

# Ofcom Broadcast Bulletin

**Issue number 171  
6 December 2010**

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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.

## Notice of Revocation of Licences

**Licence numbers:** TLCS-933, TLCS-1015, TLCS-1231 or “the TLCS Licences”

**Service names:** Tease Me, Tease Me 2 and Tease Me 3  
**Licensee** Bang Channels Limited

**Licence number:** DTPS-078 or “the DTPS Licence”

**Service name:** Tease Me TV  
**Licensee:** Bang Media (London) Limited

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On 25 November 2010, Ofcom revoked all licences held by Bang Channels Limited and Bang Media (London) Limited, on the grounds that the licensees were no longer ‘fit and proper’ to hold Ofcom licences.

Bang Channels Ltd held three TLCS licences: TLCS-933 (Tease Me), TLCS-1015 (Tease Me 2) and TLCS-1231 (Tease Me 3). Bang Media (London) Ltd held one DTPS licence: DTPS-078 (Tease Me TV) (the four licences referred to collectively as “the licences”, and Bang Channels Ltd and Bang Media (London) Ltd referred to collectively as “the Licensees”). The Licensees are under common control, and have the same directors and compliance team. The three TLCS licences were granted under Part 1 of the Broadcasting Act 1990 (“the 1990 Act”). The DTPS licence was granted under Part 1 of the Broadcasting Act 1996 (“the 1996 Act”).

On 2 November 2010, Ofcom notified the Licensees, that it was minded to revoke the licences, subject to their representations, on the basis that Ofcom no longer considered that the Licensees were fit and proper persons to hold a licence under the 1990 Act or the 1996 Act. This was due to serious and repeated breaches of the Ofcom Broadcasting Code (“the Code”) and their licence conditions recorded against the Licensees.

### Period prior to issuing the Notice of proposed licence revocation

Prior to issuing the Notice of proposed revocation on 2 November 2010, Ofcom had found a series of serious and repeated breaches of the Code (48 separate breaches in total) by the Licensees over the previous 19 months. In addition to these Code breaches, the Licensees had failed to provide recordings upon request by Ofcom in respect of five programmes, in breach of Licence Condition 11.

On 29 July 2010, Ofcom fined the Licensees a total of £157,250 for serious and repeated breaches of the Code as regards the broadcast of programmes between June 2009 and November 2009, and for breaches of Licence Conditions. No payment has been received from the Licensees, and Ofcom now is pursuing this as a separate matter.

### Period since issuing the notice of proposed revocation

Since issuing the Notice of proposed revocation on 2 November 2010, Ofcom found a further nine breaches of the BCAP Code Rules 32.3 and 4.2 in relation to material broadcast by the Licensees between 9 November 2010 and 16 November 2010 (see <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/breach-26-november-2010/>).

In addition, on 19 November 2010, Ofcom issued a direction to the Licensees to cease providing the Licensed Services with immediate effect, in light of evidence of broadcast material which was considered to be likely to amount to a serious breach of the BCAP Code in relation to the broadcast of pornography and/or BBFC R18-rated material<sup>1</sup>.

However, Ofcom had evidence that the Licensees continued to broadcast material in breach of the direction. Whilst the material was not listed on the Sky EPG, it continued to be broadcast via satellite in the United Kingdom and Ofcom was aware that the Licensees had sought to inform viewers how to access these broadcasts by reconfiguring satellite receivers.

#### Licensees' Representations

The Licensees' representations, as submitted on 24 November 2010, were not sufficient to persuade Ofcom, in light of all the evidence, that it should not revoke the licences on the basis that the Licensees are no longer fit and proper. In particular, Ofcom was not satisfied that sufficient changes had been made to the structure of the Licensees and their compliance arrangements that further serious repeated breaches of the licensing regime would not occur.

#### Revocation

On this basis, Ofcom ceased to be satisfied that the Licensees were fit and proper persons to hold licences under the 1990 Act or the 1996 Act and decided to revoke those licences, in accordance with section 3(3)(b) of the 1990 Act and section 3(3)(b) of the 1996 Act.

Accordingly, Ofcom revoked all the licences on 25 November 2010 with immediate effect.

The full Decision can be found at:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/bangmedia-revocation.pdf>

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<sup>1</sup> Material equivalent to BBFC R18 is not permitted to be broadcast on Ofcom licensed services under any circumstances.

## Standards cases

### In Breach

#### Early Bird

*Various broadcasts on Tease Me/TMTN1<sup>1</sup> and Tease Me TV (Freeview), between 9 and 15 November 2010*

#### The Pad

*Tease Me 3/TMTN2<sup>2</sup>, 10 November 2010 at 16:00 and 16 November 2010 at 12:30*

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This finding was originally published on 26 November 2010.

