

# **Ofcom Broadcast Bulletin**

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## Introduction

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

- a) Ofcom's Broadcasting Code ("the Code"), the most recent version of which took effect on 1 September 2010 and covers all programmes broadcast on or after 1 September 2010. The Broadcasting Code can be found at:  
<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>.

Note: Programmes broadcast prior to 1 September 2010 are covered by either the 2009, 2008 or the 2005 versions of the Code (depending on the date of their broadcast).

- 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://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 (see Rules 9.2 and 9.3 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>1</sup>; and
  - the imposition of statutory sanctions in advertising cases.

The BCAP Code can be found 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> BCAP and ASA continue to regulate conventional teleshopping content and spot advertising for these types of services where it is permitted.

## Standards cases

### In Breach

#### The Wright Stuff

Five, 24 November 2010, 09:15

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##### Introduction

*The Wright Stuff* is a morning magazine show in which the main presenter, Matthew Wright, discusses topical issues with three celebrity panellists, with interaction from viewers via calls, emails and text messages. Viewers' comments are collated and conveyed by a "phone booth presenter".

During this episode, the special guest celebrity panellist was the comedian Tim Minchin. About 30 minutes into the programme, his DVD was referred to as follows:

Matthew Wright: *"You're watching Wednesday's Wright Stuff with Hardeep Singh Kohli, Tracy-Ann Oberman and our special guest Tim Minchin."*

Phone booth presenter: *"And if you fancy a good laugh this Christmas, then may I recommend Tim's brand new live DVD [holds up the DVD]. It's called 'Ready For This' and features such hilarious songs as 'Bears Don't Dig on Dancing' and Matthew's personal favourite, 'Gay'. You can buy your copy from five.tv/wrightstuff for just twelve ninety three and save a third off the suggested retail price, and no, I'm not joking."*

Ofcom asked Channel 5 for its comments in relation to the following rules of the (September 2010) Code<sup>1</sup>:

- Rule 10.2 Broadcasters must ensure that the advertising and programme elements of a service are kept separate.
- Rule 10.3 Products and services must not be promoted in programmes. This rule does not apply to programme-related material.
- Rule 10.5 Product placement is prohibited<sup>2</sup>.

##### Response

Channel 5 said that the reference to the DVD was not broadcast in return for payment or similar consideration to the producer, Channel 5 or any third party and, as such, was not advertising nor product placement.

Channel 5 said that it accepted that the section of the programme, in which the phone booth presenter informed viewers that they could buy a copy of the DVD from the programme's website at a discounted price, was promotional.

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<sup>1</sup> The Code that was in force at the time of the broadcast.

<sup>2</sup> On 20 December 2010, Ofcom published new rules that allow, subject to restrictions, product placement in programmes. These rules come into force on 28 February 2011. Until this date, programmes must comply with the existing rules, which include a prohibition on product placement. Further information on the new rules can be found at: <http://stakeholders.ofcom.org.uk/consultations/bcrtv2010/statement/>

The broadcaster explained that the programme's website had recently been re-launched and the producers were keen to direct viewers to it. The rationale for promoting the availability of the DVD on the website was to explain to viewers how the website could be of benefit to them. The producers are aware that programme-related material may be promoted in programmes where editorially justified. Unfortunately, the producers misunderstood the meaning of programme-related material and were under the impression that any material which related to the programme could be promoted. Given that Tim Minchin was a guest on that day's programme, the producers mistakenly believed that his DVD also qualified as programme-related material and assumed it could be promoted in the programme in the context of promoting the programme's website.

Channel 5 said that its normal policy is to take a very conservative approach to commercial references in *The Wright Stuff*. In this case, the broadcaster said that it was an oversight that this departure from its usual policy on references to commercial products was not referred to the programme's commissioning editor prior to broadcast. It said that it had since ensured that promotions of this nature are not broadcast on the programme, and it had explained the meaning of 'programme-related material' to the production team in greater detail.

### **Decision**

Ofcom noted Channel 5's assurances that neither it nor the producer or any associate of either had included the reference to Tim Minchin's DVD in return for payment or other valuable consideration. Given the evidence before Ofcom, we therefore found no breach of Rule 10.5 of the Code (product placement).

However, Rule 10.2 requires that programmes and advertisements are kept separate. Rule 10.3 maintains this distinction by prohibiting the promotion of products and services in programmes. The only exception to this is where promotions relate to programme-related material, as defined by the Code. Broadcasters must bear in mind that the ability to promote a product or service as PRM in, or around, programmes is permitted purely by way of exception to Rule 10.3. For material to qualify as programme-related material, it must be directly derived from a specific programme and must allow viewers to benefit fully from, or interact with, that programme. This requirement is derived directly from EU broadcasting legislation, the Audiovisual Media Services Directive<sup>3</sup>.

In this case, it is clear that the reference to Tim Minchin's DVD did not meet the definition of programme-related material. The presenter encouraged the audience to buy the DVD by providing a positive review of its various features, details of a special reduced price and where the audience could purchase it. Ofcom considered the promotion of the DVD was akin to a teleshopping feature.

Ofcom concluded that the promotion of the DVD during the programme was clearly in breach of Rule 10.3 of the Code. Further, as the advertising elements of a service must be kept separate from its programming elements, Ofcom found this programme in breach of Rule 10.2 of the Code.

### **Breaches of Rules 10.2 and 10.3**

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<sup>3</sup> Article 23(2) and Recital 98.

## In Breach

### The X Factor

ITV1, 17 and 24 October 2010, 20:00

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#### Introduction

Following guest artist performances during the above episodes of *The X Factor*, Ofcom noted the following:

- on 17 October 2010, when speaking to Diana Vickers, the host, Dermot O’Leary, said *“If you want to download Diana’s single, details at ITV.com/Xfactor, and*
- on 24 October 2010, when interviewing Michael Bublé, the host said *“If you want to download Michael’s single, all the details on ITV.com/Xfactor.”*

Ofcom wrote to Channel TV, who complied the programme on behalf of the ITV Network for ITV1, and asked it to comment with regard to the following requirements of the (September 2010) Code<sup>1</sup>:

Rule 10.3 Products and services must not be promoted in programmes. This rule does not apply to programme-related material.

Rule 10.5 Product placement is prohibited<sup>2</sup>.

#### Response

Channel TV stated that the comments were made as a result of an unfortunate script error and admitted that the references to the availability of the artists’ singles were inappropriate. However, the Licensee confirmed that, in fact, no arrangements were in place with music download providers in relation to these guest artist performances and the availability of the artists’ singles.

Channel TV said that the error was not identified on 17 October 2010. Unfortunately, the script from this broadcast was used as a basis for the script for the programme broadcast on 24 October and consequently, the references to downloading information were retained in error. On the latter occasion, the reference was identified and the script corrected for all future shows.

Channel TV said that contrary to the host’s comments, neither single was available to download via the programme website and no information had been posted on the site. Channel TV said that any viewer going to the website seeking the promised information would have been disappointed: the only material on the programme website relating to the two artists was the footage of their *X Factor* performances.

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<sup>1</sup> The Code that was in force at the time of the broadcast.

<sup>2</sup> On 20 December 2010, Ofcom published new rules that allow, subject to restrictions, product placement in programmes. These rules come into force on 28 February 2011. Until this date, programmes must comply with the existing rules, which include a prohibition on product placement. Further information on the new rules can be found at: <http://stakeholders.ofcom.org.uk/consultations/bcrtv2010/statement/>

## **Decision**

Ofcom noted that the programme website provided no details in relation to downloading the guest artist songs. We also noted Channel TV's assurance that the references in question were not made as a result of any arrangement with a music download service. We therefore found no breach of Rule 10.5 of the Code.

While we understand that the comments resulted from an error, we were concerned that the programmes appeared to promote the availability of the artists' singles on two separate, scripted occasions. The promotion of products and services within programmes is contrary to the requirements of Rule 10.3 of the Code. The programmes were therefore in breach of the Code.

### **Breach of Rule 10.3 – 17 October 2010**

### **Breach of Rule 10.3 – 24 October 2010**

## In Breach

### **The X Factor**

*ITV1, 24 October 2010, 20:00*

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On 31 January 2011, this finding was removed from this issue of the Broadcast Bulletin. This was because it contained some inaccurate information supplied by Channel TV, who complied the programme on behalf of the ITV Network for ITV1. The finding has been amended in light of additional information provided to Ofcom and is re-published in Broadcast Bulletin 178<sup>1</sup>.

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<sup>1</sup> See: *The X Factor*, ITV1, 24 October 2010, 20:00 in Broadcast Bulletin 178, available to view at: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb178/>

## In Breach

### News

*BRMB, 26 October 2010, 13:00*

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#### Introduction

BRMB is a local radio station that broadcasts to the Birmingham area. On 26 October 2010, the lead story of the lunchtime news bulletin covered the sale of tickets for pop group Take That's 2011 concerts. At the end of the news item, the presenter advised listeners that they could purchase tickets for the concerts on the station's own website:

Presenter: *"...and you can get tickets at [brmb.co.uk](http://brmb.co.uk) from Friday morning."*

Ofcom received a complaint from a listener who considered the presenter's comment on the availability of tickets was tantamount to advertising. We therefore sought comments from Orion Media, the owner of BRMB, under following rule of the (September 2010) Code<sup>1</sup>.

Rule 10.3: Products and services must not be promoted in programmes.

#### Response

Orion Media explained that the "Take That concerts were some of the fastest and biggest-selling concerts in UK music history" and given that a number of performances were to be held at a local football ground, it covered it as a lead story based on "editorial merit and audience relevance".

The broadcaster said that the presenter's reference to the availability of tickets on BRMB's website was a "factual single statement, not a repeated insistence" and argued that "news stories often point listeners to useful places for further relevant information". It added that mentioning their own website as opposed to a site purely established to sell tickets was "less commercial". Orion Media therefore did not consider the material to be problematic.

#### Decision

Ofcom recognised that high demand for tickets to these concerts in the local area made this a newsworthy item for BRMB. We therefore accepted Orion's Media's justification for its decision to cover this as a lead news item.

However, Ofcom did not agree that this was an example of the news presenter pointing listeners to "useful places for further relevant information". Instead, we noted that the presenter advised listeners that they could buy concert tickets from the broadcaster's website, and gave details of when they would be available to purchase.

Irrespective of the fact that the presenter referred listeners to the broadcaster's own website, rather than to a third party website, the presenter nevertheless promoted a product in news programming. The broadcast was therefore in breach of Rule 10.3

#### Breach of Rule 10.3

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<sup>1</sup> The Code that was in force at the time of the broadcast.

## In Breach

### Charity appeals

*Bangla TV, 1, 21 and 24 August 2010, 18:00*

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#### Introduction

Bangla TV provided a general family entertainment television service – principally in Bangla and occasionally in English – for the Bengali community in the UK. Bangla TV (Worldwide) Limited, the channel’s licensee, is in the process of being wound up under the provisions of the Insolvency Act 1986 following a ruling on 9 November 2010 by the High Court of Justice, Chancery Division, Leeds District Registry. Therefore, Bangla TV is no longer broadcasting.

Ofcom received a complaint from a viewer who questioned the legitimacy of the charity, Shah Jalal Mosque and Madrasha, for which Bangla TV had conducted a broadcast appeal on 1 August 2010. The complainant also alleged that Shah Jalal Mosque and Madrasha had paid-for, and therefore sponsored, the broadcast.

Separately, a second charity for which Bangla TV broadcast an appeal on 21 August 2010, contacted Ofcom and provided a copy invoice, produced by “Bangla Television UK Ltd” for its “...Ramadan Booking ... Live Appeal”. It also provided a similar copy invoice on behalf of a third charity for a “Fundraising Appeal ... Ramadan 14...” Bangla TV broadcast an appeal for this organisation on 24 August 2010. These two charities were concerned that Bangla TV had charged them for appeals it had broadcast on their behalf, and that this may have breached Ofcom’s rules.

#### Shah Jalal Mosque and Madrasha appeal (1 August 2010)

On 27 August 2010 Ofcom asked the broadcaster for a recording of the appeal it had broadcast on behalf of Shah Jalal Mosque and Madrasha and its comments with regard to both the complainant’s concerns and Rule 10.13<sup>1</sup> of the Code, which states:

“Charity appeals that are broadcast free of charge are allowed in programmes provided that the broadcaster has taken reasonable steps to satisfy itself that:

- the organisation concerned can produce satisfactory evidence of charitable status, or, in the case of an emergency appeal, that a responsible public fund has been set up to deal with it; and
- the organisation concerned is not prohibited from advertising on the relevant medium.”

Bangla TV initially responded by saying that:

- the charity had paid for the broadcast of advertisements prior to the broadcast appeal, but this had not been a pre-condition for the broadcast of the appeal itself, for which no charge had been made;

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<sup>1</sup> Rule 10.13 at the time of broadcast, since Section Ten of the Code was amended and republished on 1 September 2010 and, subsequently, on 20 December 2010.

- it was “assured by the fundraiser that [it] gonna get the satisfactory evidence of charitable status” and was “now looking into it”; and
- it was unable to provide a recording of the broadcast appeal, as it had recorded over the programme by mistake.

