word is 'written'".*

Ofcom noted therefore that Dr Johnson did not refer to obtaining written consent as being standard, but did express his concerns that it was not sought. His comment that *"It was not standard in infants then"* referred to the occlusion testing that Dr Southall used and not to written consent.

Taking into account what Dr Southall said in response to Dr Johnson's comment about written consent, Ofcom took the view that both views on the role of written consent at the relevant time were included in the programme.

- ii) As regards the complaint that Dr Johnson stated that Dr Southall harmed some children with his research, but produced no evidence to this effect, Ofcom noted the relevant part of the programme. The director asked Dr Johnson if Dr Southall's research had damaged children and Dr Johnson said: *"I think it probably has damaged some"*. The commentary then said:

*"David dismissed Dr Johnson's claim as nonsense"*.

Ofcom considered that it would have been clear to viewers that Dr Johnson had not set out any evidence within the programme but was giving his professional opinion. It would have been equally clear that Dr Southall dismissed that opinion.

- iii) Ofcom then considered the complaint that the programme did not make clear that Dr Johnson was not on the GMC Medical Register, even though Dr Southall had informed the director that this was the case before the programme was broadcast. This meant that Dr Johnson could criticise Dr Southall without fear of being sanctioned by the GMC, whereas Dr Southall could face sanctions if he criticised Dr Johnson.

Ofcom noted Channel 4's position that Dr Johnson was not currently on the GMC Medical Register because he was not working in the UK, but that, in any event, he had spoken out many times against Dr Southall's methods, including at times when he was on the Medical Register, and stood by his comments. Ofcom also noted that Dr Southall responded in the programme to the criticisms made of him by Dr Johnson. For example, Ofcom noted that the programme included Dr Southall's opinion, contrary to that expressed by Dr Johnson, that the occlusion testing he used was a standard and ethical lung function test. As set out under decision heads c) i) and ii) above, both Dr Southall's position and that of Dr Johnson regarding written consent and the question of whether Dr Southall had damaged any children were included in the programme.

In these circumstances, Ofcom considered that Dr Johnson's criticisms were put to Dr Southall, whose responses were included in the programme.

Taking all these factors into account, Ofcom found no unfairness to Dr Southall as a result of Dr Johnson's inclusion in the programme.

d) The programme was unfairly edited.

In considering this part of the complaint, Ofcom had regard to Practice 7.6 of the Code, which states that states that when a programme is edited, contributions should be represented fairly.

i) Dr Southall complained that when he was asked why the parents were pursuing him, he was shown saying "revenge", when, in fact, he was unsure about this but believed that he had used this word in relation to Mrs Mellor's campaign against him.

Ofcom noted that the director asked Dr Southall in the programme why Ms Davis would spend 20 years of her life trying to clear her name if she was not falsely accused. Dr Southall was shown replying:

*"Revenge. They see one of the people involved in interfering with their actions in difficulties, in trouble. And also vulnerable because of the position that the family court and contempt of court laws quite rightly place them in".*

Ofcom took the view that this clearly suggested that, when he said "revenge", Dr Southall was referring to parents rather than to Mrs Mellor. Ofcom also considered the untransmitted footage provided by Channel 4, in which the director asked Dr Southall: "What's in it for the parents now?". Dr Southall gave the reply included in the programme and set out above.

Ofcom noted that it was clear from Dr Southall's complaint that he was uncertain about his recollection of this interview in this respect. Ofcom also noted that Dr Southall's reference to "revenge" was included in the programme as his response to a different question than the one he was asked in the untransmitted footage. However, Ofcom took the view that it was clear from the untransmitted footage that when he referred to "revenge" Dr Southall was talking about parents and not about Mrs Mellor. In these circumstances, Ofcom did not consider that the editing of the untransmitted footage changed the nature of what Dr Southall was saying.

ii) Ofcom then considered the complaint that the programme included footage of Dr Southall and his partner leaving the High Court following his second, successful, appeal, but the programme suggested that it was following his first, unsuccessful, appeal.

Ofcom noted Channel 4's explanation that the footage used was archive footage of Dr Southall that was filmed with his permission during his second appeal and that this was used in the absence of archive footage of him entering the High Court during his first appeal.

Ofcom noted that the footage of Dr Southall and his partner was accompanied by the following commentary:

*"However, he was now facing the most important trial of his professional life. He'd appealed against the GMC's decision to strike him off and the High Court was about to rule on it".*

This was followed by footage of Mrs Mellor watching a television news report which stated that Dr Southall had *“lost his High Court battle against a decision to strike him off the medical register”*. In Ofcom’s view this footage was simply used to illustrate Dr Southall’s involvement with the High Court and it would have been clear to viewers from this and from the point in the programme’s chronology in which the footage appeared that the programme was looking at Dr Southall’s first appeal to the High Court. Ofcom did not consider that viewers would have formed any adverse view of Dr Southall as a result of footage from the second appeal being used to illustrate commentary relating to the first appeal.

Ofcom therefore found no unfairness to Dr Southall as a result of the editing of footage.