#### Introduction

*Early Bird* is a televised daytime interactive chat advertisement which was broadcast on Tease Me/TMTN1 (Sky Channel 912) between 05:30 and 09:00 and also simulcast on Tease Me TV (Freeview channel 98) between the same times until 19 November 2010<sup>3</sup>. On both services the programme is broadcast without mandatory restricted access. Viewers are invited to contact onscreen female presenters via premium rate telephony services (“PRS”). The presenters generally dress and behave in a flirtatious manner. The licence for the service Tease Me/TMTN1 (Sky Channel 912) is held by Bang Channels Limited (“Bang Channels”). The licence for the service Tease Me TV (Freeview) is held by Bang Media (London) Limited (“Bang Media”) (together “Bang” or the “Licensees”).

*The Pad* is a televised daytime interactive chat advertisement which was broadcast as Tease Me 3/TMTN 2 (Sky Channel 959) without mandatory restricted access until 19 November 2010. Viewers are invited to contact onscreen female presenters via premium rate telephony services (“PRS”). The presenters generally dress and behave in a flirtatious manner. The licence for this service is held by Bang Channels.

As a result of monitoring the output of Tease Me/TMTN1, Tease Me 3/TMTN2 and Tease Me TV (Freeview) between 9 and 16 November 2010 Ofcom identified a number of occasions on which we provisionally considered that there were breaches of the relevant rules on broadcasting standards. In particular, Ofcom noted that the following broadcasts and their content.

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<sup>1</sup> The service Tease Me, as from around 12 November 2010, was labelled on the Sky EPG as TMTN1

<sup>2</sup> The service Tease Me 3, as from around 12 November 2010, was labelled on the Sky EPG as TMTN2

<sup>3</sup> On 19 November 2010 Ofcom issued a formal Direction to Bang Channels Ltd and Bang Media (London) Ltd directing them to cease broadcasting immediately as it had evidence of material that it considered amounted to serious breaches of the BCAP Code. As a result of this Direction BSkyB removed the Tease Me/TMTN1 channel number 912 and Tease Me 3/TMTN2 channel number 959 from the Sky EPG, and the SDN/Freeview multiplex stopped carrying the Tease Me (Freeview) service. Correspondence from the Licensees had previously confirmed that material broadcast on Tease Me TV (Freeview) was a simulcast of content broadcast on Tease Me/TMTN1 and therefore identical.

Bang Channels: Tease Me/TMTN1 (Sky Channel 912)  
Bang Media: Tease Me TV (Freeview Channel 98)

*Early Bird, 9 November 2010 06:41 to 08:43*

The female presenter was wearing a black bra, lace thong and black shoes. At various points throughout the broadcast she was seen gyrating her hips, stroking herself and mimicking sexual intercourse. She also adopted various sexual positions.

*Early Bird, 10 November 2010 05:46 to 08:33*

The female presenter was wearing a black thong, lace black bra, red shoes and red suspenders. The presenter was shown with her legs open to camera, mimicking sexual intercourse. She was also shown stroking her inner thigh and breasts and gyrating her hips in a sexual manner.

A second presenter was shown from approximately 06:00 to 06:30. She was wearing a white thong and a white strap, with a pink lace trim across her breasts. During the 30 minutes she was shown stroking herself; jiggling her breasts to camera and gyrating her hips in a sexualised manner.

*Early Bird, 11 November 2010 05:39 to 08:37*

The presenter was wearing fishnet stockings, a black lace bodice and thong. The presenter was shown adopting various sexual positions mimicking sexual intercourse. While in those positions she was seen gyrating and thrusting her hips in a sexual manner.

*Early Bird, 12 November 2010 05:31 to 08:04*

The female presenter was wearing a black thong and bra, with leather gloves and boots. She was shown at various points, for prolonged periods, with her legs wide open to camera mimicking sexual intercourse. She was also seen stroking her breasts and jiggling her buttocks.

*Early Bird, 13 November 2010 05:36 to 08:35*

The first presenter was wearing nipple plasters, stockings and a black string outfit. She was shown adopting various sexual positions including on all fours and lying on her back with her legs wide open. Whilst in these positions she was shown gyrating her hips and stroking herself in a sexual manner.

The second presenter was wearing a black and red thong and bra with black fishnet stockings. She was seen lying on her back with her legs open to camera, gyrating her hips. She was also noted jiggling her breasts to camera.