Ofcom therefore asked Bangla TV for:

- full details of the advertisement it had broadcast;
- copies of relevant applications, contractual agreements and invoices;
- the outcome of its investigation into Shah Jalal Mosque and Madrasha’s charitable status; and
- its comments with regard to Condition 11 (Retention and production of recordings) of its licence to broadcast, which states that:

“(1)The Licensee shall adopt procedures acceptable to Ofcom for the retention and production of recordings in sound and vision of any programme which is the subject matter of a Standards Complaint...

(2)In particular, the Licensee shall:

- (a) make and retain or arrange for the retention of a recording in sound and vision of every programme included in the Licensed Service for a period of 60 days from the date of its inclusion therein; and
- (b) at the request of Ofcom forthwith produce to Ofcom any such recording for examination or reproduction; and
- (c) at the request of Ofcom forthwith produce to Ofcom any script or transcript of a programme included in the Licensed Service which he is able to produce to it.”

#### Two other charity appeals (21 and 24 August 2010)

On 4 August 2010 Ofcom asked the broadcaster for a recording of the appeals and any other material it had broadcast concerning the two charities which had expressed their concern to Ofcom, together with any information to assist us in our consideration of the complaint.

The broadcaster initially responded by saying that Bangla Television (UK) Limited, which had invoiced both charities in question, was “an agent” working for Bangla TV (Worldwide) Limited (the licensee for Bangla TV). It was therefore investigating why the charges had been imposed.

Bangla TV failed to provide the requested recordings, after being reminded by Ofcom that we still required them. We therefore asked for its comments with regard to Condition 11 (Retention and production of recordings) of its licence to broadcast.

Further, after numerous reminders by Ofcom, the broadcaster failed to provide the information required and requested by Ofcom concerning our investigations into all three broadcast appeals. We therefore asked the broadcaster for its comments with regard to Condition 12 (General provision of information to Ofcom) of its licence to broadcast, which states that:

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

## **Response**

### Shah Jalal Mosque and Madrasha appeal (1 August 2010)

Bangla TV provided no substantive response with regard to Ofcom’s subsequent request for information and comments concerning its broadcast appeal for Shah Jalal Mosque and Madrasha.

### Two other charity appeals (21 and 24 August 2010)

Bangla TV provided no recordings concerning any material it broadcast for either of these two appeals.

However, it said that Bangla Television (UK) Limited, which had issued the invoices to the two charities, had “mistakenly mentioned the words ‘broadcasting charge’.” It added that Bangla Television (UK) Limited was “supposed to write down ‘service charge for promotional activities’”, for which it had received payment from the two charities “in the form of service charge for their broadcasting promotions”.

The broadcaster therefore considered that Bangla TV (Worldwide) Limited (the licensee for Bangla TV) had not imposed any charge on the organisations for the charity appeals it broadcast, for which it had requested Bangla Television (UK) Limited to refund the two charities, “otherwise the partnership agreement between Bangla TV (Worldwide) Ltd and Bangla Television (UK) Limited [would] come to [an] end for this gross breach of contract.”

### Licence Conditions

Bangla TV provided no comments with specific regard to requirements under Conditions 11(Retention and production of recordings) and 12 (General provision of information to Ofcom) of its licence to broadcast.

## **Decision**

The purpose of Rule 10.13 of the Code is two-fold: firstly, to provide protection to the audience from the risk of financial harm that may arise in the case of charity appeals on behalf of non-legitimate causes (or those prohibited from advertising on the medium). The rule therefore requires the broadcaster to take “reasonable steps to satisfy itself that the organisation concerned can produce satisfactory evidence of charitable status...”.

Secondly, the rule specifies that a charity appeal broadcast during or as a programme must be broadcast “free of charge”. This is to ensure that a distinction is maintained between advertising and programming, and that programmes do not become vehicles for the promotion of a particular cause. Therefore, if payment, or the provision of some other valuable consideration, is made for the appeal, it may only be broadcast outside programming (i.e. as advertising).

### Shah Jalal Mosque and Madrasha appeal (1 August 2010)

The complainant questioned the legitimacy of the organisation's charitable status. Bangla TV failed to provide Ofcom with any evidence that it had taken reasonable steps, as required by Rule 10.13, in this instance and the appeal was therefore in breach of this rule.<sup>2</sup>

In relation to the complainant's concern that Bangla TV had charged Shah Jalal Mosque and Madrasha for the broadcast of the appeal, Ofcom notes that Bangla TV initially said that the charity had paid for the broadcast of advertisements prior to the broadcast appeal, but this had not been a pre-condition for the broadcast of the appeal itself, for which no charge had been made. However, the broadcaster failed to provide Ofcom with all the recordings and information, and we were therefore unable to reach a decision on the matter (see 'Licence Conditions', below).

### Two other charity appeals (21 and 24 August 2010)

In relation to the second complainant's concern that Bangla TV had charged both the charities for the broadcast of appeals on their behalf, Ofcom noted that Bangla TV considered that payments made to the licensee's "agent", Bangla TV (UK) Limited, should have been refunded, even though it said they had been made for "broadcasting promotions" and not the broadcast appeals themselves. (Ofcom received no confirmation that any refund had taken place before Bangla TV (Worldwide) Limited, the channel's licensee, was wound up under the provisions of the Insolvency Act 1986 on 9 November 2010.)

However, the broadcaster failed to provide Ofcom with all the recordings and information we required to reach a decision on the matter (see 'Licence Conditions', below).

### Licence Conditions

In this instance, the broadcaster did not provide comments with regard to the relevant Licence Conditions, as requested by Ofcom. While it is not obliged to do so:

- Condition 11 (Retention and production of recordings) of television licensable content service (TLCS) licences issued by Ofcom requires the Licensee to "make and retain or arrange for the retention of a recording in sound and vision of every programme included in the Licensed Service..." and "at the request of Ofcom forthwith produce to Ofcom any such recording for examination or reproduction"; and
- Condition 12 (General provision of information to Ofcom) of such licences requires that the Licensee "shall furnish to Ofcom in such manner and at such times as Ofcom may reasonably require such documents ... or other information as Ofcom may require" in the process of carrying out its statutory duties.

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<sup>2</sup> While Ofcom does not assess the charitable status of organisations for which licensees conduct broadcast appeals, please note that, in Broadcast Bulletin issue number 171, published on 6 December 2010, Ofcom found another broadcaster (ATN Bangla UK) to have taken reasonable steps to satisfy itself of Shah Jalal Mosque and Madrasha's charitable status (see: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb171/issue171.pdf>).

Ofcom noted that the broadcaster failed to provide all the recordings and information required and requested by Ofcom for us to reach a decision on the complaints we had received.

It is imperative that licensees have appropriate compliance procedures in place to deal with all such requests from Ofcom. Failure to meet these requirements seriously and significantly breached Conditions 11 and 12 of Bangla TV's licence.

These breaches will be held on record and may be taken into account should any future application for a licence to broadcast be received from Bangla TV (Worldwide) Limited (if the company is not eventually liquidated), or from individuals associated with the company.

### **Breach of Rule 10.13**

### **Breaches of Licence Conditions 11 (retention and production of recordings) and 12 (general provision of information to Ofcom)**

## In Breach

### Bluebird TV

*Live XXX Babes, 23 September 2010, 23:20 to 00:00*

*Northern Birds, 24 September 2010, 00:25 to 02:15*

*Live XXX Babes, 12 October 2010, 21:30 to 22:30*

*Live XXX Babes, 13 October 2010, 21:30 to 23:00;*

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The channels Northern Birds and Live XXX Babes are separate licences currently held and operated by Satellite Entertainment Limited (“SEL” or “the Licensee”)<sup>1</sup>.

Northern Birds and Live XXX Babes are situated in the ‘adult’ section of the Sky electronic programme guide and are available freely without mandatory restricted access. They are broadcast on Sky channel numbers 954 and 950 respectively. At the times indicated above the channels promoted a service on screen known and branded as Bluebird TV. The channels broadcast programmes during the day based on daytime chat, and after the 21:00 watershed, programmes based on interactive ‘adult’ chat sex services. Viewers are invited to contact onscreen female presenters via premium rate telephony services (“PRS”). The female presenters dress and behave in a flirtatious way during the day and a more sexually provocative way after the watershed while encouraging viewers to contact the PRS numbers.

Condition 11 of SEL’s licences states that the Licensee must make and retain a recording of all its programmes for a period of 60 days from broadcast, and at Ofcom’s request must produce recordings forthwith. Ofcom has made clear that recordings “must be of a standard and in a format which allows Ofcom to view the material as broadcast”<sup>2</sup>.

Ofcom received complaints about alleged inappropriate content broadcast at around:

- 23:20 to 00:00 on 23 September 2010 on Live XXX Babes
- 00:25 to 02:15 on 24 September 2010 on Northern Birds
- 21:30 to 22:30 on 12 October 2010 on Live XXX Babes
- 21:30 to 23:00 on 13 October 2010 on Live XXX Babes

In order to make an initial assessment of the complaints (to consider whether or not to investigate the issues), Ofcom requested recordings of material from the Licensee, as detailed in its Licence Condition 11, at the times and dates detailed above.

### Response

Between 28 October to 29 November 2010 Ofcom formally asked SEL on several occasions, and set explicit deadlines, to provide recordings of its output at the times and dates specified. The Licensee failed to provide recordings of the programmes requested regardless of the approaches made by Ofcom.

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<sup>1</sup> Satellite Entertainment Limited (“SEL”) holds and operates four separate licences: Live XXX Babes, Sport XXX Girls, Essex Birds and Northern Birds.

<sup>2</sup> See: [http://licensing.ofcom.org.uk/binaries/tv/tlcs\\_guidance.pdf](http://licensing.ofcom.org.uk/binaries/tv/tlcs_guidance.pdf)

The Licensee said that it wished Ofcom to respond to a number of questions about the validity of the complaints it had received and for information relating to the complainant, as had been previously requested. The Licensee also stated Ofcom had “no lawful power to record any notice of breach unless and until Ofcom complies with its legal obligations”. The Licensee said it would await confirmation that Ofcom applied “no pre-judgment to broadcast complaints prior to asking the broadcaster to provide tapes”.

Ofcom responded by acknowledging the Licensee’s questions and stating that we would deal with the points raised at a later date if Ofcom decided to investigate the requested broadcast material further. Ofcom noted that it assesses all complaints in accordance with its published Procedures for the handling of broadcasting standards cases<sup>3</sup> and, in the first instance, to enable Ofcom to make an assessment of the content referred to in the complaint, the Licensee was required, under the terms of its broadcast licence, to provide the broadcast material requested by Ofcom “forthwith”.

Ofcom did not receive the recordings. Since the Licensee was obliged under the terms of its licence to supply the recordings “forthwith” on request, Ofcom asked the Licensee for formal representations on its compliance with Condition 11 of its licences.

SEL did not provide any formal comments in response. Ofcom therefore proceeded to reach a decision about the Licensee’s compliance with Licence Condition 11 in the absence of a formal response from the Licensee.

## Decision

It is a condition of all broadcast licences that a licensee adopts procedures for the retention and production of recordings and provides these recordings to Ofcom “forthwith” if requested. Further, the recordings should be “as broadcast (i.e. the same quality in terms of both sound and picture as when originally transmitted)”<sup>4</sup>.

Condition 11 of the Television Licensable Content Service licence states:

“...the Licensee shall:

- (a) make and retain or arrange for the retention of a recording in sound and vision of every programme included in the Licensed Service for a period of 60 days from the date of its inclusion therein; and
- (b) at the request of Ofcom forthwith produce to Ofcom any such recording for examination or reproduction;...”

Ofcom formally asked SEL on several occasions to provide recordings of the output at the time and dates specified above in order to view the material and decide whether it raised any potential issues under the Code. The Licensee failed to provide the four recordings requested and provided no valid reasons to justify this failure. There were, therefore, four separate breaches of Condition 11 (Retention and production of recordings) of SEL’s licences to broadcast.

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<sup>3</sup> See: <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/>

<sup>4</sup> See: [http://licensing.ofcom.org.uk/binaries/tv/tlcs\\_guidance.pdf](http://licensing.ofcom.org.uk/binaries/tv/tlcs_guidance.pdf)

All contraventions of Condition 11 are serious matters because they mean that Ofcom is unable to assess whether a particular broadcast raises potential issues under the Code. This therefore impedes Ofcom from carrying out its statutory duty – amongst others – to secure the application of standards in television and radio services that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services.

It is a broadcast licence condition that a licensee provides Ofcom, on request, with a recording of its output. It is unacceptable for a licensee to refuse to provide such recordings.

Ofcom has recently recorded a total of six separate breaches against the Licensee<sup>5</sup> for failure to provide material transmitted (Licence Condition 11) on the following licences that it holds and on the following dates noted:

- Licence: Sport XXX Girls on 10 September 2010 (published in Broadcast Bulletin 169)
- Licence: Northern Birds on 8 September 2010 (published in Broadcast Bulletin 170)
- Licence: Essex Babes on 21 September 2010 (Broadcast Bulletin 170)
- Licence: Northern Birds on 26/27 September 2010 (published in Broadcast Bulletin 170)
- Licence: Essex Babes on 16 September 2010 (Broadcast Bulletin 171)
- Licence: Essex Babes 27 September 2010 (Broadcast Bulletin 171)

The Licensee was put on notice in Bulletin 171 that the two breaches published would be added to the Licensee's compliance record and would be considered for sanction, in addition to the three breaches previously recorded in Bulletin 170.

