

# **Ofcom Broadcast Bulletin**

**Issue number 145  
9 November 2009**

# Contents

<u>Introduction</u>	3
---------------------	---

## Standards cases

### In Breach

#### **Islam in Focus**

<i>Peace TV, 31 July 2009, 16:10</i>	4
--------------------------------------	---

#### **Babeworld TV**

*Babeworld TV, 28 May 2009, 23:30*

#### **Promotion of the [www.babeworld.tv](http://www.babeworld.tv) website address**

<i>Babeworld TV, prior to 13 August 2009</i>	8
--	---

#### **Bahran Punjab Diyan and Financial Matters**

<i>MATV, 12 March 2009, 19:00 and 20:15</i>	12
---	----

#### **Top Gear**

<i>BBC2, 2 August 2009, 20:00</i>	17
-----------------------------------	----

#### **Sa Re Ga Ma Pa L'il Champs**

<i>Zee TV, 17 July 2009, 10:00</i>	20
------------------------------------	----

#### **Farmer Wants a Wife**

<i>Five, 20 September 2009, 11:00</i>	21
---------------------------------------	----

#### **Amount of advertising scheduled and retention of recordings**

<i>General Entertainment and Music (GEM), 3 August 2009</i>	23
---	----

#### **Radio Ramadhan Keighley 102.1FM**

<i>Radio Ramadhan Keighley 102.1 FM, 14 September 2009, 12:00</i>	25
---	----

## Fairness & Privacy cases

### Not Upheld

#### **Complaint by Mr Paul Mawson on behalf of Mr Daniel Mawson**

<i>Road Wars, Sky One, 1 June 2009</i>	26
--	----

<b>Other programmes not in breach</b>	30
---------------------------------------	----

## Introduction

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

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

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

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

## Standards cases

### In Breach

#### Islam in Focus

*Peace TV, 31 July 2009, 16:10*

---

#### Introduction

Peace TV is an international satellite television channel, which describes itself as providing “Islamic spiritual ‘edutainment’.” *Islam in Focus* consisted of a public lecture (“the Lecture”) in front of an audience, in English, by a religious speaker, Hamood Ashemaimry. In the Lecture, entitled “*How to build a righteous family*”, the speaker set out, in his opinion, what the rights are of husbands and wives, in the context of creating a righteous family from an Islamic viewpoint. For example, the speaker said:

*“If we have righteous families, we gonna have a righteous society; especially you my brother and sister, who living in non-Islamic country.”*

A complaint objected to part of the Lecture which, it considered, suggested that it would be permissible for husbands to beat their wives. During the Lecture, the speaker said the following

*“[A husband] should not beat [his wife] first. He should not beat her face or beat her violently. Many people misunderstand this, you know, three solution for, you know, evil women or a evil wife, or wife who is not listen to her husband. You advise her first; you disregard her in bed; you bring a mediator from her family – somebody between you to sort the problem. And then if she doesn’t – then you beat her. But beat her – it doesn’t mean to break her ribs. Beat her, tap her on her shoulder. Just let her feel you’re angry. You know the worst thing – even they listen to me, the sisters – the worst thing for a lady, just disregard her in bed, for one week, or two. This is a good solution for a quarrel wife. Don’t go to beating first of all. Try this, it works.”*

Ofcom asked Peace TV for its comments under the following Rules of the Code:

- Rule 2.3: In applying generally accepted standards broadcasters must ensure that material which may cause offence must be justified by the context; and
- Rule 2.4: Programmes must not include material, which taking into account the context, condones or glamorises violent, dangerous or seriously antisocial behaviour and is likely to encourage others to copy such behaviour.

#### Response

Peace TV said that the speaker in this programme was setting out how to build a “*Righteous Family*”, which according to the speaker would lead to a “*Good Society*” and by extension a “*Peaceful World*.” In doing so, according to the broadcaster, the speaker outlined “the relationship between husband and wife and in particular the rights of one upon the other using Islamic teachings, and the consequence of divorce of not knowing each other’s rights.” In particular, the speaker had said:

- a wife has rights “upon the husband” (e.g. “*He should treat her kindly*” and “*He should provide her with the suitable maintenance and housing*”);

- in addition, there are three steps that a husband should take to deal with “unreasonable actions of the wife.” These being: “advise her first”; “disregard her in bed”; and “bring a mediator from her family”; and
- finally, a husband would be able to beat a wife, if the above three steps did not work. But in doing so, the husband should only “tap her on her shoulder.”

In relation to Rule 2.3, Peace TV said that the reference to a husband being able to beat a wife could be justified by the following contextual factors:

- the speaker did not advocate beating as a first resort, but only after other avenues have been tried to resolve a problem;
- by advising that a husband should “tap” a wife on her shoulder, this demonstrates that the intention would be not to cause physical harm;
- the fact that the speaker says at one stage in his Lecture that a husband should not “mock” his wife or “hurt her with his tongue” shows that, if the speaker was “advocating that the husband should not even hurt his wife with his tongue, it would follow and be logical that he would not be advocating actions to cause a wife any physical harm”; and
- the Lecture included several other pieces of advice, which advocated that a husband should be considerate to his wife (e.g. “He should show patience with her”; “He should accept her as she [is]”; and “He should not hasten to divorce.”

In relation to Rule 2.4, Peace TV said it did not believe the Lecture in any way condoned or glamorised violent, dangerous or seriously anti-social behaviour, or encouraged others to copy such behaviour. In addition, the context of the Lecture was based on advice as to how to build a “Righteous Family” and by extension a “Righteous Society” and a “Peaceful World.” The broadcaster said that it would not be possible to give such advice if the Lecture was condoning or glamorising violent, dangerous or seriously anti-social behaviour or encouraging others to copy such behaviour.

In summary, Peace TV said that: “It is a fact that one of the units of society (and still today in Islam) is the family and the speaker attempt[ed] to focus the talk initially on marriage as an integral part of building a righteous family by focussing on the rights a woman has on her husband; he then went on to deal with remedies where there are severe and on-going problems within the relationship in understanding each other’s rights.”

## Decision

Ofcom notes that a number of its licensees will broadcast programming that will derive from a particular religious or spiritual viewpoint, and that such programming will include advice to followers of particular faiths as to how to lead their lives. It is therefore unsurprising if at times such advice might cause offence to different sections of the audience. Ofcom therefore recognises that it would be an unacceptable restriction on a broadcaster’s freedom of expression<sup>1</sup> to curtail the transmission of certain views, just because they cause offence.

However, in broadcasting such content, broadcasters must be aware of the need to ensure compliance with the Code. In particular, in one segment of the Lecture, the

---

<sup>1</sup> As enshrined in Article 10 of the European Convention on Human Rights.

speaker stated that it is permissible to “beat” a wife in certain circumstances. Ofcom considered whether this reference complied with Rules 2.3 and 2.4 of the Code.

With regard to Rule 2.3, Ofcom noted that this programme: was broadcast on a channel aimed at international Islamic viewers; and included the Lecture, in which the speaker gave spiritual advice to husbands and wives as how to behave in the context of building a “*Righteous Family*”. Ofcom noted that during the Lecture: the speaker laid out a list of prescriptions which a husband should adhere to in treating his wife; and that many of these could be portrayed as encouraging a husband to treat his wife with respect. For example, at different times in his lecture, the speaker said the following, as regards to how a husband should treat a wife:

*“He should treat her kindly”;*

*“He should not mock her or hurt her with his tongue”;*

*“He should accept her as she is;”* and

*“He should guide her warmly and lovingly.”*

Even though the broadcaster stated that the speaker said that a husband should only “tap” his wife on the shoulder and not “beat her face or beat her violently...or break her ribs”, Ofcom considers that the speaker was clear that some form of beating was acceptable – as a last resort after other tactics had been used to resolve a dispute with a wife. The passage was clear that a husband could use physical violence.