*Early Bird, 14 November 2010 07:18 to 07:39*

The presenter was wearing a black lace bra and thong. She was shown lying on her back with her legs open stroking herself and slowly gyrating her hips in a sexual manner.

*Early Bird, 15 November 2010 05:35 to 07:39*

The presenter was wearing a turquoise bra and knickers with white stockings. She was shown adopting sexual positions such as lying on her side with her legs open heavily thrusting her hips and on her knees jiggling her breasts to camera.

### Bang Channels: Tease Me 3 & TMTN 2 (Sky Channel 959)

#### *The Pad, 10 November 2010, 16:00*

The blonde female presenter was wearing a white shirt, tie, grey skirt, white thong and short socks and black shoes. She adopted certain positions including lying on her back with her legs wide open and on all fours. While in these positions she stroked her body, bottom and breasts, gyrated around on the floor with her legs wide open, touched around her crotch area and rubbed and massaged her breasts. The camera moved around the presenter's body and focused in on her face, breasts and bottom area.

#### *The Pad, 16 November 2010, 12:30*

The black haired presenter was wearing an all in one lace body stocking with an open section around the crotch area, a black bra and a pink thong. She adopted certain positions including lying on her back with her legs wide open and pulled back, sitting up with her legs wide open, and on all fours with her bottom in the air. While in these positions the presenter repeatedly stroked and massaged her breasts, occasionally revealing her nipples due to the skimpy nature of her bra, rocked around on the floor while gyrating her hips, pulled her legs open wider and played with her body stocking, pulling it down and stroked around her genital area.

#### Request for comments

Since 1 September 2010 all PRS-based daytime and adult sex chat television services have no longer been regulated as editorial content but as long-form advertising i.e. teleshopping. From that date the relevant standards code for such services became The UK Code of Broadcast Advertising ("the BCAP Code") rather than the Broadcasting Code. Whilst the regulation of other forms of advertising falls to BCAP, Ofcom has retained jurisdiction over the regulation of Participation TV, which includes adult chat and adult sex chat.

Ofcom reached a provisional decision that the broadcast material described above breached the BCAP Code, and wrote to the Licensees on 17 November 2010 providing them with an opportunity to make representations on these provisional decisions so Ofcom could take any comments into account before reaching a final determination. In particular the Licensees were asked to comment on how the broadcasts complied with the following rules of the BCAP Code:

#### Harm and Offence (section 4)

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

#### Scheduling (section 32)

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."

Given that the potential breaches were serious, successive and repeated, on every day during the period from 9 to 16 November, Ofcom gave a shorter than normal time period for Bang to provide comments, to ensure that Bang would not continue to breach the BCAP Code. As the provisional decision related to material that was the same or substantially similar in nature to material that had already been found to be in breach of the analogous rules in the Broadcasting Code, Ofcom did not consider

that Bang would have any difficulty in making its representations expeditiously. Ofcom therefore asked for these comments to be provided within 24 hours, by 5pm on Thursday 18 November 2010. Ofcom then received a request from Bang to extend this deadline by a further 24 hours until 5pm on Friday 19 November 2010. This request for an extension was granted by Ofcom, but it was made clear to Bang that this was a “strict deadline beyond which representations will not be considered”.

## Response

Ofcom received representations from Bang on the provisional decisions shortly before 5pm on 19 November 2010. Bang stated that it had instructed all production and presenting staff to make immediate changes to the output. It also stated that it was “still in the process of verifying that Bang Channels was responsible for the content outlined in [Ofcom’s] letter by cross referencing against recorded output” and it would “revert further in due course”.

The Licensees’ comments also confirmed that it was “unaware Bang Channels were in breach [sic] of the BCAP Code and [they] have been endeavouring to comply with Ofcom’s guidance in respect of daytime programming”. It continued that it is “conducting the necessary investigations” and “will revert with further comments in due course”.

Given the clear deadline set out in Ofcom’s letter of 17 November 2010, the fact that this deadline was extended by 24 hours at Bang’s request, and the clear terms on which this extension was granted, Ofcom has proceeded to reach a decision on whether the relevant broadcasts breached the BCAP Code in light of the Licensee’s representations.

## Decision

Rule 4.2 of the BCAP Code (see introduction) 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 (also see introduction) 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.”*

Rule 32.3 makes clear that children should be protected by appropriate scheduling from material which is unsuitable for them. Appropriate scheduling is 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 material unsuitable for children should not, in general, be shown before 21:00 or after 05:30.