Following the four further contraventions recorded in this finding, Ofcom considers that the nine breaches of SEL's licences recorded are individually serious and have been repeated. As a result, these contraventions of its licences will be considered for the imposition of a statutory sanction.

**Breach of Licence Condition 11 (retention and production of recordings) - 23 September 2010**

**Breach of Licence Condition 11 (retention and production of recordings) - 24 September 2010**

**Breach of Licence Condition 11 (retention and production of recordings) - 12 October 2010**

**Breach of Licence Condition 11 (retention and production of recordings) - 13 October 2010**

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<sup>5</sup> See: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb169/> ; <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb170/> and <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb171/>

## In Breach

### Bluebird TV

*Live 960, 2 November 2010, 12:00 to 12:30*

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Bluebird TV is a branded service situated in the 'adult' section of the Sky electronic programme guide and available freely without mandatory restricted access on Sky channel number 960 (known as Live 960). The licence for this service is owned and operated by Hoppr Entertainment ("Hoppr" or "the Licensee").

The channel broadcasts programmes during the day based on daytime chat and, after the 21:00 watershed, programmes based on interactive 'adult' chat sex services. Viewers are invited to contact onscreen female presenters via premium rate telephony services ("PRS"). The female presenters dress and behave in a flirtatious way during the day and a more sexually provocative way after the watershed while encouraging viewers to contact the PRS numbers.

Condition 11 of Hoppr's licence states that the Licensee must make and retain a recording of all its programmes for a period of 60 days from broadcast, and at Ofcom's request must produce recordings forthwith. Ofcom has made clear that recordings "must be of a standard and in a format which allows Ofcom to view the material as broadcast"<sup>1</sup>.

Ofcom received complaints about alleged inappropriate content broadcast at around 12:00 to 12:30 on 2 November 2010.

In order to make an initial assessment of the complaints (to consider whether or not to investigate the issues), Ofcom requested a recording of material from the Licensee at the time and date detailed above.

### Response

Between 4 November 2010 to 29 November 2010, Ofcom formally asked Hoppr on several occasions, and set explicit deadlines, to provide the recording of the output at the time and date specified above. The Licensee failed to provide the recording of the material requested regardless of the approaches made by Ofcom.

The Licensee said that it wished Ofcom to respond to a number of questions about the validity of the complaints it had received and for information relating to the complainant, as had been previously requested. The Licensee also stated Ofcom had "no lawful power to record any notice of breach unless and until Ofcom complies with its legal obligations". The Licensee said it would await confirmation that Ofcom applied "no pre-judgment to broadcast complaints prior to asking the broadcaster to provide tapes".

Ofcom responded by acknowledging the Licensee's questions and stating that we would deal with the points raised at a later date if Ofcom decided to investigate the requested broadcast material further. Ofcom noted that it assesses all complaints in accordance with its published Procedures for the handling of broadcasting standards

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<sup>1</sup> See: [http://licensing.ofcom.org.uk/binaries/tv/tlcs\\_guidance.pdf](http://licensing.ofcom.org.uk/binaries/tv/tlcs_guidance.pdf)

cases<sup>2</sup> and, in the first instance, to enable Ofcom to make an assessment of the content referred to in the complaint, the Licensee was required, under the terms of its broadcast licence, to provide the broadcast material requested by Ofcom “forthwith”.

Ofcom did not receive the recordings. Since the Licensee was obliged under the terms of its licence to supply recordings “forthwith” on request, Ofcom asked the Licensee for formal representations on its compliance with Condition 11 of its licence.

Hoppr did not provide any formal comments in response. Ofcom therefore proceeded to reach a decision about the Licensee’s compliance with Licence Condition 11 in the absence of a formal response from the Licensee.

## Decision

It is a condition of all broadcast licences that a licensee adopts procedures for the retention and production of recordings and provides these recordings to Ofcom “forthwith” if requested. Further, the recordings should be “as broadcast “(i.e. the same quality in terms of both sound and picture as when originally transmitted)<sup>3</sup>.”

Condition 11 of the Television Licensable Content Service licence states:

“...the Licensee shall:

- (a) make and retain or arrange for the retention of a recording in sound and vision of every programme included in the Licensed Service for a period of 60 days from the date of its inclusion therein; and
- (b) at the request of Ofcom forthwith produce to Ofcom any such recording for examination or reproduction;...”

Ofcom formally asked Hoppr on several occasions to provide a recording of the output, at the time and date specified above, in order to view the material and decide whether it raised any potential issues under the Code. The Licensee failed to provide the recording and provided no valid reasons to justify this failure. This was a clear breach of Condition 11 (Retention and production of recordings) of Hoppr’s licence to broadcast.

All contraventions of Condition 11 are serious matters because they mean that Ofcom is unable to assess whether a particular broadcast raises potential issues under the Code. This therefore impedes Ofcom from carrying out its statutory duty – amongst others – to secure the application of standards in television and radio services that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services.

It is a broadcast licence condition that a licensee provides Ofcom, on request, with a recording of its output. It is unacceptable for a licensee to refuse to provide such recordings.

Ofcom has previously recorded two similar breaches of Condition 11 against the Licensee for failure to provide material transmitted (Licence Condition 11) on the licence that it holds on the following dates:

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<sup>2</sup> See: <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/>

<sup>3</sup> See: [http://licensing.ofcom.org.uk/binaries/tv/tlcs\\_guidance.pdf](http://licensing.ofcom.org.uk/binaries/tv/tlcs_guidance.pdf)

- Licence: Live 960 on 3 & 4 August 2010 (published in Broadcast Bulletin 169)<sup>4</sup>
- Licence: Live 960 on 22 September 2010 (published in Broadcast Bulletin 170)<sup>5</sup>

The Licensee was informed in Bulletins 144 (published on 26 October 2009)<sup>6</sup> and 169 (published on 8 November 2010)<sup>7</sup> that the two breaches of Condition 11 were serious and significant and would be held on the Licensee's compliance record.

The Licensee was then informed in Bulletin 170 (published on 22 November 2010)<sup>8</sup> that the further recorded licence condition breach would be referred for consideration of the imposition of a statutory sanction.

Following the further contravention recorded in this finding, Ofcom considers that this breach and the breach recorded in Bulletin 170 of Hoppr's licence condition are individually serious and have been repeated. As a result, these two contraventions of its licence will be considered for the imposition of a statutory sanction.

### **Breach of Licence Condition 11 (retention and production of recordings) – 2 November 2010**

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<sup>4</sup> See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb169/issue169.pdf>

<sup>5</sup> See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb170/issue170.pdf>

<sup>6</sup> See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb144/issue144.pdf>

<sup>7</sup> See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb169/issue169.pdf>

<sup>8</sup> See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb170/issue170.pdf>

## In Breach

### Bluebird TV

*Live 960, 25 September 2010, 00:20 to 01:30*

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Bluebird TV is a televised interactive adult sex chat advertisement broadcast on the television service Live 960, available freely without mandatory restricted access on Sky channel number 960. This channel is situated in the 'adult' section of the Sky Electronic Programme Guide ("Sky EPG"). The licence for this service is owned and operated by Hoppr Entertainment Limited ("Hoppr" or "the Licensee"). Viewers are invited to contact onscreen female presenters via premium rate telephony services ("PRS"). The female presenters generally dress and behave in a sexually provocative way in order to elicit premium rate phone calls.

As a result of its concerns about compliance in this sector, Ofcom conducts monitoring exercises of daytime and adult sex chat channels. Ofcom noted that between 00:20 and 01:30 on 25 September 2010, the content included a "nastiness in the jail" section with a presenter wearing striped knickers and striped legwarmers. She adopted various positions including: on all fours with her bottom to camera; sat over a toilet seat and over a bed with her legs open; and, stood up holding onto the bars of the "jail" setting with her legs wide. While in these positions she: stroked and licked her nipples; rubbed her genitals in a sustained and vigorous manner simulating masturbation, both over and inside her knickers; rubbed herself with her fingers and against the bed while her knickers were removed; and, spanked her buttocks harshly so as to leave a red mark. During her performance and due to her pulling at her knickers which at one point she removed, labial and anal detail were visible.

The rules governing broadcast advertising are set by the Broadcast Committee of Advertising Practice ("BCAP") with the approval of Ofcom. BCAP performs its function by setting, monitoring and amending the UK Code of Broadcast Advertising ("the BCAP Code"), with Ofcom retaining back-stop enforcement powers. The investigation of complaints relating to daytime chat and 'adult chat' broadcast services – which are types of broadcast advertising - remain a matter for Ofcom. (Please see Ofcom's statement published on 3 June 2010<sup>1</sup> for further details).

Ofcom requested formal comments from Hoppr in relation to the following BCAP Code Rule:

Rule 4.2            Advertisements must not cause serious or widespread offence against generally accepted moral, social or cultural standards.

### Response

Ofcom set clear deadlines for any comments from Hoppr. Hoppr did not provide any comments by the set deadlines. Ofcom therefore proceeded to reach a decision.

### Decision

Since 1 September 2010 all PRS-based daytime and 'adult chat' television services have no longer been regulated as editorial content but as long-form advertising i.e.

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<sup>1</sup> See: <http://stakeholders.ofcom.org.uk/consultations/participationtv3/statement/>

teleshopping. As stated above, from that date the relevant standards code for such services became the BCAP Code rather than the Broadcasting Code.

The BCAP Code contains rules which permit 'adult chat' services to be advertised (and so broadcast) within prescribed times and on free-to-air channels that are specifically licensed by Ofcom for that purpose. When setting and applying standards in the BCAP Code to provide adequate protection to members of the public from serious or widespread offence, Ofcom must have regard to the need for standards to be applied in a manner that best guarantees an appropriate level of freedom of expression in accordance with Article 10 of the European Convention of Human Rights, as incorporated in the Human Rights Act 1998. However, broadcasters should note that the advertising content of 'adult chat' services has much less latitude than is typically available to editorial material in respect of context and narrative. A primary intent of advertising is to sell products and services and consideration of acceptable standards will take that context into account.

Rule 4.2 of the BCAP Code is substantially equivalent to Rule 2.1 of the Broadcasting Code which provides that: "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."

In Ofcom's view the sexual images included in this broadcast were strong and capable of causing offence. Ofcom noted that on a number of occasions the presenter adopted sexually provocative positions for prolonged periods of time - for example, kneeling on all fours with her buttocks in the air, sat over a bed thrusting heavily and gyrating her hips, on her back with her legs pulled open and wide, and standing up with her legs wide open to camera from behind. She was also seen simulating masturbation both over and beneath her knickers and when her knickers were removed, with her fingers and hand in direct and sustained contact with her genitals. Anal and labial detail was also revealed due to her pulling on her underwear and removing her underwear whilst her legs were spread wide. Ofcom did however note that whilst in these positions the on-screen graphics occasionally obscured the presenter's genital area to some extent.

Under BCAP Code Rule 4.2, Ofcom took into account the context in which this particular advertisement was broadcast, in order to determine whether suitable scheduling restrictions were applied to this content by the Licensee. Ofcom noted that this content was broadcast from 00:20, therefore well after the 21:00 watershed, and that viewers generally expect on all channels that stronger material will be shown after 21:00, within context. Ofcom also took account of the fact that the Live 960 channel is positioned in the adult section of the Sky EPG and that viewers tend to expect the broadcast of stronger sexual material on channels in this section of the EPG than would be expected to be included on other channels in other sections.

However, in this case, given the content included prolonged and frequent scenes of a sexual nature (provided for the purpose of sexual arousal) the location of the channel in the adult section of the EPG was not sufficient to justify the broadcast of the material without mandatory restriction.

Taking into account the factors above, Ofcom has concluded that relevant scheduling restrictions were not applied so as to ensure that the material did not cause widespread offence against generally accepted moral, social or cultural standards. Therefore Ofcom concluded that this material breached Rule 4.2 of the BCAP Code.

Ofcom has previously found the Licensee in breach of Condition 11 of its licence on 26 October 2009<sup>2</sup> and on 8<sup>3</sup> and 22<sup>4</sup> November 2010. The Licensee was put on notice on 22 November 2010 that the breach of its licence recorded on that date was being considered for the imposition of a statutory sanction.

In addition, in another finding in this current issue of the Bulletin (see page 22) a further breach of Licence Condition 11 is recorded and the Licensee has been put on notice that that breach is also being considered for the imposition of a statutory sanction.

This contravention of the BCAP Code is therefore a further example of poor compliance by this Licensee within a short period of time. This serious and significant breach will be taken into account in Ofcom's consideration of the imposition of a statutory sanction.

### **Breach of BCAP Code Rule 4.2**

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<sup>2</sup> See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb144/issue144.pdf>

<sup>3</sup> See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb169/issue169.pdf>

<sup>4</sup> See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb170/issue170.pdf>

## In Breach

### 40nNaughty

*Red Light Lounge, 13 October 2010, 11:00 to 13:00*

*Red Light Lounge, 2 November 2010, 08:55 to 10:10*

*Red Light Lounge, 10 November 2010, 10:45 to 11:20*

*Red Light Lounge, 13 November 2010, 18:20 to 19:00*

### 40nNaughty

*Red Light Central, 6 November 2010, 21:48 to 22:30*

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## Introduction

*Red Light Lounge* is a televised daytime interactive chat advertisement broadcast on the service 40nNaughty (Sky channel number 911). The service is available freely without mandatory restricted access and is situated in the 'adult' section of the Sky electronic programme guide ("EPG"). Viewers are invited to contact onscreen female presenters via premium rate telephony services ("PRS"). The presenters generally dress and behave in a flirtatious manner.