Ofcom rejected Peace TV’s representations that just because some of the advice given by the speaker advocated a husband treating his wife with respect, that it would follow that “he would not be advocating actions to cause a wife any physical harm.” The speaker used the verb “beat” three times and “beating” once in the context of a husband chastising his wife. It considered that the speaker was clear in his advice, namely, that he was encouraging what could be portrayed as domestic violence in certain circumstances.

Ofcom considers that the advice given to viewers that it was permissible for a husband to beat his wife, even if according to the broadcaster it was to be only in certain circumstances, and undertaken with restraint, would be offensive to many in the audience. Further Ofcom considered that this offensive material could not be justified by the context. This was because of for example: the lack of any mediating or counteracting views, within the programme, to the speaker’s advocacy of beating; and that, in general, the high likelihood that many in a UK audience would find any advocacy and support at all of domestic violence – which is of course potentially criminal under UK law – to be highly offensive. The programme was therefore in breach of Rule 2.3.

With regard to Rule 2.4, the relevant test is that content must not: firstly, taking into account the context, condone or otherwise glorify violent, dangerous or seriously antisocial behaviour; and secondly, be likely to encourage others to copy such behaviour. Ofcom considered these two issues in turn.

Ofcom noted Peace TV’s comments that it would not have been possible for the Lecture to have shown how to build a “*Righteous Family*” (and by extension a “*Righteous Society*” and a “*Peaceful World*”) if it had included material that condoned or glorified violent, dangerous or seriously antisocial behaviour. However, Ofcom considered that the stated subject matter and aim of the Lecture did not obviate the

fact that in this case the speaker was unambiguously advocating a form of violent behaviour i.e. domestic violence. This and the fact that the Lecture was a serious, religious lecture aiming to provide spiritual guidance, could not, in Ofcom's view, give enough contextual justification to suggest the speaker could not be reasonably portrayed as condoning violent behaviour.

In addition, Ofcom considered that the advice on beating wives within the Lecture: was delivered in a serious and measured manner by the speaker; and on a channel specialising in dispensing Islamic spiritual advice. There was therefore a strong likelihood that such advice could be construed as likely to encourage others to copy such behaviour.

Given the above, Ofcom considered that the programme was in breach of Rule 2.4.

**Breach of Rules 2.3 and 2.4**

## In Breach

### Babeworld TV

*Babeworld TV, 28 May 2009, 23:30*

### Promotion of the [www.babeworld.tv](http://www.babeworld.tv) website address

*Babeworld TV, prior to 13 August 2009*

---

#### Introduction

Babeworld TV is a chat and adult-sex chat channel available without mandatory access restrictions in the adult section of the Sky electronic programme guide (“Sky EPG”). It broadcasts programming based on interactive daytime and adult-sex chat services: viewers are invited to contact on-screen presenters via premium rate services (“PRS”). After the 21:00 watershed in particular, the presenters dress and behave in a sexually provocative way.

#### Babeworld TV

Ofcom received a complaint that at around 23:30 on 28 May 2009 a female presenter, wearing only skimpy underwear including a G-string, showed clear and close-up images of anal and vaginal detail to camera. Ofcom viewed a recording of the programme and noted that the presenter lay on her back with her legs up in the air and apart talking on the telephone. On five occasions she pulled aside the G-string she was wearing to reveal briefly her vagina and anus. This occurred during a time period of just under three minutes.

#### Promotion of the [www.babeworld.tv](http://www.babeworld.tv) website address prior to 13 August 2009

In addition, whilst monitoring the material as described above, Ofcom noted that the broadcaster had included in its programmes on-screen promotional references to its website [www.babeworld.tv](http://www.babeworld.tv). When accessed by Ofcom, this website featured sexually explicit R18 equivalent material which could be readily viewed without registration to the website. Although this pornographic material was not broadcast on-air, Ofcom was concerned that it appeared on a website being promoted on an Ofcom licensed service (Babeworld TV) from 21.00.

Ofcom sought comments from the licensee, Babeworld TV Limited (“Babeworld”). These comments were in respect of how the graphic shots of the presenter and the promotion of a website featuring unrestricted R18 equivalent<sup>1</sup> material complied with Rules 2.1 (generally accepted standards) and 2.3 (offensive material must be justified by context) of the Code.

#### Response

#### Babeworld TV

In its response, the licensee said that the presenter was tugging on her G-string and was unaware part of her bottom was showing for a short period of time. It said the

---

<sup>1</sup> The ‘R18’ category is a special and legally restricted classification primarily for explicit works of consenting sex or strong fetish material involving adults. Films may only be shown to adults in specially licensed cinemas, and video works may be supplied to adults only in licensed sex shops. ‘R18’ video works may not be supplied by mail order. Source: BBFC: The Guidelines at <http://www.bbfc.co.uk/downloads/pub/Guidelines/BBFC%20Classification%20Guidelines%202009.pdf>



presenter's behaviour was noted by its onsite compliance officer and that the presenter is seen on screen being told what had occurred. Babeworld said that this was a "one-off accident" that was not prolonged and it therefore did not consider that it constituted a breach of the Code. It said that "no reasonable adult would find any of our content out of context with what they would expect to find in the Adult area of the EPG listing". It continued that this programme was clearly an adult programme, in the adult section of the EPG, broadcast from 10pm and that it should therefore be allowed to rely on the context.

Promotion of the [www.babeworld.tv](http://www.babeworld.tv) website address prior to 13 August 2009

With reference to the promotion of its website, Babeworld said that it was only promoted after the watershed and that the material available on it was only possible to view after a user had confirmed he was over 18 years of age. However, the licensee confirmed that it had removed the content Ofcom had concerns about even though it said it was not aware that Ofcom regulated the content on internet sites. The broadcaster asked Ofcom to provide details of the legislation that gave it the power to regulate internet sites so that it could understand this area more fully.

In summary, the broadcaster disputed that it had breached any part of the Code with regard to the matters Ofcom had raised.

## Decision

### Babeworld TV

During the programme investigated of 28 May 2009, the female presenter was shown to move her left hand down to her crotch and then pull the string of her G-string to one side to show viewers clear, unambiguous and close-up shots of her vagina and anus. She repeated this action five times in just under three minutes. In Ofcom's view it is a breach of generally accepted standards and offensive to broadcast such images on a service without mandatory access restrictions unless they are justified by the context. According to Rule 2.3, context is judged by a variety of factors such as the editorial context of the service, the time of broadcast and the effect on viewers of coming across the material unawares.