Ofcom has already recorded numerous and repeated breaches of Rules 1.3 and 2.3 of the Broadcasting Code against both Bang Channels and Bang Media in respect of material deemed unsuitable for broadcast prior to the 9.00 p.m. watershed in order to ensure that children are protected from the risk of exposure to offensive and/or harmful material. See for example the following Ofcom Broadcast Bulletins:

Bulletin 165 (see: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb165/>)

Bulletin 168 (see: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb168/>)

Bulletin 169 (see: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb169/>)

Ofcom's previous findings have regularly made clear the seriousness and/or repeated nature of these breaches of the Broadcasting Code by Bang and other licensees.

Ofcom has further made clear in numerous previous published findings and guidance to Bang and to the adult sector generally what sort of material it considers to be unsuitable for inclusion in daytime interactive chat programmes without mandatory restricted access<sup>4</sup>. Some of these findings involved Bang Channels and Bang Media. In the context of daytime interactive chat programmes where the female presenters generally dress and behave in a flirtatious manner for extended periods in order to solicit PRS calls, Ofcom has underlined that the presenters should not, for example, appear to mimic or simulate sexual acts or behave in an overtly sexual manner and clothing should be appropriate for the time of broadcast. These decisions were also summarised in a guidance letter sent by Ofcom to daytime and adult sex chat broadcasters (including the Licensees) in August 2009.

The various breaches of the BCAP Code set out in this decision are grouped by Licensee, dealing first with Bang Channels.

### **Bang Channels Ltd**

#### Tease Me/TMTN1 (Sky Channel 912)

- *Early Bird, 9 November 2010 06:41 to 08:43*
- *Early Bird, 10 November 2010 05:46 to 08:33*
- *Early Bird, 11 November 2010 05:39 to 08:37*
- *Early Bird, 12 November 2010 05:31 to 08:04*
- *Early, Bird, 13 November 2010 05:36 to 08:35*
- *Early Bird, 14 November 2010 07:18 to 07:39*
- *Early Bird, 15 November 2010 05:35 to 07:39*

#### Tease Me 3 & TMTN 2 (Sky Channel 959)

- *The Pad, 10 November 2010, 16:00*

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<sup>4</sup> 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/>; Elite Days, Finding in Broadcast Bulletin 151 at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb151/>

- *The Pad, 16 November 2010, 12:30*

The above broadcasts all contained similar material which raised similar issues under the BCAP Code rule 32.3. All of these broadcasts were transmitted without mandatory access restrictions, during the early morning or during the day when children may have been watching television, some unaccompanied by an adult, and featured female presenters wearing skimpy and revealing lingerie or clothing. For example, in some cases the female presenters wore clothing that offered minimal coverage of their breasts with just their nipples covered. The presenters were all shown acting in a sexualised manner – for example, by adopting various sexual positions for prolonged periods of time, such as: kneeling on all fours; lying on their front with their legs wide open; and lying on their side and back with their legs wide open. 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 many of these broadcasts the presenters repeatedly stroked their bodies in a sexually provocative manner, including their breasts, buttocks and upper and inner thighs and genital areas.

In Ofcom's view, the revealing clothing, and repeated actions and sexual positions of the presenters were intended to be sexually provocative in nature and the broadcast of such images 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, we have concluded that the material was clearly unsuitable for children. We also concluded that, given the scheduling of the material, it might cause widespread offence against generally accepted moral, social or cultural standards.

Bang claims that it was unaware of the breaches and is “endeavouring to comply with Ofcom’s guidance in respect of daytime programming”. In Ofcom’s view, this is neither plausible nor relevant. Bang has had a large number of breaches of the Broadcasting Code recorded against it, and Ofcom has provided guidance both to the industry generally and to Bang itself. Bang must therefore have been aware that the material broadcast was likely to breach the BCAP Code. In any event, it is not relevant to the making of a breach finding whether or not the licensee knew or did not know that the material broadcast was a breach of the relevant code. Neither is the attempt to comply or otherwise relevant to a finding that the relevant code has been breached. The intentions of the licensee in this respect are irrelevant to whether or not there is a breach of the Broadcasting Code.

Taking into account the factors above, Ofcom has concluded that the content of the nine broadcasts above was clearly unsuitable for children and not appropriately scheduled so as to offer adequate protection to them or ensure that the programming did not cause 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.