**Accordingly, Ofcom has not upheld Dr Southall’s complaint of unfair treatment in the broadcast of the programme.**

## Not Upheld

### Complaint by Mrs A

*Anglia News, ITV1 (Anglia), 7 September 2011*

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**Summary:** Ofcom has not upheld this complaint of unwarranted infringement of privacy made by Mrs A.

ITV 1 (Anglia) broadcast a news item that reported that Mr A, whose son had been killed whilst serving in Afghanistan two years previously, had hanged himself. Mrs A, his widow, complained that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programme and in the broadcast of the programme.

In summary, Ofcom found as follows:

- Mrs A had a legitimate expectation of privacy in relation to the obtaining of information relating to her husband's death. However, given that the programme makers did not make any approach to Mrs A herself and given that they approached other people only to verify information already in the public domain, there was no unwarranted infringement of Mrs A's privacy in connection with the obtaining of material included in the programme.
- Mrs A had a legitimate expectation of privacy in relation to the broadcast of information about the tragic circumstances of her husband's death. However, there was no unwarranted infringement of Mrs A's privacy in the programme as broadcast, as it did not include any information that was not already in the public domain and there was a sufficient degree of public interest in the information included in the report.

### Introduction

On 7 September 2011, ITV 1 (Anglia) broadcast an edition of its evening news programme, *Anglia News*. The programme included an item that reported on the death of Mr A and said that Mr A, whose son had been killed in Afghanistan in December 2009, had hanged himself and that emergency services had not been able to revive him.

Following the broadcast of the programme, Mrs A complained to Ofcom that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programme and in the programme as broadcast.

### Summary of the Complaint and ITV 1 (Anglia)'s response

- a) In summary, Mrs A complained that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programme in that on 7 September 2011, approximately a week after Mr A had committed suicide and before there had been an inquest, someone from *Anglia News* had approached Mrs A's local vicar and asked him for an interview about Mr A. The vicar had declined, but somehow the programme makers had obtained the information on how Mr A had killed himself. Mrs A wanted to know where the programme makers obtained the information and from whom.

By way of background, Mrs A said she was in total shock and unable to deal with anything in the first few days after losing her husband. Mrs A said that someone had betrayed her and her husband by revealing to the programme makers how her husband had killed himself and that she was now unable to trust anyone outside her very close friends. Mrs A said that she had been inundated with telephone calls, text messages and visits from people who had seen the news programme.

In response, ITV 1 (Anglia) said first that they were very sorry that the report upset Mrs A and that this was the last thing they would have wanted to do. ITV 1 (Anglia) also offered their sincere sympathies to Mrs A for her bereavement.

ITV 1 (Anglia) said that the programme makers had not attempted at any point to contact the family regarding Mr A's death. A local newspaper had reported on 6 September 2011 that Mr A had "died of a broken heart" after his son was killed in Afghanistan. The newspaper reported that the family had made a statement in which they had asked that their privacy be respected and so the programme makers had not approached them directly. ITV 1 (Anglia) said that the information included in its report, namely that Mr A had been found hanged and attempts to revive him at his home were unsuccessful, was obtained from a publicly-available source, as it had been published in "The Sun" newspaper on the morning of 7 September 2011. This was the same day that the ITV 1 (Anglia) report was broadcast in the evening. ITV 1 (Anglia) also said that the fact that Mr A had died by hanging was also part of the coroner's public record of the case. The inquest had been opened and then adjourned on 31 August 2011.

ITV 1 (Anglia) said that the programme makers had contacted the local police, the local vicar, a friend of the family and a local newspaper to check the accuracy of the story published in 'The Sun'. These sources had confirmed the accuracy of the information in 'The Sun' report.

ITV 1 (Anglia) said that, following the family's statement reported in the local newspaper, it was reasonable for Mrs A to expect that she and her family would not be approached regarding Mr A's death. Given that a direct approach to the family was not appropriate and because the broadcast of inaccurate information could have caused greater distress, the programme makers were justified in contacting other people to verify the information.

In response to ITV 1 (Anglia)'s statement, Mrs A said that, given that 'The Sun' had already published information about Mr A's death, there was no need for the programme makers to take any steps to verify the accuracy of the information they wished to include in their report. She also said that, as she had asked for her family's privacy to be respected, there programme makers should not have taken the steps they did to find someone willing to talk to them.

ITV (Anglia) said that the programme makers would always check the details of a story reported in a newspaper and would not assume the newspaper had checked the underlying facts, especially in relation to such a sensitive issue.

- b) Mrs A also complained that her privacy was unwarrantably infringed in the programme as broadcast in that there had been no need for the programme to go into the details, but that it had disclosed how Mr A had died and how Mrs A had found him. This information related to a private matter, in relation to which there had not yet been an inquest, and the programme makers had no right, consent or authority to disclose the information.

By way of background, Mrs A said that she lived in a small town, where everyone now knew how her husband had died. Mrs A said that this was a direct invasion of her privacy.