Ofcom has previously and repeatedly published clear guidance regarding content broadcast by 'adult-sex chat' services in the adult section of the Sky EPG, where the material is free-to-view and broadcast without mandatory access restrictions. This guidance stated that material of a sexual nature broadcast after the 21:00 watershed must be appropriately limited and justified by the context to ensure compliance with generally accepted standards<sup>2</sup>. It has also repeatedly made it clear that the location of a channel in the adult section of the Sky EPG does not in itself provide sufficient

---

<sup>2</sup>Breach Findings for Sex Station 'Lucky Star', and House of Fun Broadcast Bulletin 115 [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb115/](http://www.ofcom.org.uk/tv/obb/prog_cb/obb115/) ;  
Breach Finding on SportxxxBabes, Ofcom Broadcast Bulletin 119, dated 13 October 2008; [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb119/](http://www.ofcom.org.uk/tv/obb/prog_cb/obb119/);  
Sanctions decision against Satellite Entertainment Limited concerning its channel SportxxxBabes, dated 26 August 2008, paragraphs 4.2, 8.3 and 8.11, [http://www.ofcom.org.uk/tv/obb/ocsc\\_adjud/sportxxxbabes.pdf](http://www.ofcom.org.uk/tv/obb/ocsc_adjud/sportxxxbabes.pdf); Sanctions decision against Square 1 Management Limited concerning its channel Smile TV, dated 10 July 2008, paragraph 1.4, [http://www.ofcom.org.uk/tv/obb/ocsc\\_adjud/SmileTV.pdf](http://www.ofcom.org.uk/tv/obb/ocsc_adjud/SmileTV.pdf);  
Sanctions decision against Connection Makers Limited dated 30 November 2007, paragraph 1.4, [http://www.ofcom.org.uk/tv/obb/ocsc\\_adjud/babeworld.pdf](http://www.ofcom.org.uk/tv/obb/ocsc_adjud/babeworld.pdf);  
Note to Daytime and Adult Sex Chat Service Broadcasters, Broadcast Bulletin 137, 6 July 2009 [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb137/Issue137.pdf](http://www.ofcom.org.uk/tv/obb/prog_cb/obb137/Issue137.pdf)

protection from the potential to view offensive material or sufficient 'programme' context for its broadcast.

As regards context, Ofcom noted that the programme was broadcast well after the 21:00 watershed. It judged however that the repeated and seemingly deliberate actions by the presenter to show her vagina and anus had either no, or a completely insufficient, justification in the context. Ofcom considered that the actions of the presenter were clearly not a "one-off accident" because she needed to act with deliberation to locate the string with her fingers and then move it to the side. Also the action was repeated five times in total. Ofcom questions the speed with which the on-site compliance officer reacted to the presenter's behaviour, given that the presenter only appeared to be informed of the incident while she was on screen once she had changed position and the G-string was back in place.

In Ofcom's view the overriding purpose of broadcasting 'adult-sex' chat material is to elicit premium rate service telephone calls or texts. The broadcast of such sexually explicit material without mandatory access restrictions requires far stronger justification than was provided by Babeworld in this case. In Ofcom's view, even though viewers of 'adult-sex' channels are used to a great extent to the type of material they show, the degree of offence capable of being caused by the broadcast of the very explicit images shown in this case was likely to be considerable. In Ofcom's view, this material would have exceeded the likely expectation of the audience, especially for viewers who may have come across it unawares.

For all these reasons, this content was offensive and not justified by context, and so breached generally accepted standards. It was therefore in breach of Rules 2.1 and 2.3 of the Code.

*Promotion of the [www.babeworld.tv](http://www.babeworld.tv) website address prior to 13 August 2009*

Ofcom asked Babeworld twice in July 2009 to comment on why it believed it was acceptable to make promotional references to the [www.babeworld.tv](http://www.babeworld.tv) website on its service when the site contained unprotected R18 equivalent material. The broadcaster finally responded on 13 August 2009, when it confirmed that R18 equivalent material had been removed but queried Ofcom's power to regulate promotional references made on air to websites.

The content of websites is not broadcast material, and therefore not subject to the requirements of the Code. However, any promotional references to websites made on air are broadcast content. Ofcom therefore has the duty and the power to regulate such references under the Communications Act 2003. The Legislative Background to the Code states: "Although a link included in the service may lead to features outside of that service which are not regulated by Ofcom, the provision of access to those features by, for instance, the inclusion of a link, is within the control of the broadcaster and so within Ofcom's remit. Ofcom may therefore require such a link or facility to be removed where Ofcom has concerns, in the light of its statutory duties and, in particular, the standards objectives set out in Section 319 of the Act, about the material to which it leads." Ofcom licensed services should therefore in no circumstances promote 'Adult' websites which provide unrestricted R18 material (or material equivalent to it) if such material can be accessed without appropriate restrictions in place. Ofcom is able to request that references to such websites are removed. Ofcom has made its position regarding this matter very clear to date in a recent sanctions decision and two published findings directly relating to the promotion of 'adult' websites on Ofcom licensed services. This information was in the

public domain prior to the 13 August 2009<sup>3</sup> and it was the responsibility of Babeworld – as with all licensees - to ensure it was fully aware of these decisions. Ofcom is concerned that Babeworld was not familiar with them.

Code Rules 2.1 and 2.3 apply to promotional references to websites made on air because they are broadcast content. The issue in this case was whether the website was suitable to be promoted on a licensed television service and so complied with these Rules. When accessed – merely by clicking a button to confirm that the user was over 18 – the front page of the Babeworld website contained extremely explicit and graphic sex material (equivalent to BBFC ‘R18’-rated content). This included pictures of intercourse, anal sex, and oral sex and close-up images of sexual organs. Users were also able, without restriction, to view clips of R18 equivalent material. This did not require prior registration to view and its promotion on television was therefore of serious concern to Ofcom. The promotional references to the [www.babeworld.tv](http://www.babeworld.tv) website on air therefore breached generally accepted standards. They were offensive because of the unprotected and highly explicit sexual material they led to and were not in Ofcom’s opinion justified by the context, such as only being broadcast after 21:00 on a service in the adult section of the Sky EPG. They were therefore in breach of Rules 2.1 and 2.3 of the Code.

In view of the serious and repeated nature of these contraventions of the Code, Ofcom reviewed carefully whether they should be considered for referral to the Content Sanctions Committee. On balance Ofcom decided not to do so on this occasion. However, Ofcom will seriously consider further regulatory action should Babeworld breach the Code in the future.

**Babeworld TV: Breach of Rules 2.1 and 2.3**

**Promotion of the [www.babeworld.tv](http://www.babeworld.tv) website: Breach of Rules 2.1 and 2.3**

---

<sup>3</sup>Published Finding against RHF Productions, promotion of Red Hot and Television X websites [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb114/issue114.pdf](http://www.ofcom.org.uk/tv/obb/prog_cb/obb114/issue114.pdf), RHF sanction published 18 May 2009 [http://www.ofcom.org.uk/tv/obb/ocsc\\_adjud/rhfportland.pdf](http://www.ofcom.org.uk/tv/obb/ocsc_adjud/rhfportland.pdf), Published Finding against Sex Station, promotion of sex station TV website published 20 July 2009 [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb138/Issue138.pdf](http://www.ofcom.org.uk/tv/obb/prog_cb/obb138/Issue138.pdf)

## In Breach

### Bahran Punjab Diyan and Financial Matters

MATV, 12 March 2009, 19:00 and 20:15

---

#### Introduction

MATV provides a news and family entertainment service for the Asian community. A viewer contacted us with concerns about the promotional nature of two phone-in programmes. In the course of the investigation, Ofcom also became concerned about MATV's inability to respond to Ofcom promptly.

#### Bahran Punjab Diyan

In *Bahran Punjab Diyan* the presenter, a studio guest solicitor and callers discussed legal issues. Viewers could contact the studio by calling a number screened at various times in a caption that stated: "*Live Call 02089631001.*"

A viewer was concerned that the guest's services were promoted throughout the programme.