### **Bang Media**

#### **Tease Me TV (Freeview Channel 98)**

- *Early Bird, 9 November 2010 06:41 to 08:43*
- *Early Bird, 10 November 2010 05:46 to 08:33*
- *Early Bird, 11 November 2010 05:39 to 08:37*
- *Early Bird, 12 November 2010 05:31 to 08:04*

- *Early, Bird, 13 November 2010 05:36 to 08:35*
- *Early Bird, 14 November 2010 07:18 to 07:39*
- *Early Bird, 15 November 2010 05:35 to 07:39*

The Licensees have confirmed that the material broadcast on Tease Me TV (Freeview) was a simulcast of that broadcast on Tease Me/ TMTN1 and therefore the content was identical. Given this, Ofcom's decision relating to the broadcasts on Tease Me/TMTN1 (as set out above) also relate to the content broadcast on Tease Me TV. The above broadcasts on Tease Me TV were therefore also in breach of Rules 4.2 and 32.3 of the BCAP Code.

**Bang Channels: Tease Me/TMTN1 (Sky Channel 912); and**  
**Bang Media: Tease Me TV (Freeview Channel 98)**

- **Early Bird, 9 November 2010 06:41 to 08:43 – breach of Rules 4.2 and 32.3**
- **Early Bird, 10 November 2010 05:46 to 08:33 – breach of Rules 4.2 and 32.3**
- **Early Bird, 11 November 2010 05:39 to 08:37 – breach of Rules 4.2 and 32.3**
- **Early Bird, 12 November 2010 05:31 to 08:04 – breach of Rules 4.2 and 32.3**
- **Early Bird, 13 November 2010 05:36 to 08:35 – breach of Rules 4.2 and 32.3**
- **Early Bird, 14 November 2010 07:18 to 07:39 – breach of Rules 4.2 and 32.3**
- **Early Bird, 15 November 2010 05:35 to 07:39 – breach of Rules 4.2 and 32.3**

**Bang Channels: Tease Me 3 & TMTN 2 (Sky Channel 959)**

- **The Pad, 10 November 2010, 16:00 – breach of Rules 4.2 and 32.3**
- **The Pad, 16 November 2010, 12:30 – breach of Rules 4.2 and 32.3**

## In Breach

### Charity appeal for Shah Jalal Mosque and Madrasha

ATN Bangla UK, 11 and 12 August 2010, various times

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#### Introduction

ATN Bangla UK provides a general entertainment service from the Indian sub-continent for Asian communities in the UK and other countries across Europe. It broadcasts predominantly in Tamil, Bengali, English, Hindi and Punjabi.

This charity appeal was ATN Bangla UK's second appeal broadcast during Ramadan 2010. It ran throughout the evening of 12 August 2010 (from 18:00) and overnight (to 04:15), to raise money for the Shah Jalal Mosque and Madrasha Islamic Cultural Centre, in Burnley.

Throughout most of the programme, details of how viewers could donate were displayed in a panel across the lower part of the screen. The information panel also stated that the appeal for "*Burnley Islamic Cultural Centre*" was "*arranged by Shah Jalal Mosque and Madrasha*" and referred to "*charity no. 10611412*". A scroll beneath the panel detailed what various amounts, if donated, could purchase and also stated: "*This appeal is supported by Ashton Bangladesh Welfare Association*".

A viewer questioned the legitimacy of the charity, noting that the charity number displayed on-screen did not appear to be genuine. He also alleged that Shah Jalal Mosque and Madrasha had paid for, and therefore sponsored, ATN Bangla UK's broadcast appeal.

Ofcom noted that charity number 10611412 did not appear to be associated with any charity listed on the Charity Commission's website.

We therefore asked ATN Bangla UK for its comments concerning the complainant's concerns, with specific regard to the following Code Rule:

Rule 10.13<sup>1</sup> "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".

Ofcom also asked the broadcaster for a copy of any agreements it had made with any third party associated with the appeal, and recordings of any broadcast material that had resulted from such agreements.

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<sup>1</sup> At the time of the broadcasts in question, the relevant rule was Rule 10.13. From 1 September, it was re-numbered as Rule 10.15 in the amended Section Ten of the Code; available at: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/commercial-references/>

ATN Bangla UK said that the charity appeal had not been broadcast in return for payment or other valuable consideration. It provided:

- a copy of a “Charity Campaign Agreement – Ramadan 2010”, which gave details of a payment that had been made to the broadcaster by Shah Jalal Mosque and Madrasha for: “Ramadan Campaign Cost Inclusive of Studio live facilities, Set & Props, Documentary production, Promo making, Presenter, Fund raising conference & Food”; and
- recordings of:
  - the broadcast charity appeal;
  - a short “documentary”, which:
    - lasted approximately six and a half minutes;
    - examined the Islamic Cultural Centre construction project more closely; and
    - was broadcast on six occasions (once before and once after the broadcast appeal and four times during it); and
  - a “promotional”, which was:
    - 31 seconds;
    - both a programme trail for the broadcast appeal and an appeal in its own right, as it provided details of how to donate; and
    - broadcast on twelve occasions during the day of the broadcast appeal and on five occasions during the preceding day (11 August 2010).