*Red Light Central* is a televised interactive adult sex chat advertisement broadcast from 21:00 on the service 40nNaughty (Sky channel number 911). The service is available freely without mandatory restricted access and is situated in the 'adult' section of the Sky EPG. Viewers are invited to contact onscreen female presenters via PRS. The female presenters dress and behave in a sexually provocative way while encouraging viewers to contact the PRS numbers.

The service 40nNaughty is owned and operated by Just4us TV Limited<sup>1</sup> ("Just4Us" or "the Licensee"). Just4Us has compliance responsibility for all advertisements broadcast on this service, including *Red Light Lounge* and *Red Light Central*.

## Pre-watershed broadcasts

Ofcom received complaints about the above four broadcasts of *Red Light Lounge*. The complainant was concerned that the content of the material was "far too graphic especially when children could inadvertently view this channel". The complainant said that the female presenters on screen were behaving in a "very provocative sexual manner miming sexual acts which was totally inappropriate for the time of day" and the content was of "an incredibly strong sexual nature".

*Red Light Lounge, 13 October 2010, 11:00 to 13:00*

Ofcom noted that the first female presenter was wearing a black top, a revealing black thong and black stockings and suspenders. During the broadcast the presenter was shown in various positions for prolonged periods of time, including: bent over on all fours with her buttocks positioned towards camera; and lying on her back with her legs wide open to camera. While in these positions she repeatedly gyrated and thrust her hips. The first presenter then introduced the second female presenter by saying:

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<sup>1</sup> Just4Us is a wholly owned subsidiary of Playboy TV UK/Benelux Limited.

Presenter number one: *“We have Sophia, isn’t she gorgeous, can you see these sexy legs guys, do you want to play with them? Do you know what, she is going to get you so hot, aren’t you Sophia?”*

Presenter number two: *“yeah just as hot as you got them”*

Presenter number one: *“and we love it, this is our play time see guys, what goes on behind the screen you know, I get to play.... So come on guys, come and play... so don’t get her too much hot because I need to play with her a bit later.”*

Presenter number two: *“I’ll save some for you, I always save some for you”*

The second presenter was wearing a black slip, a black thong and fishnet stockings. During the broadcast she was shown in various positions for prolonged periods of time, including: on her knees with her legs open and buttocks positioned to camera; straddling the back of a sofa; and lying on her back with her legs wide open to camera. While in these positions she repeatedly gyrated and thrust her hips.

*Red Light Lounge, 2 November 2010, 08:55 to 10:10*

Ofcom noted that the female presenter was wearing a purple bra and a purple lace thong. During the broadcast she was shown in various positions for prolonged periods of time, including: on her knees with her legs open and buttocks positioned to camera; lying on her side with her buttocks positioned to camera; and sat down with her legs wide open towards the camera. While in these positions the presenter repeatedly shook her breasts and gyrated and thrust her hips.

*Red Light Lounge, 10 November 2010, 10:45 to 11:20*

Ofcom noted that the female presenter was wearing a black bra, black thong, stockings and suspenders. During the broadcast she was shown in various positions for prolonged periods of time, including: bent over on her knees with her legs open and buttocks positioned to camera; and sat down with her legs wide open to camera. While in these positions the presenter repeatedly stroked up and down her legs, shook and touched her breasts and thrust her hips and buttocks.

*Red Light Lounge, 13 November 2010, 18:20 to 19:00*

Ofcom noted that the female presenter was wearing a black bra, a black thong, stockings and suspenders. During the broadcast she was shown in various positions for prolonged periods of time, including kneeling on all fours and lying on her back with one leg pulled back towards her head. While in these positions the presenter repeatedly thrust her hips and buttocks and stroked her body.

#### Post-watershed broadcast

*Red Light Central, 6 November 2010, 21:48 to 22:30*

Ofcom also received a complaint about the above broadcast of *Red Light Central*. The complainant said that during the broadcast the female presenter on screen was “licking her fingers and simulating oral sex, she performed other strong sexual acts during this same time period. Her bikini knickers were far too small and allowed her vaginal lips to be exposed”.

Ofcom noted that the female presenter was wearing a black bra top and a revealing black thong. Between 21:48 and 22:00 she pulled her bra to the side to expose her breasts. The presenter was shown in various positions, including: bent over on all fours with her buttocks positioned to camera and her legs wide open; on her knees facing the camera with her legs open; and lying on her back with her legs wide open to camera. While in these positions the presenter repeatedly thrust her pelvis and buttocks and her genital area was shown in close up. From 22:00 she also licked and repeatedly touched her exposed breasts; licked her fingers and mimed the insertion of something into her mouth.

The rules governing broadcast advertising are set by the Broadcast Committee of Advertising Practice (“BCAP”) with the approval of Ofcom. BCAP performs its function by setting, monitoring and amending the UK Code of Broadcast Advertising (“the BCAP Code”), with Ofcom retaining back-stop enforcement powers. The investigation of complaints relating to daytime chat and ‘adult chat’ broadcast services – which are types of broadcast advertising - remain a matter for Ofcom. (Please see Ofcom’s statement published on 3 June 2010<sup>2</sup> for further details).

### Request for comments

Ofcom requested formal comments under BCAP Code Rules 4.2 (“Advertisements must not cause serious or widespread offence against generally accepted moral, social or cultural standards.”) and Rule 32.3 (“Relevant timing restrictions must be applied to advertisements that, through their content, might harm or distress children of particular ages or that are otherwise unsuitable for them”) from Just4Us in relation to the following broadcasts:

*Red Light Lounge*, 13 October 2010, 11:00 to 13:00  
*Red Light Lounge*, 2 November 2010, 08:55 to 10:10  
*Red Light Lounge*, 10 November 2010, 10:45 to 11:20  
*Red Light Lounge*, 13 November 2010, 18:20 to 19:00

Ofcom requested formal comments from Just4Us under Rule 4.2 as regards *Red Light Central*, 6 November 2010, 21:48 to 22:30.

### **Response**

#### Pre-watershed broadcasts

*Red Light Lounge*, 13 October 2010, 11:00 to 13:00  
*Red Light Lounge*, 2 November 2010, 08:55 to 10:10  
*Red Light Lounge*, 10 November 2010, 10:45 to 11:20  
*Red Light Lounge*, 13 November 2010, 18:20 to 19:00

Just4Us said that the production company responsible for producing the content on 40nNaughty “were new to producing live free-to-air babe content”. It added that a change in regulation from the Ofcom Broadcasting Code to the Advertising Code led to a change in its compliance procedures and these changes were misunderstood by some producers. Just4Us added that training and guidance were given prior to the launch of 40nNaughty, however a number of factors “culminated in some teething problems, for which we apologise”.

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<sup>2</sup> See: <http://stakeholders.ofcom.org.uk/consultations/participationtv3/statement/>

The licensee said that the content broadcast on 13 October 2010 “fell far outside our own internal guidelines for daytime material and the producer responsible was in fact dismissed from his position immediately”. The Licensee apologised for “this lapse”.

The Licensee considered that the content broadcast during all the other pre-watershed broadcasts “contained very small pockets of material unsuitable for broadcast at that time, but were in the main, compliant”.

However, it said that the producers of the broadcasts on 2 November and 10 November “took our daytime instruction of “flirty and cheeky” a little too far which resulted in some sexual overtones which were not intended”. It added that “this has now all been addressed directly, and such mistakes will not recur”.

With regard to the broadcast on 13 November 2010, the Licensee said that “the girl was not behaving in a particularly sexy manner” but it did state that “there were certainly sections which fell outside the Code, specifically buttock jiggling and suggestive poses”, for which the Licensee apologised.

#### Post-watershed broadcast

*Red Light Central, 6 November 2010, 21:48 to 22:30*

Just4Us said that the presenter featured in the above broadcast was on-air “far past the watershed”. It did not consider that the presenter exposed her vaginal lips, as suggested by the complainant. However it did say that the presenter “will not be permitted to wear garments in future which appear to show such anatomy”.

The Licensee said that overall, it has “tightened up our compliance [procedures] further, giving greater, strongly worded guidance to content providers”. It has also “increased the number of staff who are monitoring the channels for compliance during the day” and “this is in addition to compliance training given to presenters, producers, the head of production and all staff involved with the production”.

#### **Decision**

Since 1 September 2010 all PRS-based daytime and ‘adult chat’ television services have no longer been regulated as editorial content but as long-form advertising i.e. teleshopping. As stated above, from that date the relevant standards code for such services became the BCAP Code rather than the Broadcasting Code.

The BCAP Code contains rules which permit ‘adult chat’ services to be advertised (and so broadcast) within prescribed times and on free-to-air channels that are specifically licensed by Ofcom for that purpose. When setting and applying standards in the BCAP Code to provide adequate protection to members of the public from serious or widespread offence, Ofcom must have regard to the need for standards to be applied in a manner that best guarantees an appropriate level of freedom of expression in accordance with Article 10 of the European Convention of Human Rights, as incorporated in the Human Rights Act 1998. However, broadcasters should note that the advertising content of ‘adult chat’ services has much less latitude than is typically available to editorial material in respect of context and narrative. A primary intent of advertising is to sell products and services and consideration of acceptable standards will take that context into account.

Rule 4.2 of the BCAP Code is substantially equivalent to Rule 2.1 of the Broadcasting Code which provides that: “*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 32.3 of the BCAP Code is substantially equivalent to Rule 1.3 of the Broadcasting Code which provides: “*Children must also be protected by appropriate scheduling from material that is unsuitable for them.*”

BCAP Code Rule 32.3 makes clear that children should be protected by relevant timing (and so appropriate scheduling) restrictions from material which is unsuitable for them. Appropriate timing and scheduling restrictions are judged according to factors such as: the likely number of children in the audience; the likely age of those children; and whether the advertisement was broadcast during school time or during school holidays. It should be noted that the watershed starts at 21:00 and broadcast advertising material unsuitable for children should not, in general, be shown before 21:00 or after 05:30.

Ofcom has made clear in previous published decisions what sort of material is unsuitable to be included in daytime interactive chat programmes and advertisements without mandatory restricted access. These decisions were summarised in a guidance letter sent by Ofcom to daytime and adult sex chat broadcasters (including Just4Us) in August 2009, and have been clarified subsequently by further findings<sup>3</sup>.

In the context of daytime interactive chat advertisements where the female presenters generally dress and behave in a provocative and/or flirtatious manner for extended periods in order to solicit PRS calls, Ofcom has underlined that the

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<sup>3</sup> *The Pad*, Tease Me TV 2, 19 October 2010, 17:00 to 18:00, Broadcast Bulletin 172 at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb172/>;

*Early Bird*, Tease Me TV (Freeview) cases, Broadcast Bulletin 169 at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb169/>

*Elite Days*, Elite TV 2, 6 August 2010, 12:24 and *Early Bird*, Tease Me TV (Freeview), 27 July 2010, 07:30 to 07:50, Broadcast Bulletin 168 at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb168/>;

*Early Bird*, Tease Me TV (Freeview) 25 July 2010, 07:25 to 07:45, Broadcast Bulletin 165 at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb165/>;

*Earlybird*, Tease Me TV, 3 June 2010, 05:45 and 08:00, Broadcast Bulletin 164 at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb164/>;

*Earlybird*, Tease Me TV, 30 January, 20 March, 27 April 2010 and *Earlybird*, Tease Me, 21 April 2010 – all Findings in Broadcast Bulletin 163 at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb163/>;

*Tease Me: Earlybird*, Tease Me TV (Freeview), 15 February 2010, 05:30 and *Tease Me: Earlybird*, Tease Me TV (Freeview), 25 January 2010, 07:15 – both Findings in Broadcast Bulletin 158 at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb158/>;

*The Pad*, Tease Me, 26 February, 11:45, *The Pad*, Tease Me 3, 27 February 2010, 11:45, *Tease Me: Earlybird*, Tease Me TV (Freeview) 26 January 2010, 07:15 - all in Broadcast Bulletin 157 at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb157/>;

*The Pad Tease Me*, 6 November 2009, 12:00 to 13:00 and 14:00 to 15:00, Broadcast Bulletin 152 at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb152/>.

presenters should not, for example, appear to mimic or simulate sexual acts or behave in an overtly sexual manner and clothing should be appropriate for the time of broadcast.

#### Pre-watershed broadcasts

*Red Light Lounge*, 13 October 2010, 11:00 to 13:00

*Red Light Lounge*, 2 November 2010, 08:55 to 10:10

*Red Light Lounge*, 10 November 2010, 10:45 to 11:20

*Red Light Lounge*, 13 November 2010, 18:20 to 19:00

The above broadcasts all contained similar material which raised similar issues under the BCAP Code Rule 32.3. All of the broadcasts featured female presenters wearing skimpy and revealing lingerie. For example, in all cases the female presenters wore thongs that offered minimal coverage of their buttocks. The presenters were all shown acting in a sexualised manner for example, by adopting various sexually provocative positions for prolonged periods of time, such as: kneeling on all fours with their legs open and positioning their buttocks to camera; lying on their back with their legs wide open and pulled back; and straddling a sofa. While in these positions the presenters repeatedly thrust and/or gyrated their buttocks and pelvis as though miming sexual intercourse, or shook their breasts to the camera. In addition, in some cases the presenters stroked and touched their bodies in a sexually provocative manner, including their breasts and upper thighs.