During the programme the presenter promoted the guest solicitor and the company he represented, when he said, for example:

- "...I would tell viewers Mr Sharma who is from MB Law Solicitors, is sitting here and ... I think you should come and see him, it would be a very good thing, you could save your money...";
- "...if you mention the name of Bahran Punjab Diyan programme, whatever the fee is, you will get free advice, absolutely free because I have promised with him that if any of my Bahran Punjab Diyan viewers comes and mentions the name of Bahran Punjab Diyan programme, you will have to give free advice..."; and
- "...At the same I would tell you that if you want to note down Mr Sharma's number, you can ring him direct ... note down his number: 079401 234801. I repeat, it is 079401 234801. This is his direct number if you want to talk with him..."

The guest solicitor also promoted his services, when he said, for example, "*You note down my number and ring me ... You can ring me tomorrow morning between 10 and 12*", and stated his company's full postal address.

#### Financial Matters

In *Financial Matters* two experts discussed finance with callers. Viewers could contact the studio by calling a number screened at various times in a caption that stated: "*Live Call 02089631001.*"

A viewer was concerned that the business of one of the experts was promoted throughout the programme.

Four times during the programme (for periods in excess of four, two, one and six minutes respectively) a white banner was screened. It contained the following caption:

“Contact – 02084705454, 07713123456  
e-mail – jag@chima.co.uk”

These were the contact details of Mr Chima, the programme’s presenter (one of the experts).

An advertisement for Mr Chima’s business, London Debt Solutions (London Residentials Ltd), was broadcast during commercial breaks appearing in and around *Financial Matters*. It featured Mr Chima and promoted the advertiser’s contact telephone number, “02084705454” – the same number promoted in the white banner that was broadcast during the programme.

The white banner broadcast in the programme therefore appeared to promote Mr Chima’s business, London Debt Solutions (London Residentials Ltd).

We therefore sought MATV’s comments with reference to both *Bahran Punjab Diyan* and *Financial Matters*, and with regard to the following Code Rules:

- Rule 10.3 – Products and services must not be promoted in programmes
- Rule 10.4 – No undue prominence may be given in any programme to a product or service.
- Rule 10.5 – Product placement is prohibited.

#### The provision of material to Ofcom

In the course of this investigation, MATV failed on a number of occasions to provide Ofcom with requested material in a timely manner, as required under its licence to broadcast. We therefore also sought MATV’s comments on this matter with regard to the following licence conditions:

- Condition 11 (Production and retention of recordings), which requires, among other things, that recordings or transcripts requested by Ofcom are provided “forthwith”; and
- Condition 12 (General provision of information to Ofcom), which requires, among other things, that “The Licensee shall furnish to Ofcom in such manner and at such times as Ofcom may reasonably require such ... information ... for the purpose of exercising the functions assigned to it...”

#### **Response**

MATV assured Ofcom that the broadcast of neither programme had been subject to a commercial arrangement with a third party. The broadcaster added that it had no intention to breach Code rules and both programmes had therefore been removed from air pending Ofcom’s decision on the matters raised.

#### *Bahran Punjab Diyan*

With regard to Rule 10.3, which prohibits the promotion of products and services in programmes, MATV said that the references to MB Law Solicitors, Mr Sharma, his personal contact details and his offer of free advice, were “just [part of] an advisory service we provide to [a] minority community and there is no commercial arrangement made between any of the participants hence Rule 10.3 does not apply

to it.” The broadcaster added: “10.3 says programmes. But it is a live debate show and not a recorded programme.”

With regard to Rule 10.4, which prohibits the undue prominence of products and services in programmes, MATV said the solicitor had only appeared in one programme, which had been broadcast “as a free community service.” It added that the full contact details of MB Law Solicitors were provided only once in the programme. The broadcaster therefore concluded that “there is no question of undue prominence.” MATV added that naming the guest’s credentials (including the company name) on air was editorially justified, as viewers would not otherwise have been aware of his fitness to address the matters raised.

#### Financial Matters

MATV noted that, like *Bahran Punjab Diyan*, above, *Financial Matters* was a live show, run by the broadcaster as a community service. It added: “...as a broadcaster we do have certain social responsibilities as well...”

The broadcaster said that the advertisements for the presenter’s company were paid for spots, which followed a predetermined schedule that had no connection with the live show.

#### The provision of material to Ofcom

With regard to Conditions 11 and 12 of MATV’s licence to broadcast, the broadcaster said it had provided material to Ofcom “as and when requested”. It added that MATV had had “no communications issues regarding providing information to Ofcom” and stated the reasons for the delay in the provision of specific material (for example, due to ill health).

#### **Decision**

Ofcom noted MATV’s assurance that the broadcast of neither programme had been subject to a commercial arrangement with a third party. Ofcom therefore concluded that product placement had not occurred in either broadcast.

Nevertheless, Ofcom is concerned at MATV’s apparent lack of understanding when interpreting both the Code and the conditions of its licence.

#### Bahran Punjab Diyan

In the Code, a “programme” refers to broadcast editorial content and comprises live and pre-recorded material that is not advertising.

Rule 10.3 of the Code prohibits the promotion of products and services in any programme. This includes the promotion of a commercial business, or one of its representatives, even if it offers a special/free service by arrangement with the broadcaster.

Ofcom notes that a legitimate contact phone number was provided on screen for viewers who wished to participate in the live discussion within the programme and obtain advice from the studio guest.

Ofcom accepts that MATV and its guest had agreed to conduct a free off-air advisory service for viewers following the programme. Nevertheless, the provision of additional contact details – for the programme’s guest (a solicitor) and the company he represented (MB Law Solicitors) – together with solicitations for callers to contact

the guest off air, merely promoted products and services in the programme, in breach of Rule 10.3 of the Code.

An occasional passing on-air reference to the provision of a subsequent free off-air advisory service, with reference to its contact details being available, for example, on the broadcaster's website, may be editorially justified within a programme. However, the provision in a programme of a commercial business's contact details, or those of its representative, are unlikely to have editorial justification, irrespective of how few times they are mentioned on air.

In this instance, the programme offered advice to viewers who contacted it via a legitimate contact number that was occasionally promoted on screen. Ofcom could therefore find no editorial justification for the reference to the contact details of the guest solicitor or to the full postal address of the company he represented. The programme was therefore in breach of Rule 10.4 of the Code.

#### Financial Matters

Ofcom accepts that MATV may have social responsibilities that it wishes to fulfil on-air. Ofcom notes that a legitimate contact phone number was provided on screen for viewers who wished to participate in the live discussion and obtain financial advice within the programme.

Ofcom also accepts that advertisements for the presenter's company, broadcast in and around *Financial Matters*, were paid for spots, which followed a predetermined schedule that had no connection with the live show.

Nevertheless, as with *Bahran Punjab Diyan*, above, the provision of additional contact details within the programme – for its guest and his company (London Debt Solutions (London Residentials Ltd)), merely promoted products and services in the programme, in breach of Rule 10.3 of the Code.

No reference in the programme to the contact details of the presenter or his company had editorial justification, especially as the screened business telephone number was also provided in advertisements for the same company, as broadcast in and around the programme. The programme was in breach of Rule 10.4 of the Code.

The broadcaster was previously found in breach of Rules 10.3 and 10.4 of the Code, in September 2008, when it stated it had broadcast promotional material by mistake.<sup>1</sup> Ofcom is particularly concerned that MATV has now breached the same Code rules with material that it believes was compliant.