Section Nine of the Code states that “a sponsored programme ... is a programme that has had some or all of its costs met by a sponsor with a view to promoting its own or another's name, trademark, image, activities, services, products or any other direct or indirect interest...”

We therefore also asked ATN Bangla UK for its comments, with specific regard to the following Code rules:

- Rule 9.5     “There must be no promotional reference to the sponsor, its name, trademark, image, activities, services or products or to any of its other direct or indirect interests. There must be no promotional generic references. Non-promotional references are permitted only where they are editorially justified and incidental”;
- Rule 9.6     “Sponsorship must be clearly identified as such by reference to the name and/or logo of the sponsor. For programmes, credits must be broadcast at the beginning and/or end of the programme”; and
- Rule 9.7     “The relationship between the sponsor and the sponsored ... programme must be transparent.”

## **Response**

ATN Bangla UK said that it considered Shah Jalal Mosque and Madrasha to be a legitimate charitable organisation. The broadcaster added that the organisation was raising funds for its Islamic Cultural Centre with the support of Aston Bangladesh Welfare Association, which is a charitable organisation registered with the Charity Commission (number 1061412). It explained that the charity number shown on-screen throughout the broadcast appeal (i.e. “10611412”) was incorrect, as a result of a transcription error, which had been an oversight on its part.

ATN Bangla UK said it took this matter very seriously and hoped the complainant's concern about the legitimacy of the organisation had now been assuaged.

In response to Ofcom's request for comments concerning Rules 9.5, 9.6 and 9.7 of the Code, ATN Bangla UK stated:

"The ... Charity Appeal did not make reference to purchase or rental of a product or service, the charity appeal promotional intended to inform the audience the purpose of the appeal, which was made with due consideration to section 10.13 ... of the Code"

The broadcaster therefore appeared to have considered all the broadcast material under consideration (i.e. the programme trail for the broadcast charity appeal, the documentary broadcast in and around the appeal and the appeal itself) to have been programming (not advertising), but did not appear to have considered any of it to have been sponsored.

### **Decision**

Rule 10.13 of the Code notes that a charity appeal broadcast in (or as) a programme must be broadcast "free of charge". If payment, or the provision of some other valuable consideration, is made for the broadcast, by the relevant charity, the appeal may only take place outside programming (i.e. as advertising). Otherwise, the broadcast raises issues under Section Nine (Sponsorship) of the Code, as discussed under 'sponsorship issues', below.

#### The charity

Ofcom noted that ATN Bangla UK considered the charity appeal to have been broadcast free of charge and had therefore considered it to be compliant with that aspect of Rule 10.13 of the Code..

Further, we noted that ATN Bangla UK had taken steps to assess the legitimacy of the broadcast appeal's beneficiary (Shah Jalal Mosque and Madrasha Islamic Cultural Centre), as required by Rule 10.13 of the Code (on the basis that the broadcaster considered the programme to have been broadcast free of charge).

While it was unfortunate that Aston Bangladesh Welfare Association's charity number (1061412) had been quoted incorrectly on-screen, we recognise that, as a supporter for the Shah Jalal Mosque and Madrasha Islamic Cultural Centre, the provision of such information nevertheless demonstrated that ATN Bangla UK had taken reasonable steps to ensure the beneficiary's charitable status, as required under Rule 10.13 of the Code.

#### Sponsorship issues

Ofcom noted both the content of the agreement made between ATN Bangla UK (the broadcaster) and Shah Jalal Mosque and Madrasha (the charity), which stated that payment has been received by the broadcaster towards meeting the costs of:

- "Studio live facilities";
- "Set & Props";
- "Documentary production";

- “Promo making”;
- “Presenter”;
- “Fund raising conference”; and
- “Food”.

As stated in the Code, “a sponsored programme … is a programme that has had some or all of its costs met by a sponsor with a view to promoting its … activities, services … or any other … interest…”

In particular, Ofcom noted that, as detailed in the agreement, payment by Shah Jalal Mosque and Madrasha had been made to the broadcaster in return for the provision of the following items:

- live studio facilities, the set, props and the presenter used in the broadcast charity appeal;
- production of the associated documentary, broadcast on six occasions in and around the broadcast charity appeal; and
- production of the additional (brief) appeals and programme trails, broadcast on 17 occasions as programming (not advertising).