In addition to the above, Ofcom noted that the 13 October 2010 broadcast included what we considered to be sexual language spoken by the presenter in a seductive manner, such as *"We have Sophia, isn't she gorgeous, can you see these sexy legs guys, do you want to play with them? Do you know what, she is going to get you so hot, aren't you Sophia?"* and *"So come on guys, come and play... so don't get her too much hot because I need to play with her a bit later"*.

In Ofcom's view, the revealing clothing, sexual language, and repeated actions and sexual positions of the presenters were intended to be sexually provocative in nature and the broadcast of such content was not suitable to advertise daytime chat and could not be justified by the context in which it was presented. In light of this behaviour and imagery, Ofcom concluded that under BCAP Code Rule 32.3 the material during this daytime broadcast was clearly unsuitable for children.

Ofcom then considered under BCAP Code Rule 32.3 whether relevant timing or scheduling restrictions were applied to these broadcasts by the Licensee. Ofcom noted that the service 40nNaughty is situated in the 'adult' section of the EPG. However, all the broadcasts were transmitted without mandatory access restrictions at various times during the day when children may have been watching television, some unaccompanied by an adult.

Taking into account the factors above, Ofcom has concluded that relevant timing and scheduling restrictions were not applied to the broadcasts so as to offer adequate protection to children. Ofcom also concluded under BCAP Code Rule 4.2 that, given the nature and scheduling of the material, it would cause serious or widespread offence against generally accepted moral, social or cultural standards.

Therefore Ofcom concluded that this material breached Rules 4.2 and 32.3 of the BCAP Code.

### Post-watershed broadcast

*Red Light Central, 6 November 2010, 21:48 to 22:30*

In Ofcom's view the sexual images included in this broadcast were strong and capable of causing offence. The presenter was wearing a very revealing thong and she was shown removing her bra and exposing her breasts before 22:00. The presenter's genital area was shot in close up and as a consequence the broadcast included some very intrusive images before 22:00. During the broadcast the presenter repeatedly thrust and/or gyrated her buttocks and pelvis for prolonged periods of time, as though miming sexual intercourse, and after 22:00 she also licked and massaged her naked breasts.

Under BCAP Code Rule 4.2 Ofcom took into account the context in which this particular advertisement was broadcast, in order to determine whether suitable scheduling restrictions were applied to this content by the Licensee. Ofcom noted that this content was broadcast after the 21:00 watershed and that viewers generally expect on all channels that stronger material will be shown after 21:00, within context. Ofcom also took account of the fact that the 40nNaughty channel is positioned in the adult section of the Sky EPG and that viewers tend to expect the broadcast of stronger sexual material on channels in this section of the EPG than would be expected to be included on other channels in other sections.

However, in this case, given the content included prolonged and frequent scenes of a sexual nature (provided for the purpose of sexual arousal) the location of the channel in the adult section of the EPG was not sufficient to justify the broadcast of the material from 21:48. The content shown at this time would in Ofcom's view have exceeded the likely expectation of the vast majority of the audience for a channel of this nature and location. Ofcom was also concerned at the degree of offence likely to be caused to viewers who might come across this material unawares, given the broadcast started before 22:00.

Taking into account the factors above, Ofcom has concluded that relevant scheduling restrictions were not applied so as to ensure that the material did not cause widespread offence against generally accepted moral, social or cultural standards. Therefore Ofcom concluded that this material breached Rule 4.2 of the BCAP Code.

Just4Us is a wholly owned subsidiary of Playboy TV UK/Benelux Limited ("Playboy"). All editorial compliance decisions regarding the two companies are taken by a centralised compliance team headed by the same Compliance Officer.

In August and December 2010 Ofcom recorded breaches of the Broadcasting Code and BCAP Code, respectively, against Playboy for content broadcast on its licensed service Tease Me TV 2<sup>4</sup>. Ofcom's more recent finding relating to Playboy stated that "Ofcom considers this breach of the BCAP Code a serious matter and should there

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<sup>4</sup>Bang Babes, Tease Me TV 2, 22 May 2010, 03:35 to 04:00, published in Broadcast Bulletin 164 (23 August 2010) at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb164/>; and

The Pad, Tease Me TV 2, 19 October 2010, 17:00 to 18:00, published in Broadcast Bulletin 172 (20 December 2010) at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb172/>.

be any similar contraventions, Ofcom will consider further regulatory action". Ofcom's Broadcast Bulletin 172, published on 20 December 2010, also included a note to broadcasters which stated that "those services operating in the sector of daytime and adult chat should be aware that Ofcom will not tolerate repeated breaches of the Code in this area. Ofcom has serious concerns about industry compliance in this area and we will not hesitate to take appropriate enforcement action where necessary (which may include fines and revocation of licences)".

In light of the above and Ofcom's recent concerns with Just4Us and Playboy's compliance, Ofcom is now requiring the licensees to attend a meeting at Ofcom to discuss its compliance procedures. Ofcom also puts Just4Us and Playboy on notice that it must take all necessary and appropriate measures to ensure its channels comply with the BCAP Code in the future. Ofcom will not expect further breaches of this nature to occur again.

### **Pre-watershed broadcasts**

***Red Light Lounge, 40nNaughty, 13 October 2010, 11:00 to 13:00: Breach of BCAP Code Rules 4.2 and 32.3***

***Red Light Lounge, 40nNaughty, 2 November 2010, 08:55 to 10:10: Breach of BCAP Code Rules 4.2 and 32.3***

***Red Light Lounge, 40nNaughty, 10 November 2010, 10:45 to 11:20: Breach of BCAP Code Rules 4.2 and 32.3***

***Red Light Lounge, 40nNaughty, 13 November 2010, 18:20 to 19:00: Breach of BCAP Code Rules 4.2 and 32.3***

### **Post-watershed broadcast**

***Red Light Central, 40nNaughty, 6 November 2010, 21:48 to 22:30: Breach of BCAP Code Rules 4.2***

## In Breach

### Party Wars

LIVING, 30 October 2010, 14:00

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#### Introduction

*Party Wars* is an entertainment programme in which four contestants compete with each other to determine who can arrange the best party.

Ofcom received a complaint about this programme from a viewer who noted that one of the contestants used the word “fucking”.

The licence for LIVING is held by Living TV Group Ltd<sup>1</sup> (“Living TV Group”). Ofcom asked Living TV Group for its comments under Rule 1.14 (the most offensive language must not be broadcast before the watershed).

#### Response

Living TV Group admitted the broadcast of this language was in breach of Rule 1.14 and regretted an error in its systems had resulted in the term being broadcast. The broadcaster said it is “acutely aware” this was “the latest in a string of incidents” where the most offensive language had been broadcast before the watershed across Living TV Group.

Living TV Group said it takes its compliance responsibilities “very seriously” and it was “extremely disappointed” that such language had been broadcast on this occasion. It said there were a number of instances where offensive language in this episode had been appropriately obscured for a pre-watershed broadcast, but that unfortunately human error resulted in this one word being missed.

The broadcaster assured Ofcom that it would not intentionally broadcast the most offensive language before the watershed. Living TV Group said this episode has been edited to remove the offensive language in question and that the version as broadcast on this occasion will not be transmitted again.

#### Decision

Ofcom research on offensive language<sup>2</sup> clearly notes that the word “fuck” and its derivatives are considered by viewers to be very offensive. Such language is unacceptable before the watershed and the inclusion of the word “fucking” in *Party Wars* was clearly in breach of the requirements of Rule 1.14.

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<sup>1</sup> On 3 September 2010 the licence for this service was transferred to British Sky Broadcasting Ltd. However compliance responsibilities remained with Living TV Group for this programme during a period of transition to British Sky Broadcasting.

<sup>2</sup> Audience attitudes towards offensive language on television and radio, August 2010 (<http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>)

Ofcom noted Living TV Group's apology, however we remain concerned by the number of recent and repeated breaches<sup>3</sup> relating to the broadcast of offensive language before the watershed by Living TV Group, despite assurances about its compliance procedures.

Ofcom does not expect further compliance issues of this nature, but may consider taking further regulatory action should they recur.

### **Breach of Rule 1.14**

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<sup>3</sup>See Broadcast Bulletin 167 published on 11 October 2010 at:  
<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb167/>

Broadcast Bulletin 164 published on 23 August 2010 at:  
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb164/issue164.pdf>;

Broadcast Bulletin 150 published on 25 January 2010 (under the previous compliance name Virgin Media Living Television Limited) at:  
<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb150/>

Broadcast Bulletin 141 published on 14 September 2009 (under the compliance name Virgin Media Television Limited) at:  
<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb141/>

Broadcast Bulletin 140 published on 28 August 2009 (under the compliance name Virgin Media Television Limited) at:  
<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb140/>; and

Broadcast Bulletin 129 published on 9 March 2009 (under the compliance name Virgin Media Television Limited) at:  
<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb129/>

## Broadcast Licence Condition Cases

### In Breach

#### Failure to provide key commitments

*Blyth Valley Radio*

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##### Introduction

Blyth Valley Radio is a community radio station providing a service for the people of Southwold and surrounding villages in Suffolk. It has been on air since July 2009 and the output is presented by volunteers. The licence is held by Blyth Valley Community Radio ('the licensee').

The station's licence includes as an annex a 'key commitments' document which sets out what the radio station is required to broadcast (which is based on the promises made by the station in its original application for the licence). In the programming section it says that "*Live output will typically consist of 70% music and 30% speech ('speech' excludes advertising, programme/promotional trails and sponsor credits)*"<sup>1</sup>.

Following a complaint regarding the proportion of speech programming broadcast on the station, on 19 August 2010 Ofcom wrote to the licensee, to ask whether it was complying with its key commitment to broadcast at least 30% speech output during live programming.

In its response the station provided an analysis of its weekly broadcasting for a week in August. In this analysis the station estimated that its overall speech output was 15.8% with music at 84.2%.

Based on the station's estimation that it was only delivering 15.8% speech output, Ofcom again wrote to the licensee to ask how it considered its output complied with the licence condition relating to key commitments delivery. Condition 2(4), contained in Part 2 of the Schedule to the licence, states that:

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

##### Response

The licensee said that it continuously monitors and updates its schedule to accommodate different presenters and that this can cause "*peaks and troughs*" in the station's speech output percentage. As a result, the licensee said that at times it over-delivers on its speech remit and at other times it under-delivers on this requirement; the licensee felt that typically, its speech output "*is around 30% on average over a period of time*".

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<sup>1</sup> Blyth Valley Community Radio has successfully applied for a change to its key commitments and is now required to deliver 75% music and 25% speech. The key commitment change request can be found at <http://stakeholders.ofcom.org.uk/binaries/broadcast/radio-ops/key-commitment-changes/BVR.pdf>.

<sup>2</sup> The service that the station is licensed to provide, as described in its 'key commitments'.

The licensee said that in the particular week where they estimated delivering 15.8% speech there were exceptional circumstances: *“one new presenter who had never been on air, another fairly new presenter who did a one off show and one person we also had in the studio a work experience youngster who also had a go at presenting”*.

The licensee says it has worked extensively over the past three months to train presenters to become more confident on-air and deliver more speech programming. In addition to this there are now more ‘what’s on’ segments, local news and items of interest and that there has been *“a marked improvement in the peak/trough averages”*.

Lastly, the licensee said that Blyth Valley Radio takes to heart the spirit of community radio broadcasting and has helped people of all ages and abilities to gain access to the airwaves and that due to this the speech ratio has, in the past, been a challenge to meet. The licensee believes that this has been improved by the training offered to volunteers.

### **Decision**

Ofcom notes that Blyth Valley Community Radio has struggled to consistently deliver the required 30% speech output which forms part of its key commitments. The licensee has since requested to change this key commitment requirement to deliver 25% speech and 75% music and this was agreed by Ofcom in October 2010.

By failing to provide the required 30% speech output on Blyth Valley Radio during August 2010, the licensee was not providing the service as described in its key commitments, and was therefore in breach of the licence condition referred to above. Ofcom has therefore formally recorded this breach by the licensee.

Community radio stations are, under the terms of The Community Radio Order 2004, defined as local radio stations provided primarily for the good of members of the public or for a particular community, rather than primarily for commercial reasons. They are also required to deliver social gain, be run on a not-for-profit basis, involve members of their target communities and be accountable to the communities they serve.

Any organisation applying for a community radio licence is required to set out proposals as to how it will meet these various statutory requirements. If it is awarded a licence, its proposals are then included in the licence so as to ensure their continued delivery. As referred to above this part of a community radio station's licence is known as the 'key commitments', and it is designed to ensure that each community radio station continues to provide the service for which it has been licensed. As such, ‘key commitments’ are requirements which must be delivered from launch, not ‘targets’ to meet at a future date.