Broadcasters should note that the repetition of breaches of the Code is a condition under which Ofcom may consider the imposition of statutory sanctions, in accordance with its published procedures.

#### The provision of material to Ofcom

Ofcom does not accept that MATV had provided material to Ofcom "as and when requested" or that it had had "no communications issues regarding providing information to Ofcom." Ofcom notes, for example, that MATV failed to:

- provide the English translation of some material, as requested by Ofcom;
- inform Ofcom in advance of its inability to meet a deadline;

---

<sup>1</sup> Finding available at: [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb118/](http://www.ofcom.org.uk/tv/obb/prog_cb/obb118/).

- request of its own volition an extension for the provision of any material it was unable to provide on time; and
- arrange contingency plans for the provision of material to Ofcom, when one specific contact was incapacitated or unavailable.

The broadcaster was therefore in breach of Conditions 11 and 12 of its licence, which require, among other things, that recordings or transcripts requested by Ofcom are provided “forthwith” and that the licensee will “furnish to Ofcom” information “in such manner and at such times as Ofcom may reasonably require [it].”

The repeated breaches recorded in this finding raise serious concern. Ofcom puts MATV on notice that it will consider further regulatory action in the event of any further recurrence or serious compliance failure in the future.

**Breaches of Rules 10.3 and 10.4 of the Code**  
**Breaches of Licence Conditions 11 (Retention and production of recordings)**  
**and 12 (General provision of information to Ofcom)**



## In Breach

### Top Gear

*BBC2, 2 August 2009, 20:00*

---

#### Introduction

*Top Gear* is the BBC's long running entertainment series about cars, presented by Jeremy Clarkson and two co-presenters, James May and Richard Hammond. This edition, the final show of the programme's thirteenth series, featured a spoof remake of an advertisement for a Volkswagen car which showed a man committing suicide with a gunshot to the head, followed by blood splattering out after the impact. The scene also included a depiction of the dead man lying in a pool of blood.

Fifty viewers contacted Ofcom to complain about this scene which they felt was too graphic and unsuitable for the time of broadcast (20:00) because children were watching. Ofcom noted that a subsequent repeat of the programme on 3 August 2009, in a 19:00 timeslot, removed the scene in which the man was seen shooting himself in the head. This mock advertisement was one of six or seven such advertisements in this segment of the programme which employed exaggerated and absurd themes to draw attention to the Volkswagen Sirocco's perceived lack of speed. Other 'advertisements' contained references to the Bible, to mothers in law, to funerals, and to explosions. One advertisement included a scene in a hospital waiting room. An actor who had supposedly been in a car accident was seen holding what appeared to be his own severed arm from which blood spurted in large quantities for approximately two minutes.

Ofcom asked the BBC to comment on the complaints in light of the Code Rule 1.11 (violence to be appropriately limited before the watershed). We also asked it to explain the reasoning for editing out the image of the man shooting himself from the 19:00 repeat of the programme.

#### Response

The BBC pointed out that the Code does not preclude the depiction of all violence before the watershed, even when children are likely to be watching a programme. Rule 1.11 requires that violence should be appropriately limited and in this case, the BBC said, it believed that it was limited by what it described as "the ludicrous and obviously comic depiction of the suicide."

The BBC continued that the reason for the man committing suicide was preposterous – that he had failed to buy the diesel variant of a particular car and that the loss of blood following the shooting was absurdly and deliberately exaggerated. This comic exaggeration and distancing from reality, which characterised the whole segment, were such as to limit the actual depiction of violence in the same way as a violent sequence from a children's cartoon. The fact that the original Volkswagen advertisement was also shown in its entirety highlighted to viewers that this was a witty, if slightly grotesque, send up of a classic advertisement.

In relation to the removal of the image of the man shooting himself from the repeat of the programme, shown at 19:00, the BBC acknowledged that there would have been a certain number of children amongst the programme's audience. However, it said it believed that the depiction of the suicide was appropriately limited so as to make it

suitable for transmission in the programme's usual slot. The programme was broadcast at 20:00 and the sequence in question was shown at just after 20:30. The programme-makers were conscious, however, that the repeat, transmitted at 19:00, might attract a significant number of younger children so the decision was taken to re-edit the sequence and remove the images of the gun shot. The BBC emphasised that it was not done because it was felt that there an editorial misjudgement in relation to the original transmission but because they were sensitive to the fact that there may be a "sliding scale of bedtimes" in many family homes.

## Decision

When applying the Code, Ofcom must carry out its duties in light of Article 10 of the European Convention of Human Rights which provides for the right to freedom of expression. Ofcom must regulate potentially harmful or offensive material in a manner that respects freedom of expression – the broadcasters' right to transmit information and the audience's right to receive it. Ofcom must therefore seek an appropriate balance between protecting members of the public from harm and offence on the one hand and the broadcaster's right to freedom of expression on the other, taking into account context.

Ofcom recognises that *Top Gear* is a series with an established audience, some of whom are children. It is known however for its adult orientated content and humour, which some viewers on occasions may find challenging. Viewers have in general come to expect these features of the programme. In the scene complained of, in a send-up of a well known Volkswagen advertisement, an actor is seen, at close quarters, apparently killing himself by shooting himself in the head. The aftermath of the shooting is also shown as described above.

Rule 1.11 is designed to protect children from depictions of violence and its after effects in programmes broadcast before the watershed. Therefore Ofcom considered whether children were likely to be viewing the programme. Audience data indicated that a significant number – 204,000 – younger viewers (those aged between 4 and 9 years) were watching the original broadcast at 20:00. Ofcom noted the BBC's decision to remove the image of the gunshot to the head from the programme broadcast in the earlier timeslot of 19:00, because they considered that a greater number of younger children may have been watching at this time. In fact, the audience figures showed that substantially less – 36,000 fewer younger viewers - watched the repeat. Therefore it was the case that, whilst the programme of 2 August 2009 was not aimed specifically at children, the programme regularly attracts a strong child audience and the broadcaster should have taken this into consideration when including the scene in the later broadcast.

The rule states that violence before the watershed must be appropriately limited and must also be justified by the context. Firstly, Ofcom considered whether the violence was appropriately limited. Whilst the shooting scene was only a few seconds in duration, it was Ofcom's view that the spoof suicide was graphically depicted on screen with the man holding the gun to his temple and firing and blood splattering into the air after the bloody impact of the gunshot. Its realistic depiction meant that the violent imagery was not appropriately limited.

Ofcom then considered whether the scene was contextually justified. Context includes, but is not limited to: the editorial content of the programme; the service on which the material is broadcast; the degree of harm or offence likely to be caused; and the likely expectation of the audience.

Firstly, in terms of the editorial content of the programme Ofcom took into account the established nature of *Top Gear* as described above. It also considered the BBC's argument that the comic exaggeration inherent in the spoof advertisement overall, and in this scene in particular, rendered it inoffensive and, in context, justifiable. While scenes such as the hospital patient with the severed arm, described above, were so comically exaggerated and preposterous that they could be said to be justified by the overall context of the *Top Gear* series as described above, the depiction of suicide was of a distinct nature from this and so not justified by the context.