In response, ITV 1 (Anglia) said that Mrs A was not referred to in the report and that at no point did the report state that she had found Mr A.

ITV 1 (Anglia) said that Mrs A had some expectation of privacy regarding the reporting of her husband's death and how he died. However, this was lessened by the fact that Mr A's death had already been reported in the local and national press, the family had released a statement to the local newspaper regarding his death and the manner in which Mr A had died was a matter of public record as a result of the opening and adjournment of the inquest.

As regards the complaint about the programme going into details and not simply referring to suicide, ITV 1 (Anglia) said that, given that there was to be an inquest, the manner of Mr A's death would not have remained private. ITV 1 (Anglia) said that the report was not overly intrusive in terms of the detail included.

ITV 1 (Anglia) said that, in any event, it was warranted to include in the report the manner in which Mr A had died and the fact that attempts to revive him had failed. The information had already been reported in the national press and the way in which Mr A had died was part of the public record at the coroner's office. ITV 1 (Anglia) said that the report did not go beyond what was already in the public domain. It would not have been appropriate to approach Mrs A for consent to broadcast the report, given the statement issued by family. ITV 1 (Anglia) said that any death that is subject to a public inquest is inherently a matter of some public interest and that there was a wider public interest in broadcasting the limited details that were included in the report, in that they helped to inform viewers of the ongoing and tragic impact on families of the losses of their loved ones in the war in Afghanistan.

## **Decision**

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

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

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 into account representations made by the parties in response to its preliminary view on the complaint. Ofcom noted with great sympathy the tragic circumstances surrounding this complaint.

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 focus intensely 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 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.

- a) Ofcom considered Mrs A’s complaint that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programme in that someone from *Anglia News* had approached her local vicar and asked him for an interview about Mr A. The vicar had declined, but somehow the programme makers had obtained the information on how Mr A had killed himself.

In considering this part of the complaint, Ofcom had regard to Practices 8.3 and 8.5 of the Code. Practice 8.3 states that when people are caught up in events which are covered by the news they still have a right to privacy in both the making and the broadcast of a programme, unless it is warranted to infringe it. This applies to both the time when these events are taking place and to any later programmes that revisit those events. Practice 8.5 of the Code states that any infringement of privacy in the making of a programme should be with the person’s consent or be otherwise warranted.

In order to establish whether or not Mrs A’s privacy was infringed in connection with obtaining material included in the programme, Ofcom first assessed the extent to which she had a legitimate expectation of privacy in relation to the gathering of material for the item.

Applying Practice 8.3 of the Code, and taking into account the tragic circumstances of Mr A’s death, which were of an intensely personal nature to Mrs A, Ofcom came to the view that Mrs A had a legitimate expectation of privacy in relation to the gathering of information about her husband’s death. Ofcom also noted, however, that the fact that Mr A had taken his own life, and the manner in which this had happened, was in the public domain, as a result of the opening and adjourning of the inquest. The manner in which Mr A died had also been reported in ‘The Sun’ on the morning of the ITV 1 (Anglia) broadcast.

The information included in the ITV 1 (Anglia) report was therefore already in the public domain. This limited Mrs A’s legitimate expectation of privacy to some extent.

Having found that Mrs A had a legitimate expectation of privacy (albeit limited) in relation to the obtaining of material included in the programme, Ofcom considered whether or not any infringement of this privacy (namely as a result of the approaches made by the programme makers) was warranted in the circumstances.

Ofcom noted that a local newspaper had reported Mr A’s death on 6 September 2011 and included a reference to the family’s request that their privacy be respected. Ofcom considered that, having issued that statement, Mrs A had a legitimate expectation of privacy that she would not be approached by the media and that, applying Practice 8.5 of the Code, it would probably not have been appropriate in these circumstances for ITV 1 (Anglia) to approach Mrs A and seek her consent to broadcast the report. Ofcom noted that the programme makers did not, in fact, make any approach to Mrs A.

Ofcom however noted Mrs A's complaint that her privacy was infringed as a result of approaches made by the programme makers to the local vicar. Ofcom noted that ITV 1 (Anglia) acknowledged that the programme makers also approached the local police, a friend of the family and a local newspaper to verify the story published in 'The Sun'.

Ofcom weighed Mrs A's legitimate expectation of privacy against the broadcaster's competing right to freedom of expression and the public interest in being aware of the tragic circumstances of Mr A's death and the audience's right to receive information and ideas without unnecessary interference. Ofcom noted that approaches made by the programme makers were made in order to verify information already published in the local and national press and not to gather further information. Ofcom also noted ITV 1 (Anglia)'s point that broadcasting inaccurate information about Mr A's death could have caused his family even greater distress. In these particular circumstances, Ofcom took the view that the actions taken by the programme makers were proportionate and did not infringe Mrs A's privacy.

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

- b) Ofcom then considered Mrs A's complaint that her privacy was unwarrantably infringed in the programme as broadcast in that the programme disclosed the details of how Mr A had died and how Mrs A had found him.