### **Breach of Licence Condition 2(4) in Part 2 of the Schedule to the community radio licence held by Blyth Valley Community Radio (licence number CR188)**

## Fairness and Privacy Cases

### Not Upheld

#### Complaint by Mr Andrew Vincent

*Police Interceptors, Five, 7 June 2010*

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

This edition of the programme included footage of Mr Vincent being stopped by police officers who suspected he was driving a “*phoney*” ambulance. Mr Vincent was shown being questioned by the officers and being arrested for road traffic offences and for obstructing a police officer.

In summary, Ofcom found the following:

- It was not unfair for the programme to refer to Mr Vincent as a “*wannabe paramedic*” or to him living in a “*weird fantasy land*”, given the various explanations he gave to the police about the vehicle he was driving.
- Given that Mr Vincent was not named in the programme and told the police the vehicle was not his car, the broadcast of the vehicle’s registration plate, was not an unwarranted infringement of his privacy.
- As regards Mr Vincent’s conversation with the police officer, the broadcaster’s right to freedom of expression outweighed Mr Vincent’s legitimate expectation of privacy and there was no unwarranted infringement of his privacy.

#### Introduction

On 7 June 2010, Five broadcast an edition of its reality series *Police Interceptors*, which follows the work of a police interception unit, a high-speed mobile response team, in Essex.

The programme showed police officers investigating a report of a “*suspected phoney ambulance*” that had been seen outside an Ipswich hospital earlier in the day. The officers spotted, followed and stopped what appeared to them to be the “*phoney*” emergency vehicle. When officers questioned the driver, Mr Andrew Vincent, who was not named in the programme, he said he had no identification with him and that he had pulled over because he had received a call about an accident. He would not give his name in front of the cameras and said he would talk to the officer at the back of the vehicle. Footage of this conversation was included in the programme. Brief footage of a mobile fingerprinting device was shown and one of the officers said:

*“He comes back as...not as Mr Whelan”.*

The name given by the fingerprinting device as the correct identity of the driver was bleeped out. The programme showed the man being arrested and taken to a police station. One of the officers, who was shown inspecting the vehicle and finding various London Ambulance Service jackets and badges, said:

*“He says he works, or he’s employed by, which is all a little bit grey, Essex Healthcare...I think probably ...Essex Healthcare is something he’s just made up and goes with in some kind of weird fantasy land that he lives in”.*

The narrator then referred to Mr Vincent as a “*wannabe paramedic*” and said that he later pleaded guilty to driving without insurance or a licence and obstructing a police officer.

## **The Complaint**

### **Mr Vincent’s case**

In summary, Mr Vincent complained that he had been treated unfairly in the programme in that:

- a) He was portrayed unfairly in that:
  - i) He was described as a “*wannabe paramedic*”.
  - ii) The police officer’s comment that Mr Vincent “*goes ... in some kind of weird fantasy land that he lives in*” was derogatory to him and could have been understood by viewers to suggest that he was a danger to the public.

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

- b) His vehicle registration plate was not obscured.
- c) In spite of the fact he asked the officer if he could talk to him away from the camera and the officer agreed to that, his conversation with the officer was included in the programme.

### **Five’s case**

In summary, Five responded to Mr Vincent’s complaint that he had been treated unfairly in the programme as follows:

- a) Five responded first to the complaint that Mr Vincent was portrayed unfairly.
  - i) As regards the complaint that Mr Vincent was described as a “*wannabe paramedic*”, Five said that he had first told the police officers at the scene that he worked for the ambulance service and later said that he worked for a company called Essex Healthcare, which provided vehicles and drivers to television productions such as *The Bill* and *EastEnders*. In answer to a direct question, he explained that he was not a paramedic but a “*technician*”. Five said that ambulance technicians employed in the NHS were members of the accident and emergency crew. Five said it understood that the role of technician was it was no longer available for new entrants to the NHS and that existing technicians were being given opportunities to work as emergency care assistants and to progress onto paramedic training.

Five said that, in light of Mr Vincent’s comments and his description of himself as a technician, the current position relating to ambulance technicians and the discovery of a quantity of London Ambulance Service uniforms in the boot of his vehicle, it was not unfair to describe him as a “*wannabe paramedic*”.

ii) Five next responded to the complaint that the police officer's comment that Mr Vincent's company, Essex Healthcare, "*goes ... in some kind of weird fantasy land that he lives in*" was derogatory to him and could have been understood by viewers to suggest that he was a danger to the public. Five said that the officer's comment was made after the following sequence of events:

- Mr Vincent had given a number of unsatisfactory and contradictory responses to questions as to why he was driving a vehicle marked as an ambulance.
- Mr Vincent was unable to produce any form of driving licence or identification and gave false information about his identity.
- Mr Vincent had activated the vehicle's flashing blue lights.
- An officer had noticed that the vehicle lacked any of the radio equipment normally found in emergency response vehicles.
- The vehicle carried no first aid equipment.
- The officer had found London Ambulance Service uniforms and badges in the boot of Mr Vincent's vehicle.

Five said that, when referring to a "*weird fantasy land*", the officer was clearly explaining his view of Mr Vincent at that particular stage of the investigation. The officer's comment was immediately qualified with his assertion that:

*"You wouldn't want him turning up if you called 999, put it that way".*

Furthermore, Five said that Mr Vincent had not provided the police with any information about Essex Healthcare and that the programme makers had not been able to verify his claim that he was employed by the company or that the company provided any assistance to the emergency services.

As regards the complaint that the programme suggested that Mr Vincent was a danger to the public, Five said that it merely demonstrated that he was unable to provide the police with a satisfactory explanation as to his identity or why he was driving the vehicle in question. However, Five said that any inference that Mr Vincent was a danger to the public was warranted, given that he was driving on public roads without insurance or a driving licence and in an emergency vehicle fitted with a blue warning beacon, contrary to the Road Vehicles Lighting Regulations 1989.

Five next responded to the complaint that Mr Vincent's privacy was unwarrantably infringed in the programme as broadcast.

b) As regards the complaint that the vehicle registration plate was not obscured, Five said that Mr Vincent did not have a legitimate expectation of privacy, as the registration plate was not private information. Five said that, registration plates did not in themselves reveal any more information about a vehicle than was visible from the vehicle to which they were attached and that the law required the Driver and Vehicle Licensing Agency ("DVLA") to protect the privacy of individual motorists and to ensure that personal data was used fairly and lawfully. Five said that regulations allowed for the release of information from DVLA's register in specified circumstances, with each request looked at individually by the DVLA to ensure that the privacy of motorists is properly safeguarded. Five said that viewers would not have been able to obtain further information about Mr Vincent or the vehicle from the DVLA, or from any other source, simply by viewing the

programme and requesting information from the DVLA, unless they were able to demonstrate reasonable cause to do so.

Five said that, if Ofcom did consider that the broadcast of the registration plate infringed Mr Vincent's privacy, any such infringement was warranted, on the grounds that he was convicted for driving without a licence or insurance and obstructing a police officer in the course of his duty, an offence he committed whilst being questioned about his identity and his use of the vehicle. Five said that it was in the public interest for viewers to be aware that the driver of a vehicle bearing the registration mark in the programme, a vehicle marked as an ambulance, had been convicted of criminal offences.

- c) Five then responded to the complaint that, in spite of the fact Mr Vincent asked the officer if he could talk to him away from the camera and the officer agreed to that, the conversation was included in the programme. Five accepted that a person being questioned by police officers might have a reasonable expectation of privacy in respect of the conversation. However the broadcaster said that, in this case, broadcast of the footage was warranted given the public interest both in showing the work of the police as they investigated criminal offences and in showing offences being committed and the consequences of committing crimes, including, in Mr Vincent's case, obstructing a police officer in the course of his duty. Five said that there was a significant public interest in showing the varied and often difficult incidents experienced by police officers in dealing with traffic offences and in developing the public's understanding of the range of situations dealt with by the police, particularly in cases where the police were investigating allegations involving someone impersonating a member of emergency services. Five said that Mr Vincent's conviction and the right of the public to receive information about it outweighed any right he had to privacy in these circumstances.

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

### Unfair treatment

- a) Ofcom first considered the complaint that Mr Vincent was unfairly treated in the programme in that he was portrayed unfairly.

In considering this part of the complaint Ofcom took account of Rule 7.1 of the Code. Ofcom also had regard to Practice 7.9 which states that broadcasters must

take reasonable care not to present, disregard or omit material facts in a way which is unfair to an individual.

- i) As regards the complaint that Mr Vincent was described as a “*wannabe paramedic*”, Ofcom noted that the narrator said towards the end of the relevant part of the programme:

*“The wannabe paramedic later pleaded guilty to driving without insurance or a licence and obstructing a police officer”.*

Ofcom noted that when he was stopped, Mr Vincent gave the officers a number of different explanations about the vehicle and why he was driving it. He first told the officers that he worked for the ambulance service and then said that he worked for a company which provided vehicles and drivers to television productions such as *The Bill* and *EastEnders*. He then told the officers that he was not a paramedic but a technician. Ofcom noted Five’s explanation that the role of technician was no longer available for new entrants to the NHS and that existing technicians were being given opportunities to work as emergency care assistants and to progress onto paramedic training. Ofcom also took into account the officer’s discovery of a quantity of London Ambulance Service uniforms and badges in the boot of Mr Vincent’s vehicle.

Ofcom considered that, in the absence of a clear explanation by Mr Vincent to the police officers as to what his role was and why he was driving a vehicle that appeared to be an emergency ambulance, given that he offered a number of different and contradictory explanations of who he was and what he was doing and given the presence of uniforms in the vehicle, it was reasonable for the programme makers to assume that he wanted and intended to give the impression that he was a paramedic. In these circumstances, it was not unfair to describe him as a “*wannabe paramedic*”.

- ii) Ofcom next considered the complaint that the police officer’s comment that his company, Essex Healthcare, “*goes ... in some kind of weird fantasy land he lives in*” was derogatory to him and could have been understood by viewers to suggest that he was a danger to the public. Ofcom noted that one of the officers investigating Mr Vincent and his vehicle said:

*“I think probably ... Essex Healthcare is something he’s just made up and goes with in some kind of weird fantasy land that he lives in”.*

Ofcom noted that Mr Vincent gave contradictory responses to the police officers as to why he was driving a vehicle marked as an ambulance, was unable to produce a driving licence or other identification and gave false information about his identity. Ofcom further noted that Mr Vincent had activated the flashing blue lights of the vehicle, which had none of the radio or first aid equipment normally found in emergency response vehicles, but did have a number of London Ambulance Service uniforms and badges in the boot. Ofcom also noted that Mr Vincent had not provided the police with any information about Essex Healthcare and that the programme makers had been unable to verify his claims that he was employed by the company or that it provided any assistance to the emergency services.

Taking all the above factors into account, it was Ofcom’s view that it was reasonable for the programme makers to include in the programme the

conclusion reached by the police officers that Mr Vincent was not a paramedic and was not driving a genuine ambulance but that it was his intention to give that impression. Ofcom considered that, in these circumstances, it was reasonable for the programme to include the officer's opinion that Mr Vincent was living in a "*weird fantasy land*" and for him to take the view, based on the information available at the time, that a member of the public would not want Mr Vincent responding to their 999 call.

As regards the complaint that the programme suggested that Mr Vincent was a danger to the public, Ofcom noted that the programme did not include any explicit statement that Mr Vincent was a danger to the public. The police officers shown in the programme and the commentary did not imply that Mr Vincent was a danger, but that he lived in a "*weird fantasy land*". The programme subsequently made clear that Mr Vincent was convicted only of driving offences and of obstructing a police officer. Ofcom does not believe that this would have lead viewers to conclude that he was a danger to the public.

Ofcom therefore found no unfairness to Mr Vincent.

### Privacy

Ofcom considered the complaint that Mr Vincent's privacy was unwarrantably infringed in the programme as broadcast.

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 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.

- b) Ofcom considered the complaint that Mr Vincent's vehicle registration plate was not obscured.

In considering this part of the complaint Ofcom applied Rule 8.1 of the Code. Ofcom also had regard to Practice 8.6 of the Code which states that if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

In considering whether or not there had been any unwarranted infringement of Mr Vincent's privacy, Ofcom first considered whether Mr Vincent would have had a legitimate expectation of privacy in connection with the registration plate of the vehicle he was driving.

Ofcom noted that Mr Vincent stated to the police that the vehicle, which was marked as an emergency ambulance, was not his personal car but a "*service car*". In the circumstances, Ofcom considered that broadcast of the registration plate disclosed no personal or sensitive information about Mr Vincent and that as a result he could not have had a legitimate expectation of privacy in relation to it.

Having concluded that Mr Vincent had no legitimate expectation of privacy in relation to the registration plate, Ofcom found that his privacy was not unwarrantably infringed in the programme as broadcast in this respect.

- c) Ofcom considered the complaint that, in spite of the fact Mr Vincent asked the officer if he could talk to him away from the camera and the officer agreed to that, his conversation with the officer was included in the programme.

In considering this part of the complaint Ofcom applied Rule 8.1 of the Code. Ofcom also had regard to Practice 8.6 of the Code, as set out under decision head b) above.