These costs appeared to Ofcom to be programme costs met with a view to promoting its activities and interests within the broadcast charity appeals, to raise funds for its Islamic Cultural Centre. Ofcom therefore concluded that the broadcast charity appeals, and all the material broadcast in association with them, were sponsored by Shah Jalal Mosque and Madrasha.

Rule 9.5 of the Code requires that “there must be no promotional reference to the sponsor, its … activities … or to any of its other … interests … Non-promotional references are permitted only where they are editorially justified and incidental”.

The purpose of a broadcast charity appeal is generally to solicit and encourage the audience to make financial donations to the charity in question. In this case, the charity was also the sponsor of the appeals. As such, Ofcom considered that the references within the appeals to the Shah Jalal Mosque and Madrasha, and its Islamic Cultural Centre, were promotional references to the sponsor, its activities and interests. The broadcast charity appeals in this instance (i.e. the extended overnight charity appeal programme, which also contained the associated short documentary, and the brief appeals that also trailed the programme) were therefore in breach of Rule 9.5.

Likewise, Ofcom noted that the subject matter of the associated documentary broadcast outside the extended overnight appeal was the sponsor’s Islamic Cultural Centre construction project. As such, these references to the sponsor’s activities and interests could not be considered incidental, as required by Rule 9.5 of the Code. The two separate broadcasts of the documentary (before and after the extended overnight charity appeal programme) were therefore in breach of this rule.

To ensure that the audience is made aware of commercial involvement in programmes, Rule 9.7 of the Code requires that “the relationship between the sponsor and the sponsored … programme must be transparent”, and Rule 9.6 requires that “sponsorship must be clearly identified as such … credits must be broadcast at the beginning and/or end of the programme”. These are explicit requirements of EU broadcasting legislation – the Audiovisual Media Services (AVMS) Directive.

During the broadcast of all the material under consideration in this instance, viewers would have been unaware of any commercial arrangement between ATN Bangla UK and the Shah Jalal Mosque and Madrasha, as no sponsorship credits were broadcast, in breach of Rules 9.6 and 9.7 of the Code.

Ofcom is concerned by ATN Bangla UK's lack of compliance in this instance and puts the broadcaster on notice that, in the event of similar Code breaches, we will consider taking further regulatory action.

**Breaches of Rules 9.5, 9.6 and 9.7**

## In Breach

### Sponsorship of Inside Incredible Athletes

Channel 4, 29 August 2010, 21:00

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#### Introduction

*Inside Incredible Athletes* profiled several competitors of the upcoming London 2012 Paralympic Games and covered their preparation for the event.

Ofcom noted that, directly before the programme started, two sponsorship credits were broadcast. Both credits contained images of the official London 2012 logo. One credit referred to BT, with the voiceover stating:

*"BT, proud partner of the London 2012 Paralympic Games".*

The second credit referred to Sainsbury's, with the voiceover stating:

*"Over four thousand of the world's greatest athletes will be pushing themselves to their absolute limits at the London 2012 Paralympic Games and everyone at Sainsbury's is very proud to be supporting them."*

Similar credits appeared before and after the commercial breaks that occurred during *Inside Incredible Athletes*, and at the end of the programme.

Ofcom noted that none of the credits referred to, or gave any indication of, a sponsorship arrangement between BT/Sainsbury's and the programme.

Ofcom therefore asked Channel 4 to confirm that BT and Sainsbury's had sponsored the programme, and sought the broadcaster's comments with regard to the following Code rules:

- Rule 9.6 – Sponsorship must be clearly identified as such by reference to the name and/or the logo of the sponsor; and
- Rule 9.7 – The relationship between the sponsor and the sponsored channel or programme must be transparent.

#### Response

Channel 4 explained that, when acquiring the UK television rights for the London 2012 Paralympic Games, it "pledged to provide the event with strongest pre-Games broadcast coverage the event has ever received". It added that "all Paralympic coverage both pre-Games and during the event is sponsored by BT and Sainsbury's."

The broadcaster confirmed that *Inside Incredible Athletes* formed part of its pre-Games coverage and therefore the programme was sponsored by BT and Sainsbury's. With regard to the programmes' sponsorship credits, Channel 4 said that, in its view, the credits clearly identified "the Paralympic pre-Games sponsorship arrangement through voiceover and visual logo."

Channel 4 argued that viewers had a “good understanding of the look and feel of programme sponsorship credits in general” and did not accept that there would be “viewer confusion about the relationship between the sponsor and the sponsored programme, especially in the light of the unprecedented publicity about Channel 4 becoming the Paralympics broadcaster and the extensive pre-Games coverage it plans”.

Therefore, the broadcaster did not consider the sponsorship credits to have breached either Rule 9.6 or 9.7 of the Code.