In considering this part of the complaint, Ofcom took into consideration Practice 8.3, as set out under head a) above. Ofcom also 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 first noted the wording of the ITV 1 (Anglia) report, which said:

*"The father of a Northamptonshire soldier killed in Afghanistan has been found hanged. Nineteen year old [Mr A junior] died in a Taliban bomb blast in Helmand Province in December of 2009. His father, 48 year old [Mr A] could not be revived when emergency services were called to the family home in [\*\*\*] last week. His funeral will take place on Friday".*

Ofcom noted that the item did not, therefore, include the information that Mrs A found her husband.

In considering whether Mrs A's privacy was infringed in the programme as broadcast, Ofcom first considered the extent to which she could have had a legitimate expectation of privacy in relation to the details of how Mr A had died. Having taken into account the circumstances of Mr A's death, the request published in the local press the previous day that the family's privacy be respected and the provisions of Practice 8.3, referred to above, Ofcom considered that Mrs A had a legitimate expectation of privacy in relation to the tragic and intensely personal nature of the information included in the report. Ofcom noted, however, that the information contained in the ITV 1 (Anglia) report about Mr A's death had already appeared in the local and national press and considered that this limited Mrs A's expectation of privacy to some extent.

Having found that Mrs A had a legitimate expectation of privacy (albeit limited) in relation to the broadcast, Ofcom considered whether or not any infringement of this privacy (by the fact of the broadcast itself) was warranted in the circumstances. This involved weighing Mrs A's legitimate expectation of privacy against the broadcaster's competing right to freedom of expression and the public interest in being aware of the tragic circumstances of Mr A's death and the audience's right to receive information and ideas without unnecessary interference. Ofcom considered whether, in the circumstances, there was a sufficient public interest to justify any intrusion into Mrs A's legitimate expectation of privacy without her consent.

As set out under decision head a) above, Ofcom noted that, before the item was broadcast, the fact that Mr A had hanged himself was in the public domain, as a result of the opening and adjourning of the inquest. The information that Mr A had hanged himself (and that attempts to revive him at his home were unsuccessful) had also been reported in 'The Sun' on the morning of the ITV 1 (Anglia) broadcast.

In these circumstances, Ofcom took the view that the manner in which Mr A had died was in the public domain. Ofcom further considered that the ITV 1 (Anglia) report was proportionate as it went no further than the information that was already publicly available. Ofcom also considered that there was a sufficient degree of public interest both in reporting a death that is subject to a public inquest, and in the ongoing and tragic impact on UK families of the losses of their loved ones in the war in Afghanistan.

Taking the above factors into account, Ofcom found that Mrs A's privacy was not unwarrantably infringed in the programme as broadcast.

**Accordingly, Ofcom has not upheld Mrs A's complaint of unwarranted infringement of privacy in connection with the obtaining of material included in the programme and in the broadcast of the programme.**

## Other Programmes Not in Breach

Up to 30 January 2012

Programme	Broadcaster	Transmission Date	Categories
Advertisements	Clubland TV	Various	Advertising scheduling
Advertisements	ESPN	Various	Advertising scheduling
Bridezillas	Really	27/11/2011	Offensive language
Celebrity Big Brother's Bit on the Side	Channel 5	27/01/2012	Generally accepted standards
Charity appeal	Channel S	18/08/2011	Charity appeals
Charity appeal	NTV	19/08/2011	Charity appeals
Charity appeals	Takbeer TV	11/08/2011	Charity appeals
Charity appeals	Ummah Channel	20/08/2011	Charity appeals
Party 2Nite Top 50	Kiss	02/12/2011	Offensive language
SERF Appeal	Sabras Radio	Various	Charity appeals
Shipwrecked: The Island	Channel 4	11/12/2011	Scheduling
Sunrise Radio South East Asia Disaster Appeal	Sunrise Radio	Various	Materially misleading

## Complaints Assessed, Not Investigated

### Between 17 and 30 January 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
118 118's sponsorship of ITV Movies	ITV2	n/a	Generally accepted standards	1
4thought.tv	Channel 4	23/01/2012	Harm	2
Ace Ventura: Pet Detective	Channel 5	15/01/2012	Offensive language	1
Adult programming	n/a	n/a	Participation TV	1
Advertisements	Various	n/a	Advertising scheduling	1
Alan Brazil Sports Breakfast	Talksport	27/01/2012	Generally accepted standards	1
Alan Carr's New Year Specstacular	Channel 4	31/12/2011	Under 18s - Coverage of sexual and other offences	11
All New You've Been Framed!	ITV1	28/01/2012	Religious/Beliefs discrimination/offence	1
American Dad!	BBC 3	11/01/2012	Generally accepted standards	1
Basement Jerxx	Somer Valley FM	n/a	Offensive language	1
BBC News	BBC News Channel	30/12/2011	Outside of remit / other	1
BBC News	BBC World News	12/01/2012	Outside of remit / other	1
BBC News at Ten	BBC 1	17/01/2012	Generally accepted standards	1
BBC News at Ten	BBC 1	26/01/2012	Generally accepted standards	1
Bear Grylls: Born Survivor	Discovery	23/01/2012	Animal welfare	1
Beauty and the Geek	ITV2	17/01/2012	Sexual material	1
Birdsong	BBC 1	22/01/2012	Scheduling	3
Birdsong (trailer)	BBC 1	14/01/2012	Scheduling	1
Born Survivor: Bear Grylls	Discovery	16/01/2012	Animal welfare	1
Call the Midwife	BBC 1	15/01/2012	Scheduling	1
Call the Midwife	BBC 1	22/01/2012	Scheduling	1
Capital Radio	Capital Radio (Yorkshire)	22/12/2011	Scheduling	2
Cartoonito Tales	Cartoonito	18/01/2012	Generally accepted standards	1
Casualty	BBC 1	21/01/2012	Generally accepted standards	1
Celebrity Big Brother	Channel 5	05/01/2012	Generally accepted standards	1
Celebrity Big Brother	Channel 5	13/01/2012	Generally accepted standards	1
Celebrity Big Brother	Channel 5	14/01/2012	Generally accepted	1