In Ofcom's view, it was precisely because *Top Gear* is an established entertainment programme which features a typical sort of humour that many viewers – including some adults watching with children - would not have expected such a violent scene to appear. Ofcom noted there was no information before the spoof advertisement was shown which would have prepared viewers for its potentially disturbing nature and alerted adult viewers to the fact that it may be unsuitable for younger viewers. These factors taken together meant that the scene exceeded audience expectations for the programme and led Ofcom - on balance - to conclude that there was no editorial justification for its inclusion.

### **Breach of Rule 1.11**

## In Breach

### Sa Re Ga Ma Pa L'il Champs

Zee TV, 17 July 2009, 10:00

---

#### Introduction

Zee TV is a Hindi general entertainment channel. The series *Sa Re Ga Ma Pa L'il Champs* is a studio-based child talent contest. The programme was sponsored by East End Foods.

The following references to the sponsor appeared during the programme:

- an “*East End L'il Champs*” on-screen caption was displayed when contestants performed on stage; and
- after a commercial break, a presenter verbally referred to the programme sponsor when welcoming the audience back to the show.

A viewer complained about the inclusion of commercial messages within the programme.

Ofcom asked Zee TV to comment on the sponsor references under Rule 9.12 of the Code (sponsorship credits must be clearly separated from programme content).

#### Response

Zee TV accepted that the references did not comply with the Code and apologised for this error.

The broadcaster explained that the programme was produced and originally transmitted live in India. Unlike many of the channel's other programmes, the programme was broadcast in the UK very quickly after the original live transmission in India. Zee TV believed that this speed of turnaround may have “caught the staff out.”

The broadcaster said that it was taking steps to ensure its viewing staff are aware of the compliance issues that can be raised by fast turnaround programmes. It had also taken steps to ensure that the necessary masking and editing of the remainder of the programmes in the series and any other such series is done.

#### Decision

Rule 9.12 of the Code states that sponsorship credits must be clearly separated from programmes by temporal or spatial means.

In this case the sponsor was credited during the programme both visually and verbally. The programme was therefore in breach of Rule 9.12

#### Breach of Rule 9.12

## In Breach

### Farmer Wants a Wife

Five, 20 September 2009, 11:00

---

#### Introduction

*Farmer Wants a Wife* is a weekly reality-style TV series. In each episode two single women move to the country and vie for the attentions of a single farmer. This series is originally scheduled to broadcast on Wednesday evenings, after 21:00 and is repeated again in the pre-watershed slot on Sunday mornings.

During this episode, one of the female contestants Karla explained on-camera her feelings about the single farmer Derek's developing friendship with her rival Sarah. Karla said:

*"It is nice to see that she [Sarah] gets along with Derek, but it is a bit frightening, 'cos you're like, 'fuck!'"*

Ofcom received three complaints from viewers who objected to the strong language being broadcast at this time of day and were concerned that children may have been watching. Ofcom wrote to Five for comments with regard to Rule 1.14 (the most offensive language must not be broadcast before the watershed).

#### Response

Five apologised for the broadcast of this language before the watershed. Five explained that, due to human error, its compliance team failed to notice the use of this offensive language and therefore did not flag it to be edited from the pre-watershed version of the programme. Five said that the language also went unnoticed when the edited version was checked again.

The broadcaster explained that a viewer complained to them directly shortly after transmission, and Five arranged for the episode to be re-edited, to remove the offensive language from any future transmission. Five said that it has introduced further measures to ensure similar errors do not occur again.

The following Sunday Five broadcast two apologies for any offence caused to viewers, one preceding and one following the next episode in this series.

#### Decision

Rule 1.14 of the Code clearly states that the most offensive language must not feature before the watershed. Ofcom's research<sup>1</sup> confirms that most viewers find the word "*fuck*" and its derivatives one of the most offensive words.

Ofcom acknowledged Five's apologies and the steps taken by the broadcaster to ensure compliance in this area in the future. However, in Bulletin 89 Ofcom issued a notice to broadcasters highlighting their duty to ensure that a robust system be put in place to protect viewers from harmful or offensive material, in particular when editing

---

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

post-watershed programmes for transmission during the daytime. It explained that human error was not a sufficient justification for such failures in compliance.

This broadcast of the most offensive language in this pre-watershed programme therefore breached Rule 1.14.

**Breach of 1.14**

## In Breach

### Amount of advertising scheduled and retention of recordings

*General Entertainment and Music (GEM), 3 August 2009*

---

#### Introduction

General Entertainment and Music (“GEM”) is a subscription channel for an Iranian audience which broadcasts mainly in the Middle East. The channel cannot be received in the United Kingdom, but is licensed by Ofcom and therefore subject to Ofcom’s codes and licence conditions.

As part of Ofcom’s routine monitoring of compliance with the Code on the Scheduling of Television Advertising (“COSTA”) we requested recordings and transmission logs from the broadcaster for 3 August 2009. After some weeks GEM provided Ofcom with the transmission logs. However, the recordings provided by GEM were not ‘as-broadcast’ recordings of the channel’s output (i.e. the same quality in terms of both sound and picture as when originally transmitted), as had been requested by Ofcom. This hampered our investigation as the recordings provided did not correlate with the transmission logs and therefore did not give a clear picture of what had been transmitted.

Condition 11(2) of each TLCS licence requires that: “the Licensee shall make and retain or arrange for the retention of a recording in sound and vision of every programme included in the Licensed Service for a period of 60 days from the date of its inclusion therein...”

Analysis of the transmission logs that had been provided by the broadcaster indicated that the channel had transmitted 16 minutes and 58 seconds of advertising during the clock hour from 18:00 to 19:00 on 3 August 2009.

Rule 4 of COSTA states that “...time devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes...”

Ofcom therefore asked GEM for its comments with regard to Licence Condition 11(2) and Rule 4 of COSTA.

#### Response

GEM said that it had contracted out the play-out of its programming to a third party. This company was not contractually obliged to retain copies of the ‘as-broadcast’ programmes. GEM did not keep copies of its programme output either.

With regard to the amount of advertising broadcast, the broadcaster said it had not fully understood or appreciated the detail of COSTA. GEM incorrectly believed that advertisements for sister companies and businesses were exempted from total advertising minutage. The channel admitted the breach of Rule 4 of COSTA.

GEM apologised that it had not previously fully understood its obligations and the requirements of both its licence and COSTA. The broadcaster confirmed that steps have been put in place to prevent further breaches in the future.

GEM has also confirmed that it will ensure that advertising will not exceed 12 minutes in any one hour. The broadcaster stated that it will be enlisting the support of a law firm to assist its compliance office in keeping abreast of its regulatory obligations and relevant Ofcom codes.

### **Decision**

As a condition of holding an Ofcom licence, broadcasters are required to ensure that the material they broadcast complies with Ofcom codes. GEM failed to retain recordings of its output, as broadcast, and had been relying on a third party who was not contractually obliged by the broadcaster to do so either. The broadcaster was therefore in breach of Condition 11(2) of its TLCS licence to broadcast.

Further, on the basis of the information available, Ofcom found that the material broadcast on GEM between 18:00 and 19:00 on 3 August 2009 was in breach of Rule 4 of COSTA which limits the amount of advertising in any one hour to 12 minutes.

Ofcom notes that GEM has given assurances that it now retains recordings of its output, as required by its licence, and that it will ensure that advertising will not exceed 12 minutes in any one hour.

Nevertheless, these are serious breaches and will be held on GEM's record. Ofcom is concerned that GEM appeared to have contracted out its compliance obligations to a third party service provider without ensuring that specific licence conditions were adhered to. Ofcom reminds GEM of its compliance obligations under its Ofcom licence and puts GEM on notice that should any breaches occur in the future, further regulatory action will be considered.