In considering whether or not there had been any unwarranted infringement of Mr Vincent's privacy, Ofcom first considered the extent to which Mr Vincent could legitimately have expected that the footage of his conversation with the officer would not be broadcast without his consent. Ofcom recognised that Mr Vincent was not participating in a public event, was not a public figure and was clearly involved in an embarrassing and sensitive situation, as he was being questioned by police officers. Although the conversation had been filmed on the public highway, it did not appear to Ofcom that there were other people in the area who would have heard the discussion. In any event, Ofcom noted that Mr Vincent asked the officer if the conversation could be conducted away from the camera. Although Mr Vincent had not suggested that he was given any assurances by the programme makers that the conversation would not be filmed or broadcast, Ofcom noted that the officer agreed to conduct the conversation some way away from the camera. In view of Mr Vincent's request and the officer's action in moving away from the camera to speak to Mr Vincent, Ofcom considered that Mr Vincent would legitimately have expected that footage of the conversation would not be broadcast.

Ofcom then proceeded to consider the competing right of the broadcaster to freedom of expression. In this respect, Ofcom considered whether in the circumstances there was a sufficient public interest to justify the intrusion into Mr Vincent's private life.

Ofcom considered that there was a significant public interest in showing the work of the police as they investigate criminal offences and in showing the varied and potentially difficult situations that face officers who deal with traffic offences. In this case, Ofcom took the view that there was a public interest in showing how officers investigated a report of a "*suspected phoney ambulance*" and subsequently dealt with a person who obstructed a police investigation. Ofcom noted that Mr Vincent was, ultimately, convicted of driving without insurance or a licence and obstructing a police officer and that there was a public interest in demonstrating the consequences of committing those offences.

Ofcom concluded, when considering all of the above circumstances, that the broadcaster's right to freedom of expression outweighed Mr Vincent's legitimate expectation of privacy, and that there was no unwarranted infringement of Mr Vincent's privacy.

In light of the above, Ofcom has not upheld the complaint in this respect.

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

## Not Upheld

### **Complaint by Mrs Shizia Sarfraz on her own behalf and on behalf of her daughter (a minor)**

*Look East, BBC1, 13 August 2010*

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**Summary:** Ofcom has not upheld this complaint of unwarranted infringement of privacy made by Mrs Shizia Sarfraz on her own behalf and on behalf of her daughter (a minor).

A report in this programme looked at concerns that councils were experiencing difficulties providing services because of high levels of immigration. The report included brief footage which showed a number of people, including Mrs Sarfraz and her daughter, walking along a busy street.

In summary, Ofcom found that Mrs Sarfraz and her daughter did not have a legitimate expectation of privacy in relation to the making or the broadcast of the programme, as they were filmed in a public place and the footage did not include information of a sensitive or private nature about them.

#### **Introduction**

On 13 August 2010, BBC1's local news programme for the east of England, *Look East*, included a report on concerns that councils were experiencing difficulties providing services because of high levels of immigration. In the opening to the programme, the newsreader said:

*"Under pressure: the councils which say they're struggling to cope with rising immigration and that services could suffer".*

During the course of the item, the reporter visited a number of places in the east of England where councils were said to be facing problems. While visiting Luton, she said:

*"In Corby and Luton, authorities say their population is increasing massively and it's being ignored by the Government".*

Each of these comments was a voiceover accompanied by footage of a number of people walking along a street. The same footage was shown each time, although a slightly shorter clip was shown during the opening to the programme. Shown clearly in the foreground of the footage were a woman, Mrs Shizia Sarfraz, and her daughter, the complainants.

#### **The Complaint**

##### **Mrs Sarfraz's case**

In summary, Mrs Sarfraz complained that her privacy and that of her daughter was unwarrantably infringed in the making of the programme in that:

- a) Footage of them was recorded without Mrs Sarfraz's knowledge or consent.

In summary, Mrs Sarfraz complained that her privacy and that of her daughter was unwarrantably infringed in the programme as broadcast in that:

- b) Footage of them was included in the programme without Mrs Sarfraz's knowledge or consent.

### **The BBC's case**

In summary, the BBC responded to the complaints of unwarranted infringement of privacy in the making and the broadcast of the programme together as follows:

The BBC said that the news item was entirely focused on the issue of difficulties local authorities were having as a result of high levels of immigration. The BBC said that Mrs Sarfraz and her daughter appeared briefly during the programme's opening menu, and again during the body of relevant report, over the reporter's words "*and it's being ignored by the Government*" and the opening words of an interview with Councillor Hazel Simmons. The BBC said that Mrs Sarfraz and her daughter were seen walking along a busy street and that there was nothing to indicate that they were engaged in any intrinsically private activity. Although they happened to be in the centre of the shot, there was nothing intrusive about the camera work, which did not, for example, single them out by zooming in on them. The BBC said that Mrs Sarfraz and her daughter were simply part of a crowd, in one of a number of shots designed to illustrate the ethnic and cultural diversity of towns in the BBC East region while also suggesting pressure of population.

The BBC said that, in the absence of any disobliging reflection on Mrs Sarfraz and her daughter, they did not have such reasonable expectations of privacy that the filming of the shots and their use in the context of this programme constituted an infringement of their privacy. The BBC said that even if Ofcom took the view that there was an infringement of their privacy, it was both minor and warranted by the public interest in illustrating a news story of considerable importance to the public in the BBC East region.

### **Decision**

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public and all other persons from both unfair treatment in programmes included in such services, and unwarranted infringements of privacy resulting from activities carried on for the purposes of such services<sup>1</sup>.

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<sup>2</sup>. 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<sup>3</sup>.

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<sup>1</sup> Section 3(2)(f) Communications Act 2003

<sup>2</sup> Section 3(4)(g) Communications Act 2003

<sup>3</sup> Section 3(3) Communications Act 2003

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast, a transcript, 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 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 first considered the complaint that Mrs Sarfraz and her daughter's privacy was unwarrantably infringed in that footage of them was recorded without Mrs Sarfraz's knowledge or consent.

In considering this part of the complaint, Ofcom took account of Rule 8.1 of the Code. Ofcom also had regard to Practice 8.5 of the Code which states that "*Any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or otherwise be warranted.*"

In considering whether or not there had been any infringement of Mrs Sarfraz's privacy and that of her daughter, Ofcom first considered whether they had a legitimate expectation of privacy in connection with the filming of footage of them.

Ofcom noted that Mrs Sarfraz and her daughter were filmed without their knowledge while they were walking along a busy public street. In Ofcom's view, as set out in the Code, "Legitimate expectations of privacy will vary according to the place and nature of the information, activity or condition in question, the extent to which it is in the public domain (if at all) and whether the individual concerned is already in the public eye. There may be circumstances where people can reasonably expect privacy even in a public place. Some activities and conditions may be of such a private nature that filming or recording, even in a public place, could involve an infringement of privacy."

Ofcom noted that Mrs Sarfraz and her daughter appeared prominently in the relevant footage, as their position was closest to the camera, but considered that the camerawork was not intrusive. They were filmed merely going about their day-to-day business in a public place, and the recorded footage of them did not disclose any information of a personal or sensitive nature or show them in an embarrassing situation. While Mrs Sarfraz and her daughter appear to have been unaware that they were being filmed and were not therefore in a position to provide or withhold consent, there was no suggestion that they were filmed surreptitiously or specifically targeted.

Ofcom noted Mrs Sarfraz's concern at discovering that the footage of her and her daughter existed. However, in the absence of any special factors in relation to the filming, Ofcom did not consider that Mrs Sarfraz and her daughter had a legitimate expectation of privacy in relation to the filming. As a result, it was not necessary for Ofcom to consider whether any intrusion into Mrs Sarfraz's private life or that of her daughter was warranted.

Ofcom therefore found that Mrs Sarfraz and her daughter's privacy was not unwarrantably infringed in the making of the programme.

- b) Ofcom considered the complaint that Mrs Sarfraz and her daughter's privacy was unwarrantably infringed in that footage of them was included in the programme without Mrs Sarfraz's knowledge or consent.

In considering this part of the complaint Ofcom applied Rule 8.1 of the Code. Ofcom had regard to Practice 8.6 of the Code which states that *"If the broadcast of a programme would infringe the privacy of a person... consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted."*

In considering whether or not there had been any unwarranted infringement of Mrs Sarfraz's privacy and that of her daughter, Ofcom first considered whether they had a legitimate expectation of privacy in respect of the broadcast of the footage of them walking along a street.

Having found at decision head a) above that there were no special factors in relation to the filming which gave rise to a legitimate expectation of privacy, Ofcom considered whether there were any additional factors to be taken into account in relation to the subsequent broadcast of the footage. Ofcom noted that the programme did not make any comment, explicit or implied, about Mrs Sarfraz and her daughter personally, but simply included them in a scene of people walking along a street. The voiceover at the relevant time only commented generally on the reported situation, and did not refer specifically to the people shown in the footage. In Ofcom's view therefore there were no special factors that gave Mrs Sarfraz or her daughter a legitimate expectation of privacy in relation to the broadcast of the programme.

As a result, it was not necessary for Ofcom to consider whether any intrusion into Mrs Sarfraz's private life or that of her daughter was warranted.

Ofcom therefore found that Mrs Sarfraz and her daughter's privacy was not unwarrantably infringed in the programme as broadcast.

**Accordingly, Ofcom has not upheld Mrs Sarfraz's complaint of unwarranted infringement of privacy in either the making or broadcast of the programme.**

## Other Programmes Not in Breach

Up to 3 January 2011

Programme	Transmission Date	Broadcaster	Categories	Number of complaints
100 Greatest Toys with Jonathan Ross	19/12/2010	Channel 4	Sexual material	14
100 Greatest Toys with Jonathan Ross	26/12/2010	Channel 4	Generally accepted standards	1
118 118's sponsorship of ITV Movies	02/12/2010	ITV4	Crime	1
4thought.tv	15/12/2010	Channel 4	Religious/Beliefs discrimination/offence	1
4thought.tv	19/12/2010	Channel 4	Religious/Beliefs discrimination/offence	5
8 Out of 10 Cats Christmas Special	23/12/2010	Channel 4	Generally accepted standards	1
A Night of Heroes: The Sun Military Awards	17/12/2010	ITV1	Outside of remit / other	1
Accused	20/12/2010	BBC 1	Harm	1
Accused	20/12/2010	BBC 1	Generally accepted standards	2
Adhwaa Ala Al-ahdath (Issues under the Spotlights)	23/09/2010	Al Hiwar TV	Religious/Beliefs discrimination/offence	1
Afternoon Live	09/12/2010	Sky News	Offensive language	1
Afternoon Live	21/12/2010	Sky News	Generally accepted standards	1
Afternoon Report	24/12/2010	Sky Sports News	Generally accepted standards	1
Alan Carr: Chatty Man	13/12/2010	Channel 4	Nudity	1
Alan Carr: Chatty Man	13/12/2010	Channel 4	Generally accepted standards	1
All Star Family Fortunes	25/12/2010	ITV1	Gender discrimination/offence	1
An Idiot Abroad	19/12/2010	Sky 1	Generally accepted standards	1
Antiques Roadshow	10/12/2010	BBC 1	Generally accepted standards	1
Balls of Steel	22/12/2010	4Music	Race discrimination/offence	1
BBC News	15/12/2010	BBC 1	Violence and dangerous behaviour	1
BBC News	15/12/2010	BBC 1	Generally accepted standards	1
BBC News	15/12/2010	BBC 1	Generally accepted standards	1
Bear Grylls: Born Survivor	27/12/2010	Discovery Channel	Animal welfare	1
Being Erica	30/12/2010	E4	Offensive language	1
Bluebird TV	02/10/2010	Live 960	Participation TV - Harm	1
Bluebird TV	04/10/2010	Live 960	Participation TV - Harm	1
Bluebird TV	05/10/2010	LivexxBabes	Participation TV - Harm	1
Bluebird TV	02/10/2010	Various	Participation TV - Harm	1
Brainiac: Science Abuse	21/12/2010	Sky 1	Offensive language	1