			standards	
Celebrity Big Brother	Channel 5	15/01/2012	Generally accepted standards	2
Celebrity Big Brother	Channel 5	16/01/2012	Generally accepted standards	1
Celebrity Big Brother	Channel 5	18/01/2012	Generally accepted standards	1
Celebrity Big Brother	Channel 5	19/01/2012	Generally accepted standards	5
Celebrity Big Brother	Channel 5	20/01/2012	Voting	2
Celebrity Big Brother	Channel 5	21/01/2012	Generally accepted standards	1
Celebrity Big Brother	Channel 5	22/01/2012	Generally accepted standards	1
Celebrity Big Brother	Channel 5	23/01/2012	Generally accepted standards	18
Celebrity Big Brother	Channel 5	24/01/2012	Generally accepted standards	2
Celebrity Big Brother	Channel 5	25/01/2012	Generally accepted standards	17
Celebrity Big Brother Live from the House	5*	20/01/2012	Materially misleading	1
Celebrity Big Brother: Live	5*	18/01/2012	Generally accepted standards	2
Celebrity Big Brother's Bit on the Side	Channel 5	23/01/2012	Offensive language	2
Celebrity Big Brother's Bit on the Side	Channel 5	24/01/2012	Race discrimination/offence	1
Celebrity Big Brother's Bit on the Side	Channel 5	25/01/2012	Religious/Beliefs discrimination/offence	3
Celebrity Big Brother's Bit on the Side	Channel 5	27/01/2012	Generally accepted standards	2
Celebrity Coach Trip	Channel 4	18/01/2012	Generally accepted standards	1
Celebrity Juice	ITV1	14/01/2012	Generally accepted standards	1
Channel 4 News	Channel 4	20/01/2012	Sexual orientation discrimination/offence	1
CNBC	CNBC	23/01/2012	Promotion of products/services	1
Come Dine with Me	Channel 4	01/01/2012	Race discrimination/offence	1
Come Dine with Me	Channel 4	21/01/2012	Generally accepted standards	1
Continuity announcement	Channel 4	17/01/2012	Outside of remit / other	1
Continuity announcement	Channel 4	24/01/2012	Religious/Beliefs discrimination/offence	1
Coppers	Channel 4	09/01/2012	Generally accepted standards	6
Coppers	Channel 4	16/01/2012	Generally accepted standards	8
Coronation Street	ITV1	16/01/2012	Under 18s in programmes	2
Coronation Street	ITV1	23/01/2012	Drugs, smoking, solvents or alcohol	1
Coronation Street	ITV1	23/01/2012	Harm	1
Coronation Street	ITV1	27/01/2012	Generally accepted	1