### **Breach of Rule 4 of COSTA**

### **Breach of Licence Condition 11 (Retention and production of recordings)**



## In Breach

### **Radio Ramadhan Keighley 102.1FM**

*Radio Ramadhan Keighley 102.1 FM, 14 September 2009, 12:00*

---

#### **Introduction**

Radio Ramadhan Keighley was a radio service which broadcast in West Yorkshire under a short-term restricted service licence for the Ramadhan period. A listener complained that the station broadcast content with a bias towards the Labour Party, and that this was not politically balanced and did not serve the purpose of a religious-based station.

Ofcom asked Radio Ramadhan Keighley for a recording of the programme to assess the content.

#### **Response**

Radio Ramadhan Keighley explained that it was unable to obtain the recording from its logging facility. It said a computer hardware failure meant that the external hard-drive used to record programmes was faulty, and had failed to record the programme.

Although it was unable to provide a recording, the station did explain that it had no bias towards any political party, and it had invited representatives from all the political parties to participate in local community awareness programmes.

#### **Decision**

While noting Radio Ramadhan Keighley's comments about impartiality towards all political parties, in the absence of a recording we were unable to consider the complaint. It is a very important condition of all radio broadcasters' licences that recordings of their output are made and retained and copies provided to Ofcom on request "forthwith." The failure of Radio Ramadhan Keighley to meet these requirements is a serious and significant breach of the conditions of its licence. This breach will be held on record.

#### **Breach of Licence Condition 8 (Part 2 General Conditions) of restricted service licence**

## Fairness and Privacy Cases

### Not Upheld

#### Complaint by Mr Paul Mawson on behalf of Mr Daniel Mawson *Road Wars, Sky One, 1 June 2009*

---

**Summary:** Ofcom has not upheld this complaint of unwarranted infringement of privacy in the programme as broadcast.

This programme featured footage of Mr Daniel Mawson (Mr Paul Mawson's son) being questioned by police officers who had stopped him to ascertain whether or not he was insured to drive the car he was driving. The police were shown searching both Mr Daniel Mawson and the car. The searches revealed that he was in possession of approximately £1300 in cash and that four kilos of cocaine were concealed in the car. Mr Mawson was arrested at the scene for possession with intent to supply.

Mr Paul Mawson complained on his son's behalf that his privacy had been unwarrantably infringed in the programme as broadcast.

Ofcom found that Mr Daniel Mawson did not have a legitimate expectation of privacy in relation to the broadcast of footage of him being stopped and arrested by police as he was filmed openly in a public place and found to be in possession of four kilos of cocaine with intent to supply for which he was subsequently convicted and sentenced to five years imprisonment. Therefore, Ofcom concluded that his privacy was not unwarrantably infringed in the programme as broadcast.

#### Introduction

On 1 June 2009, British Sky Broadcasting Limited ("BSkyB") broadcast on its channel Sky One an edition of its series *Road Wars*, which followed police officers from a number of different police forces throughout the country carrying out their duties.

This edition included footage of two police officers of Devon and Cornwall Constabulary who had stopped a car on a routine "stop-check" to ascertain whether the driver was insured to drive the vehicle. The driver of the car, Mr Daniel Mawson, was shown being questioned by the police officers about the insurance and then being searched. The search revealed that he was in possession of approximately £1,300 in cash and a subsequent search of the car that he was driving revealed four kilos of cocaine. Mr Daniel Mawson was arrested at the scene for possession of a Class A drug with intent to supply and was taken to the police station to be charged. At the end of the section of the programme that featured Mr Daniel Mawson, the programme's commentary stated:

*"In court, Daniel Mawson, admitted being paid to courier the drugs down from the north. He was transporting cut down coke ready to be bagged up and sold. It turned out he was just minutes from the drop off point when [the police officers] collared him. [The police officers'] quality policing prevented 4000 wraps of cocaine getting onto the streets. Daniel Mawson pleaded guilty to possessing cocaine with intention to supply. He's now serving a five year sentence in prison."*

Mr Paul Mawson complained to Ofcom on behalf of his son, Mr Daniel Mawson, that his son's privacy had been unwarrantably infringed in the programme as broadcast.

## **The Complaint**

### **Mr Mawson's case**

In summary, Mr Paul Mawson complained on behalf of his son, Mr Daniel Mawson, that his privacy had been unwarrantably infringed in the programme as broadcast in that his full name was disclosed in the programme and that his face was not obscured. Mr Paul Mawson said that his son had not given his permission for the broadcast of his full name or the footage taken of him.

### **BSkyB's case**

In summary, BSkyB responded as follows:

BSkyB said that Mr Daniel Mawson did not have a legitimate expectation of privacy in relation to being shown being searched and arrested by a police officer. It said that he had been driving on a public road prior to being stopped and that the police officers had a legitimate reason to stop and search Mr Daniel Mawson and his car. BSkyB also said that the police officers had sufficient evidence to arrest Mr Daniel Mawson at that time on suspicion of possessing a Class A drug with an intent to supply, an offence to which he subsequently pleaded guilty and for which he was convicted and given a custodial sentence. BSkyB said that the fact of his conviction is a matter of public record and that the details of this case, including a photograph of Mr Daniel Mawson, were available on local newspaper websites.

BSkyB said that the camera crew was clearly visible to Mr Daniel Mawson at the time of filming and it was not conducted surreptitiously. There was no suggestion that the programme makers concealed the fact that they were filming him. BSkyB said that Mr Daniel Mawson was aware that he was being filmed as the camera crew were in full view of him. Contrary to Mr Paul Mawson's complaint, Mr Daniel Mawson made no attempt during filming to request that the filming be stopped or object to the footage being broadcast or request that his identity be obscured.

BSkyB said that there was a clear public interest in the production of programmes which depict the work of the police and in particular portray the real-life situations they face. There was also a clear public benefit in highlighting the fact that a seemingly simple routine police check can uncover very serious crime; in this case, one of Devon and Cornwall Constabulary's biggest seizures of cocaine. Accordingly, it said that the public interest outweighed any right to privacy that Mr Daniel Mawson might have in relation to the circumstances of this case.

### **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.

Mr Paul Mawson's complaint on behalf of his son was considered by Ofcom's Executive Fairness Group. In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast and the parties' written submissions. In its considerations, Ofcom took account of Ofcom's Broadcasting Code ("the Code").

Ofcom recognises that the line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. In considering complaints about the unwarranted infringement of privacy, Ofcom will therefore, where necessary, address itself to two distinct questions: First, has there been an infringement of privacy? Second, if so, was it warranted? (Rule 8.1 of the Code).

Ofcom considered Mr Paul Mawson's complaint that Mr Daniel Mawson's privacy was unwarrantably infringed in that his full name was disclosed in the programme and that footage of him was broadcast in the programme without his consent.

In considering whether or not Mr Daniel Mawson's privacy had been infringed, Ofcom first determined whether he had a legitimate expectation of privacy in relation to the footage that was broadcast.

Ofcom examined the footage that was included in the programme as broadcast and assessed the nature of the information, actions and events disclosed as well as the context of the disclosure.

Ofcom acknowledged that Mr Daniel Mawson's face was not obscured in the programme and that the programme's commentary disclosed his name when stating the outcome of his trial. In Ofcom's view, these images and information identified him to viewers.