Breakfast	16/12/2010	BBC 1	Under 18s in programmes	1
BT Vision's sponsorship of Drama on 4	17/12/2010	Channel 4	Sponsorship credits	1
Caillou	08/12/2010	Cartoonito	Harm	1
Call Me Claus	18/12/2010	Five	Offensive language	1
Captain Mack	27/11/2012	Tiny Pop	Offensive language	1
Casualty	11/12/2010	BBC 1	Generally accepted standards	1
Catherine Tate: Nan's Christmas Carol	22/12/2010	BBC 1	Offensive language	1
Celebrity Come Dine with Me	21/12/2010	Channel 4	Generally accepted standards	1
Celebrity Come Dine with Me	28/12/2010	Channel 4	Generally accepted standards	2
Celebrity Come Dine with Me	28/12/2010	Channel 4	Offensive language	11
Channel 4 News	05/12/2010	Channel 4	Due accuracy	128
Channel 4 News	14/12/2010	Channel 4	Due impartiality/bias	1
Channel 4 News	22/12/2010	Channel 4	Outside of remit / other	1
Chris Moyles' Christmas Quiz Night	22/12/2010	Channel 4	Violence and dangerous behaviour	2
Chris Moyles' Christmas Quiz Night	22/12/2010	Channel 4	Generally accepted standards	1
Come Fly with Me	25/12/2010	BBC 1	Race discrimination/offence	10
Come Fly with Me	25/12/2010	BBC 1	Religious/Beliefs discrimination/offence	2
Come Fly with Me	25/12/2010	BBC 1	Animal welfare	1
Coppers	29/11/2010	Channel 4	Disability discrimination/offence	1
Coronation Street	08/12/2010	ITV1	Outside of remit / other	1
Coronation Street	17/12/2010	ITV1	Offensive language	2
Coronation Street Omnibus	19/12/2010	ITV1	Offensive language	1
Coronation Street trailer	n/a	ITV1	Materially misleading	1
Crimewatch	14/12/2010	BBC 1	Generally accepted standards	1
Curry's sponsorship of The Simpsons	11/12/2010	Sky 1	Animal welfare	1
Curry's sponsorship of The Simpsons	15/12/2010	Sky 1	Animal welfare	1
Curry's sponsorship of The Simpsons	16/12/2010	Sky 1	Generally accepted standards	1
Daybreak	17/12/2010	ITV1	Animal welfare	1
Deal or No Deal	21/12/2010	Channel 4	Other	2
DFS' sponsorship of Christmas on ITV	18/12/2010	ITV1	Generally accepted standards	1
Doctors	08/12/2010	BBC 1	Generally accepted standards	1
Doctors	08/12/2010	BBC 1	Sexual orientation discrimination/offence	1
Dr Phil	12/12/2010	CBS Reality	Offensive language	1
EastEnders	02/12/2010	BBC 1	Generally accepted standards	1

EastEnders	13/12/2010	BBC 1	Race discrimination/offence	21
EastEnders	14/12/2010	BBC 1	Violence and dangerous behaviour	1
EastEnders	14/12/2010	BBC 1	Generally accepted standards	3
EastEnders	16/12/2010	BBC 1	Generally accepted standards	2
EastEnders	20/12/2010	BBC 1	Generally accepted standards	1
EastEnders	27/12/2010	BBC 1	Generally accepted standards	1
EastEnders	28/12/2010	BBC 1	Nudity	1
Eastenders	13/12/2010	BBC 1	Race discrimination/offence	1
EastEnders Omnibus	19/12/2010	BBC 1	Race discrimination/offence	1
Emmerdale	15/12/2010	ITV1	Disability discrimination/offence	1
Emmerdale	16/12/2010	ITV1	Religious/Beliefs discrimination/offence	1
Emmerdale	20/12/2010	ITV1	Generally accepted standards	1
Emmerdale	25/12/2010	ITV1	Generally accepted standards	1
Extreme Fishing with Robson Green	20/12/2010	Five	Animal welfare	1
Famous and Fearless (trailer)	22/12/2010	Channel 4	Materially misleading	1
Four in a Bed	13/12/2010	Channel 4	Generally accepted standards	1
Granada News and Weather	28/11/2010	ITV1 Granada	Advertising/editorial separation	1
Grand Designs	07/12/2010	More4	Offensive language	1
Grand Designs	11/12/2010	More4	Offensive language	1
Grand Slam of Darts	19/11/2010	ITV4	Offensive language	2
Green Santa Promo	08/12/2010	CITV	Generally accepted standards	1
Green Santa Promo	19/12/2010	CITV	Gender discrimination/offence	1
Grizzly Tales for Gruesome Kids	n/a	Nick Replay	Generally accepted standards	1
Harry Potter and the Order of the Phoenix	19/12/2010	ITV1	Generally accepted standards	1
Have I Got News for You	17/12/2010	BBC 1	Generally accepted standards	1
Heston's Christmas Feast	13/12/2010	Channel 4	Animal welfare	2
Holby City	21/12/2010	BBC 1	Disability discrimination/offence	1
Home and Away (trailer)	15/12/2010	Five	Materially misleading	1
Horrid Henry (trailer)	28/09/2010	CITV	Offensive language	1
Ian Hislop's Age of the Do-Gooders	13/12/2010	BBC 2	Generally accepted standards	1
I'm a Celebrity, Get Me Out of Here Now!	14/11/2010	ITV2	Generally accepted standards	1
ITV News	24/12/2010	ITV1	Privacy	1

ITV3 HD channel trailer	various	ITV3	Materially misleading	3
Jeremy Vine	10/12/2010	BBC Radio 2	Crime	1
Jeremy Vine	16/12/2010	BBC Radio 2	Disability discrimination/offence	1
Jimmy's Christmas Food Factory	22/12/2010	BBC 1	Animal welfare	1
Kerry Katona: The Next Chapter	21/12/2010	ITV2	Offensive language	1
Kindergarten Cop	19/12/2010	ITV2	Sexual orientation discrimination/offence	1
Lee Evans: Access All Arenas	27/12/2010	Channel 4	Offensive language	1
Little Crackers	20/12/2010	Sky 1	Generally accepted standards	1
Live at Five	12/12/2010	Sky News	Generally accepted standards	1
Live from Studio Five	15/12/2010	Five	Materially misleading	5
Live Golf	05/12/2010	Sky Sports 3	Gender discrimination/offence	1
Live: Celebrity Who Wants to be a Millionaire?	23/12/2010	ITV1	Participation TV - Misleadingness	1
Liverpool v Aston Villa	06/12/2010	Sky Sports 1	Offensive language	1
Loose Women	14/12/2010	ITV1	Gender discrimination/offence	2
Maltesers' sponsorship of Loose Women		ITV1	Gender discrimination/offence	1
MGMT music video	01/12/2010	WTF	Generally accepted standards	1
Midsomer Murders	28/12/2010	ITV1	Offensive language	1
Misfits Christmas Special	19/12/2010	E4	Religious/Beliefs discrimination/offence	6
Nick Ferrari	13/12/2010	LBC 97.3FM	Due impartiality/bias	1
One Born at Christmas	25/12/2010	Channel 4	Generally accepted standards	1
Pakistan Live	05/12/2010	Venus TV	Generally accepted standards	1
Palm FM	n/a	Palm FM	Sponsorship	1
Panorama	06/12/2010	BBC 1	Drugs, smoking, solvents or alcohol	1
Parry & Graham	23/12/2010	Talksport	Sexual orientation discrimination/offence	1
PM	23/12/2010	BBC Radio 4	Sexual material	1
Pompeii: Life and Death in a Roman Town	14/12/2010	BBC 2	Offensive language	1
Porridge	21/12/2010	BBC 2	Race discrimination/offence	1
Prince William: Behind the headlines	31/12/2010	True Entertainment	Materially misleading	1
Promotion of Bluebird TV website	n/a	LivexxBabes, Bluekiss TV, Northern Birds, Live 960	Participation TV - Harm	10
Psychic and Soul	19/11/2010	Watchme.tv	Participation TV - Harm	1
Red Bus Bingo's sponsorship of ITV2 Daytime	22/11/2010	ITV2	Gambling	1

Remember Palestine	31/10/2010	Press TV	Due impartiality/bias	1
Ricky Tomlinson's Right Royle Christmas!	23/12/2010	4Music	Offensive language	2
Robbie Dee	20/11/2010	CFM Radio	Generally accepted standards	1
Russell Howard Live: Dingleododies	16/12/2010	BBC 3	Religious/Beliefs discrimination/offence	1
Russell Howard Live: Dingleododies	16/12/2010	BBC 3	Generally accepted standards	1
Sex: How to Do Everything	30/11/2010	Fiver	Gender discrimination/offence	1
Sexcetera	12/12/2010	Channel One	Sexual material	1
Shappi Talk	29/12/2010	BBC Radio 4	Generally accepted standards	1
Simon Dale	22/12/2010	Heart FM	Sexual orientation discrimination/offence	1
Sky News	23/12/2010	Sky News	Generally accepted standards	1
Sky News	14/12/2010	Sky News	Violence and dangerous behaviour	3
Sports Personality of the Year 2010	19/12/2010	BBC 1	Race discrimination/offence	1
Sports Personality of the Year 2010	19/12/2010	BBC 1	Generally accepted standards	1
Sports Personality of the Year 2010	19/12/2010	BBC 1	Competitions	1
Sports Personality of the Year 2010	19/12/2010	BBC 1	Under 18s - Coverage of sexual and other offences	1
Starz TV	28/11/2010	Starz TV	Nudity	1
Strictly Come Dancing	11/12/2010	BBC 1	Generally accepted standards	2
Strictly Come Dancing	10/12/2010	BBC 1	Sexual material	1
Strictly Come Dancing: It Takes Two	16/12/2010	BBC 2	Sexual orientation discrimination/offence	1
Sunday Exclusive	12/12/2010	Talksport	Sponsorship	1
Sunrise	14/12/2010	Sky News	Race discrimination/offence	2
Sunrise	15/12/2010	Sky News	Violence and dangerous behaviour	1
Sunrise	29/12/2010	Sky News	Due impartiality/bias	1
T4	05/12/2010	Channel 4	Offensive language	1
Take Me Out	11/12/2010	ITV1	Gender discrimination/offence	1
Teen Undertaker	17/12/2010	Channel 4	Generally accepted standards	2
Tenapants' sponsorship of The Onedin Line	21/10/2010	Yesterday	Advertising content	1
Tesco Extra's sponsorship of news	28/10/2010	U105	Sponsorship	1
The Alan Titchmarsh Show	06/10/2010	ITV1	Generally accepted standards	1
The Alan Titchmarsh Show	02/12/2010	ITV1	Generally accepted standards	1
The Alan Titchmarsh Show	13/12/2010	ITV1	Animal welfare	1

The Alan Titchmarsh Show	15/12/2010	ITV1	Sexual material	16
The Alan Titchmarsh Show	16/12/2010	ITV1	Sexual material	5
The Alan Titchmarsh Show	29/11/2010	ITV1	Sexual material	1
The Apprentice	15/12/2010	BBC 1	Generally accepted standards	1
The Apprentice	01/12/2010	BBC 1	Generally accepted standards	1
The Family	21/12/2010	Channel 4	Race discrimination/offence	1
The Genius of British Art	31/10/2010	Channel 4	Offensive language	1
The Impressions Show with Culshaw and Stephenson	11/12/2010	BBC 1	Offensive language	1
The Inbetweeners	26/12/2010	E4	Disability discrimination/offence	1
The ITV2 Panto	21/12/2010	ITV2	Generally accepted standards	1
The Jeremy Kyle Show	30/11/2010	ITV1	Materially misleading	1
The Jeremy Kyle Show	17/12/2010	ITV2	Generally accepted standards	1
The Mentalist	18/12/2010	Five	Violence and dangerous behaviour	1
The Million Pound Drop Live	16/12/2010	Channel 4	Materially misleading	1
The Morgana Show	14/12/2010	Channel 4	Generally accepted standards	1
The Morgana Show	28/12/2010	Channel 4	Generally accepted standards	1
The Mummy	19/12/2010	ITV1	Scheduling	4
The Odd Half Hour	16/11/2010	BBC Radio 4	Disability discrimination/offence	1
The One Ronnie	25/12/2010	BBC 1	Disability discrimination/offence	1
The One Show	09/12/2010	BBC 1	Offensive language	1
The Only Way is Essexmas	25/12/2010	ITV2	Animal welfare	2
The Royal Variety Performance 2010	16/12/2010	BBC 1	Sexual material	3
The Royal Variety Performance 2010	16/12/2010	BBC 1	Religious/Beliefs discrimination/offence	1
The Savoy	13/12/2010	ITV1	Promotion of products and services	2
The Savoy	13/12/2010	ITV1	Offensive language	3
The Simpsons	17/12/2010	Channel 4	Sexual material	1
The Vampire Diaries	16/12/2010	ITV2	Violence and dangerous behaviour	1
The Weakest Link	14/12/2010	BBC 1	Generally accepted standards	1
The Weakest Link	22/12/2010	BBC 1	Generally accepted standards	1
The Wright Stuff	14/12/2010	Five	Generally accepted standards	1
The X Factor	11/12/2010	ITV1	Voting	1

The X Factor	12/12/2010	ITV1	Voting	3
The X Factor	12/12/2010	ITV1	Violence and dangerous behaviour	1
The X Factor	11/12/2010	ITV1	Disability discrimination/offence	1
The Zoo	16/11/2010	ITV1	Offensive language	13
This Morning	21/12/2010	ITV1	Generally accepted standards	4
This Morning	21/12/2010	ITV1	Under 18s - Coverage of sexual and other offences	1
This Morning	20/12/2010	ITV1	Generally accepted standards	3
This Morning	21/12/2010	ITV1	Nudity	1
This Morning	24/12/2010	ITV1	Sexual material	1
Thought For the Day	24/12/2010	BBC Radio 4	Generally accepted standards	1
Tonight	14/12/2010	ITV1	Due accuracy	1
Top Gear	21/12/2010	BBC 2	Violence and dangerous behaviour	20
Top Gear	21/12/2010	BBC 2	Generally accepted standards	3
Top Gear	21/12/2010	BBC 2	Sexual material	1
Total Wipeout USA	19/12/2010	Watch	Generally accepted standards	1
Unwrapped	27/12/2010	Food Network	Undue prominence	1
White Van Man	03/12/2010	Five	Offensive language	2
Who Framed Roger Rabbit?	26/12/2010	BBC 1	Offensive language	1
Young, Muslim and Black	19/12/2010	BBC Radio 4	Generally accepted standards	1