			standards	
Coronation Street	ITV1	n/a	Scheduling	1
Costa Coffee's sponsorship credits	Jack FM	22/12/2011	Commercial communications on radio	1
Criminal Minds	Sky Living	16/12/2011	Outside of remit / other	1
Current TV	Current TV	n/a	Outside of remit / other	1
Dancing on Ice	ITV1	08/01/2012	Flashing images/risk to viewers who have PSE	1
Dancing on Ice	ITV1	15/01/2012	Outside of remit / other	1
Dancing on Ice	ITV1	22/01/2012	Generally accepted standards	3
Daybreak	ITV1	21/12/2011	Materially misleading	1
Daybreak	ITV1	13/01/2012	Generally accepted standards	1
Daybreak	ITV1	18/01/2012	Animal welfare	1
Deal or No Deal	Channel 4	20/01/2012	Generally accepted standards	1
Death Row Dogs	BBC 1	24/01/2012	Animal welfare	13
Death Row Dogs	BBC 1	24/01/2012	Outside of remit / other	2
Desh Shathe	Desh TV	05/01/2012	Generally accepted standards	1
Desperate Scousewives	Channel 4	21/01/2012	Scheduling	1
Dick and Dom	CBBC	31/07/2011	Outside of remit / other	1
Digital on-screen graphics	BBC channels	n/a	Outside of remit / other	1
Duncan Barkes	LBC Radio	03/12/2012	Race discrimination/offence	1
Dynamo: Magician Impossible	Watch	28/01/2012	Advertising minutage	1
EastEnders	BBC 1	06/01/2012	Race discrimination/offence	6
EastEnders	BBC 1	n/a	Generally accepted standards	1
Edinburgh Comedy Fest Live 2011	BBC 3	22/01/2012	Religious/Beliefs discrimination/offence	1
Evening Report	Sky Sports News	27/12/2011	Generally accepted standards	6
FA Cup Football: Arsenal v Leeds	ESPN	09/01/2012	Offensive language	1
Fast Freddie, the Widow and Me	ITV1	27/12/2011	Generally accepted standards	1
Fighting Talk	BBC Radio 5 Live	14/01/2012	Religious/Beliefs discrimination/offence	1
Fleabag Monkeyface	CITV	17/01/2012	Offensive language	1
Four Weddings	Pick TV	20/01/2012	Offensive language	1
Freshly Squeezed	Juice 107.2	25/12/2011	Offensive language	1
Game of Thrones (trailer)	Sky News	08/01/2012	Scheduling	1
Geordie Shore	MTV	31/01/2012	Outside of remit /	2

			other	
Great Barrier Reef	BBC 2	15/01/2012	Animal welfare	1
Greystoke: The Legend of Tarzan, Lord of the Apes	Channel 5	08/01/2012	Nudity	1
Gypsy Blood	Channel 4	19/01/2012	Materially misleading	1
Harry Hill's TV Burp	ITV1	28/01/2012	Violence and dangerous behaviour	1
Harveys' sponsorship of Coronation Street	ITV1	13/01/2012	Materially misleading	1
Hollyoaks	Channel 4	16/01/2012	Materially misleading	1
Hollyoaks	Channel 4	24/01/2012	Generally accepted standards	1
How Sex Works	BBC 3	23/01/2012	Outside of remit / other	1
Junior Doctors: Your Life in Their Hands	BBC 3	24/01/2012	Outside of remit / other	1
Kate Thornton - Anorexic: My Secret Past (trailer)	Channel 5	n/a	Harm	1
Kick Off	Talksport	19/01/2012	Race discrimination/offence	1
Kommissarie Lewis (trailer)	Kanal 5	17/12/2011	Scheduling	1
Life's Too Short	BBC 2	17/11/2011	Generally accepted standards	1
London Tonight	ITV1 London	17/01/2012	Due accuracy	1
Loose Women	ITV1	13/01/2012	Sexual material	1
Loose Women	ITV1	24/01/2012	Generally accepted standards	2
Loose Women	ITV1	27/01/2012	Generally accepted standards	4
Loose Women	ITV1	30/01/2012	Nudity	1
Lorraine	ITV1	17/01/2012	Violence and dangerous behaviour	1
Lorraine	ITV1	23/01/2012	Due accuracy	1
Michael McIntyre	Comedy Central	11/01/2012	Sexual orientation discrimination/offence	1
Midsomer Murders	ITV1	28/12/2011	Violence and dangerous behaviour	1
Midsomer Murders	ITV1	11/01/2012	Advertising minutage	1
Midsomer Murders	ITV1	11/01/2012	Offensive language	1
Midsomer Murders	STV	10/01/2012	Offensive language	1
My Daughter the Teenage Nudist	Channel 4	12/01/2012	Crime	1
My Parents Are Aliens	CITV	24/01/2012	Scheduling	2
Nate's Sunday Show	OnFM (Hammersmith)	23/10/2011	Due impartiality/bias	1
NCIS	Channel 5 USA	15/01/2012	Generally accepted standards	1
New You've Been Framed!	ITV1	21/01/2012	Generally accepted standards	3
New You've Been Framed!	ITV2	24/01/2012	Race discrimination/offence	1
News	Classic Gold	05/01/2012	Due impartiality/bias	1