Mr Daniel Mawson was filmed being stopped by the police on a routine check. He was then shown being questioned by the police about whether or not he was insured to drive the car. Footage was also shown of Mr Daniel Mawson and the car he was driving being searched and the subsequent discovery of £1300 in cash and four kilos of cocaine. Mr Daniel Mawson was shown being arrested on the suspicion of possessing a Class A drug with intent to supply and being taken to the police station.

In Ofcom's view, when a person is filmed either committing an offence or being arrested for an offence, that person's expectation of privacy is likely to be significantly diminished by their actions. In Mr Daniel Mawson's case, Ofcom considered that by committing an offence for which he was subsequently convicted and sentenced to five years imprisonment (namely, for the possession of a Class A drug with intent to supply), his expectation of privacy was considerably lessened.

While Ofcom acknowledged that Mr Daniel Mawson was identified in that his face was visible throughout the footage and his full name was disclosed in the broadcast, it also noted that his actions took place on a public highway and in public view and had been filmed openly. Ofcom further noted that Mr Daniel Mawson pleaded guilty to possession of a Class A drug with intent to supply and was given a custodial sentence. In light of all the circumstances, Ofcom found that he did not have a legitimate expectation of privacy in relation to the broadcast of the footage of his face, nor the disclosure of his full name.

Having concluded that Mr Daniel Mawson did not have a legitimate expectation of privacy in this regard, Ofcom found that his privacy was not infringed in the

programme as broadcast. It was therefore not necessary for Ofcom to further consider whether any infringement of privacy was warranted or not.

**Accordingly, Ofcom has not upheld Mr Paul Mawson's complaint made on behalf of Mr Daniel Mawson of unwarranted infringement of privacy in the programme as broadcast.**

## Other Programmes Not in Breach

Up to 19 October 2009

Programme	Transmission Date	Broadcaster	Categories	Number of Complaints
Archive On 4	10/10/2009	BBC Radio 4	Offensive Language	1
Archive On 4	26/09/2009	BBC Radio 4	Sex/Nudity	1
Baba Ji Online	13/05/2009	DM Digital	Use of Premium Rate Numbers	1
Balls of Steel	05/08/2009	4Music	Generally Accepted Standards	1
Benidorm	12/10/2009	ITV2	Generally Accepted Standards	1
Bizarre ER	12/10/2009	BBC 3	Generally Accepted Standards	1
Capital Breakfast	05/10/2009	Capital 95.8FM	Inaccuracy/Misleading	1
Carpet Right sponsorship	various	Sky1	Generally Accepted Standards	8
Central Tonight	06/10/2009	ITV1 Central	Sex/Nudity	1
Channel 4 News	24/09/2009	Channel 4	Generally Accepted Standards	1
Channel 4 News	12/10/2009	Channel 4	Religious Offence	1
Channel 4 News	15/10/2009	Channel 4	Violence	1
Coronation Street	11/09/2009	ITV1	Generally Accepted Standards	1
Derren Brown	02/10/2009	Channel 4	Inaccuracy/Misleading	1
Doc Martin	11/10/2009	ITV1	Generally Accepted Standards	1
Doc Martin	04/10/2009	ITV1	Generally Accepted Standards	1
Don't Tell the Bride	13/10/2009	BBC 3	Sex/Nudity	1
Earth Under Water	19/09/2009	National Geographic	Inaccuracy/Misleading	1
EastEnders	16/10/2009	BBC 1	Generally Accepted Standards	2
Edinburgh and Beyond	19/10/2009	Comedy Central	Other	1
F1: Grand Prix	04/10/2009	BBC 1	Generally Accepted Standards	1
Geoff Lloyd's Hometown Show	01/10/2009	Absolute Radio	Generally Accepted Standards	1
GMTV	15/10/2009	ITV1	Commercial References	1
Helicopter Heroes	14/10/2009	BBC 1	Violence	1
Hollyoaks	09/10/2009	Channel 4	Suicide/Self Harm	9
Hollyoaks	08/10/2009	E4	Suicide/Self Harm	4
Hollyoaks Omnibus	11/10/2009	Channel 4	Suicide/Self Harm	1
Horrible Histories	09/10/2009	CBBC	Violence	1
How I Met Your Mother	12/10/2009	E4	Offensive Language	1
How to Look Good Naked	13/10/2009	Channel 4	Sex/Nudity	1
Interactive Services	01/09/2009	Boomerang	Use of Premium Rate Numbers	1
ITV News	10/10/2009	ITV1	Inaccuracy/Misleading	1
James O'Brien	25/09/2009	LBC 97.3FM	Due Impartiality/Bias	1
James O'Brien	02/10/2009	LBC 97.3FM	Generally Accepted Standards	1
Katy Brand's Big Ass Show	08/10/2009	ITV2	Generally Accepted Standards	1

Katy Brand's Big Ass Show	18/10/2009	ITV2	Generally Accepted Standards	1
Kids with Machetes - Stacey Dooley Investigates	13/10/2009	BBC Three	Generally Accepted Standards	1
Kiss 100 Breakfast Show	07/10/2009	Kiss 100	Crime (incite/encourage)	1
KNTV Sex	09/10/2009	Channel 4	Sex/Nudity	2
London Tonight	04/09/2009	ITV1	Generally Accepted Standards	1
Mastermind	04/09/2009	BBC 2	Flashing images	1
Mock the Week Again	14/10/2009	BBC 2	Religious Offence	2
Postal Gold sponsors afternoon dramas on Five	05/10/2009	Five	Crime (incite/encourage)	1
Predator Raw (trailer)	06/10/2009	FX HD	Generally Accepted Standards	1
Richard Wilson: Two Feet in the Grave	29/09/2009	BBC 1	Generally Accepted Standards	1
Road Wars	10/10/2009	Sky1	Generally Accepted Standards	1
Rude Tube	16/10/2009	Channel 4	Sex/Nudity	1
Sexcetera	09/10/2009	Virgin 1	Sex/Nudity	1
Skins	12/10/2009	E4	Generally Accepted Standards	1
Sky News	10/10/2009	Sky News	Generally Accepted Standards	1
Sky News	14/10/2009	Sky News	Generally Accepted Standards	1
Snooker	11/10/2009	BBC 2	Generally Accepted Standards	1
Strictly Come Dancing	03/10/2009	BBC 1	Generally Accepted Standards	1
Teletext Page 301	11/10/2009	ITV1	Generally Accepted Standards	1
The Simpsons	13/10/2009	Channel 4	Sex/Nudity	1
The Weakest Link	14/10/2009	BBC 1	Generally Accepted Standards	1
The X Factor	10/10/2009	ITV1	Commercial References	1
The X Factor	11/10/2009	ITV1	Religious Offence	6
The X Factor	11/10/2009	ITV1	Substance Abuse	3
The X Factor	18/10/2009	ITV1	Substance Abuse	10
The Xtra Factor	11/10/2009	ITV2	Generally Accepted Standards	1
This Morning	13/10/2009	ITV1	Sex/Nudity	1
Today	13/10/2009	BBC Radio 4	Sex/Nudity	1
Top Gear	02/08/2009	BBC 2	Generally Accepted Standards	9
Top Gear	12/09/2009	BBC 3	Violence	3
Top Gear	10/10/2009	Dave	Offensive Language	1
Video Exclusive	11/10/2009	Channel 4	Sex/Nudity	1
Wives	11/10/2009	Sky Three	Generally Accepted Standards	1