Newsnight	BBC 2	18/01/2012	Generally accepted standards	1
Newsnight	BBC 2	24/01/2012	Outside of remit / other	2
Noel Fielding's Luxury Comedy (trailer)	E4	19/01/2012	Generally accepted standards	1
Noel Fielding's Luxury Comedy (trailer)	E4	25/01/2012	Scheduling	1
Nothing But Hits	MTV Hits	09/01/2012	Offensive language	1
Obese: A Year to Save My Life	Sky1	18/01/2012	Harm	1
One Born Every Minute	Channel 4	18/01/2012	Generally accepted standards	3
Open Book	BBC Radio 4	24/12/2011	Generally accepted standards	1
Party Paramedics	Channel 4	23/01/2012	Materially misleading	15
Pet Squad	CBBC	16/01/2012	Offensive language	1
Peter Popoff Ministries	Gospel Channel	18/01/2012	Outside of remit / other	1
Phones 4U's sponsorship of Harry Hill's TV Burp	ITV2	13/01/2012	Generally accepted standards	1
Planet's Funniest Animals	ITV2	14/01/2012	Violence and dangerous behaviour	1
Playboy TV Chat	Playboy TV Chat	14/01/2012	Participation TV - Protection of under 18s	1
Playboy TV Chat	Playboy TV Chat	15/01/2012	Participation TV - Offence	1
Poirot	ITV3	05/01/2012	Sexual material	1
Police Stop!	ITV4	22/01/2012	Harm	1
Premier League Football	Sky Sports 1	22/01/2012	Offensive language	1
Princess for a Day competition	Disney Junior	16/01/2012	Gender discrimination/offence	1
Programme	Noor TV	08/01/2012	Charity appeals	1
Programming	Channel 4	n/a	Nudity	1
Programming	Mountain FM	n/a	Format	1
Programming	Various	n/a	Drugs, smoking, solvents or alcohol	1
Programming	Various	n/a	Outside of remit / other	2
Rasta Mouse	CBeebies	n/a	Scheduling	1
Right Guard's sponsorship of Channel 4 Comedy	Channel 4	n/a	Materially misleading	1
Road Wars	Pick TV	24/12/2011	Generally accepted standards	1
Rob Howard	Capital North East	17/01/2012	Offensive language	1
Room 101	BBC 1	27/01/2012	Age discrimination/offence	2
Roy	BBC 1	10/01/2012	Disability discrimination/offence	1
Rude Tube	E4	15/12/2011	Animal welfare	2

Russia Today	Russia Today	n/a	Outside of remit / other	1
Sasuraal Genda Phool	Star Plus	24/01/2012	Generally accepted standards	1
Scrubs	E4	12/01/2012	Age discrimination/offence	1
Secret Garden	BBC 4	n/a	Television Access Services	1
Secret Sound	Pirate FM 102	05/01/2012	Competitions	1
Sex: How to Do Everything	5*	10/01/2012	Gender discrimination/offence	1
Shanghai competition (promotion)	LBC 97.3FM	20/01/2012	Materially misleading	1
Shipwrecked: The Island	E4	10/01/2012	Generally accepted standards	1
Sky Football	Sky Sports	22/01/2012	Generally accepted standards	1
Sky News	Sky News	12/01/2012	Advertising/editorial distinction	1
Sky News	Sky News	20/01/2012	Religious/Beliefs discrimination/offence	1
Sky News	Sky News	24/01/2012	Due impartiality/bias	1
Sky News at 11 with Stephen Dixon	Sky News	08/01/2012	Due accuracy	1
South East Today	BBC 1 South East	11/01/2012	Generally accepted standards	1
Sports Breakfast	Talksport	17/01/2012	Race discrimination/offence	1
Strictly Come Dancing	BBC 1	17/12/2011	Generally accepted standards	1
Sun, Sex and Suspicious Parents	BBC 3	27/01/2012	Outside of remit / other	1
Sunrise Radio	Sunrise Radio	14/12/2011	Generally accepted standards	1
Superscrimpers: Waste Not, Want Not	Channel 4	23/01/2012	Animal welfare	2
Superscrimpers: Waste Not, Want Not	Channel 4	23/01/2012	Violence and dangerous behaviour	1
Syria's Torture Machine	Channel 4	19/12/2011	Violence and dangerous behaviour	1
Talladega Nights: The Ballad of Ricky Bobby	Channel 5	15/01/2012	Scheduling	1
Tennis	BBC 2	29/01/2012	Age discrimination/offence	1
That Sunday Night Show	ITV1	15/01/2012	Generally accepted standards	2
That Sunday Night Show	ITV1	22/01/2012	Generally accepted standards	8
The Biggest Loser	ITV1	03/01/2012	Advertising/editorial distinction	1
The Biggest Loser	ITV1	24/01/2012	Generally accepted standards	3
The Crusades	BBC 2	18/01/2012	Outside of remit / other	1
The Crusades	BBC 2	25/01/2012	Due impartiality/bias	1
The Devil's Dinner Party (trailer)	Sky Atlantic	05/01/2012	Transgender discrimination/offence	1
The Fat Fighters	Channel 4	10/01/2012	Scheduling	1

The Hotel	Channel 4	22/01/2012	Offensive language	1
The Jeremy Kyle Show	ITV1	24/01/2012	Generally accepted standards	1
The Jeremy Kyle Show	ITV1	n/a	Generally accepted standards	1
The Jeremy Kyle Show	ITV2	11/01/2012	Generally accepted standards	1
The Jeremy Kyle Show	ITV2	16/01/2012	Materially misleading	1
The Jonathan Ross Show	ITV1	14/01/2012	Generally accepted standards	1
The Joy of Teen Sex	Channel 4	10/01/2012	Generally accepted standards	1
The Joy of Teen Sex	Channel 4	n/a	Sexual material	1
The Magicians	BBC 1	21/01/2012	Sexual material	1
The Magicians	BBC 1	21/01/2012	Sexual material	1
The Million Pound Drop Live	Channel 4	20/01/2012	Age discrimination/offence	1
The Million Pound Drop Live	Channel 4	28/01/2012	Materially misleading	1
The Official UK Urban Chart	MTV Base	26/01/2012	Sexual material	1
The One Show	BBC 1	13/01/2012	Generally accepted standards	1
The Only Way Is Essex (trailer)	ITV1	22/01/2012	Scheduling	1
The Only Way Is Essex (trailer)	ITV1	28/01/2012	Generally accepted standards	1
The Only Way Is Essex (trailer)	ITV1	28/01/2012	Scheduling	1
The Only Way Is Essex (trailer)	ITV1	29/01/2012	Generally accepted standards	1
The Real Hustle Special	BBC 3	06/01/2012	Crime	1
The Talent Show Story	ITV1	28/01/2012	Offensive language	1
The World's Most Stupid Criminals	Dave	22/01/2012	Offensive language	1
The Wright Stuff	Channel 5	16/01/2012	Race discrimination/offence	1
The Wright Stuff	Channel 5	19/01/2012	Generally accepted standards	4
The Wright Stuff	Channel 5	23/01/2012	Generally accepted standards	1
The Wright Stuff	Channel 5	24/01/2012	Generally accepted standards	1
The X Factor / Britain's Got Talent	ITV1	n/a	Competitions	1
The X Factor Results Show	ITV1	11/12/2011	Undue prominence	1
This Morning	ITV1	11/01/2012	Materially misleading	3
This Morning	ITV1	12/01/2012	Disability discrimination/offence	1
This Morning	ITV1	19/01/2012	Religious/Beliefs discrimination/offence	1
This Morning	ITV1	23/01/2012	Outside of remit / other	1
This Week's Most Played Top 40	MTV Base	13/01/2012	Offensive language	1

Three Fat Brides, One Thin Dress	Living	30/12/2011	Harm	1
Today	BBC Radio 4	17/01/2012	Outside of remit / other	1
Tombola.co.uk's sponsorship of Emmerdale	ITV1	16/01/2012	Sponsorship credits	1
Tombola.co.uk's sponsorship of Emmerdale	ITV1	n/a	Harm	1
Tombola.co.uk's sponsorship of Emmerdale	ITV1	n/a	Sponsorship credits	1
Top Gear	BBC 2	28/12/2011	Generally accepted standards	2
Top Gear	BBC 3	21/01/2012	Offensive language	1
Top of the Pops	BBC 4	28/01/2012	Outside of remit / other	1
True Stories: Gypsy Blood	Channel 4	19/01/2012	Generally accepted standards	1
True Stories: Gypsy Blood	Channel 4	19/01/2012	Violence and dangerous behaviour	1
TV Licensing (promotion)	BBC	n/a	Outside of remit / other	1
Universal Somali TV	Universal Somali TV	n/a	Outside of remit / other	1
Utter Shambles (trailer)	Comedy Central	n/a	Offensive language	3
Vera	ITV1	15/01/2012	Violence and dangerous behaviour	1
Victorious: Prom Wrecker	Nickelodeon	07/01/2012	Scheduling	1
Waterwörl	TV6	14/11/2011	Generally accepted standards	1
Waterwörl	TV6	14/11/2011	Sexual orientation discrimination/offence	1
Websex: What's the Harm?	BBC 3	11/01/2012	Generally accepted standards	1
Where Eagles Dare	ITV4	15/01/2012	Advertising minutage	1
William Hill's sponsorship ITV FA Cup Coverage	ITV1	08/01/2012	Sponsorship credits	1
Woman's Hour	BBC Radio 4	20/01/2012	Generally accepted standards	1
Wonderland	BBC 2	23/01/2012	Offensive language	2
Wonga.com's sponsorship of Channel 5 drama	Channel 5	16/12/2011	Age discrimination/offence	1
World's Greatest Body Shockers	E4	06/01/2012	Gender discrimination/offence	1
World's Scariest Plane Landings	Channel 5	12/01/2012	Advertising scheduling	1
World's Toughest Trucker	Channel 5	20/01/2012	Offensive language	1
World's Toughest Trucker	Channel 5	20/01/2012	Offensive language	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 2 and 15 February 2012.

Programme	Broadcaster	Transmission Date
Coronation Street	ITV1 London	23 January 2012
Dastar Day	Sikh Channel	23 September 2011
Find My Past	Yesterday	05 January 2012
Find My Past's sponsorship of various programmes	Yesterday	n/a
Hanging Up	Sony Entertainment Television	29 January 2012
Party Paramedics: Corfu Carnage	Channel 4	31 January 2012
POAF Conference	DM Digital	25 November 2011
Psychic World TV	Psychic Line	20 January 2012
The Ferret	ITV1 Wales	28 November 2011
The Truth Behind the Loch Ness Monster	National Geographic Channel	02 February 2012
The Wright Stuff	Channel 5	01 February 2012
To The Point	Prime TV	29 December 2011
True Stories: WikiLeaks: Secrets and Lies	More 4	29 November 2011

**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/>.