### **Decision**

Ofcom considered that the sponsorship credits made clear that BT and Sainsbury's were sponsors of the London 2012 Paralympic Games (for example: *“BT, proud partner of the London 2012 Paralympic Games”*; and *“Over four thousand of the world's greatest athletes will be pushing themselves to their absolute limits at the London 2012 Paralympic Games and everyone at Sainsbury's is very proud to be supporting them”*).

As such, we did not dispute Channel 4's view that the sponsorship arrangement between BT/Sainsbury's and London 2012 Paralympic Games was sufficiently clear. However, we were concerned that the sponsorship credits made no reference to the sponsorship arrangement between BT/Sainsbury's and the programme *Inside Incredible Athletes*.

Rule 9.6 of the Code requires that programme sponsorship must be clearly identified “as such”, and Rule 9.7 requires that the relationship between the sponsor and the sponsored programme must be made clear to the audience. These are explicit requirements of EU broadcasting legislation – the Audiovisual Media Services (AVMS) Directive.

As the sponsorship credits made no reference to the sponsored programme, Ofcom did not consider the programme sponsorship arrangement to be clearly identified as such, as required by Rule 9.6. As a consequence, the relationship between the sponsor and the sponsored programme was not transparent, and the programme was therefore also in breach of Rule 9.7.

### **Breaches of Rules 9.6 and 9.7**

## In Breach

### Dirty Talk Live

*Dirty Talk, 2 September 2010, 21:00 to 22:00*

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Dirty Talk Live is a programme on the adult chat television service Dirty Talk available freely without mandatory restricted access on Sky channel number 920. 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 RHF Productions Limited ("RHF" or "the Licensee"). Viewers are invited to contact onscreen female presenters via premium rate telephony services ("PRS"). The female presenters dress and behave in a sexually provocative way while encouraging viewers to contact the PRS numbers.

Ofcom received a complaint about alleged inappropriate adult content broadcast at various times between 21:00 and 22:00 on 2 September 2010. The complainant considered the presenter "continually simulated both sexual intercourse and oral sex" too soon after the watershed.

From 1 September 2010, daytime chat and adult sex chat broadcast services were no longer regulated under the Ofcom Broadcasting Code as editorial content but as long form advertising (teleshopping). Ofcom set out its decision on this issue in a statement published on 3 June 2010<sup>1</sup> after a period of public consultation. Ofcom's statutory duties in relation to broadcast advertising were contracted out to the Advertising Standards Authority ("ASA") in 2004. 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 Broadcast Code of Advertising Practice ("BCAP Code"), with Ofcom retaining back-stop enforcement powers. Ofcom has however retained responsibility for regulation of certain services under the BCAP Code. These include daytime chat and adult sex chat services. As a consequence, all output from these channels must comply with the BCAP Code.

Ofcom noted the presenter was wearing a basque, fishnet stockings, and a thong. On several occasions between 21:00 and 21:30 and throughout the remainder of the broadcast the presenter knelt on all fours with her buttocks pointing upwards and lay on her back with her legs open to camera. While in both of these positions she thrust her hips powerfully in a sexual manner so as to mimic sexual intercourse. Although fully clothed, she also stroked her breasts, lightly spanked her buttocks, opened her mouth in a sexual rather than flirtatious manner and mimed oral sex. Ofcom noted the images described above were shown very shortly after the 21:00 watershed, starting at 21:03.

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

- 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.

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

## Response

In response the Licensee said “the programme would have been in line with viewer’s expectations of an adult channel broadcast after the watershed...without mandatory restricted access”. However, they accepted their internal compliance guidelines had not been followed in this instance due to an inexperienced presenter who was unfamiliar with the Licensee’s internal compliance guidelines. Additionally, the studio’s communication equipment had failed, resulting in the producer leaving the gallery to fix it and was therefore not in a position to oversee the programme content as it was broadcast. RHF told Ofcom it had reviewed its compliance procedures and taken steps to ensure “content of this nature is not broadcast again” so soon after 21:00. These measures included: suspension of both the producer and presenter in question pending further compliance training and amending RHF’s internal guidelines to ensure at least one producer is present in the gallery at all times between the hours of 21:00 and 22:00, given this is a particularly busy period and to provide an additional level of scrutiny over the broadcast of the programme.

## Decision

Ofcom has a statutory duty to ensure that persons under the age of eighteen are protected from harmful or offensive material in radio and television programmes (including advertising).

In fulfilling this duty, 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. This is the right of a broadcaster to impart information and ideas and the right of the audience to receive them. Ofcom notes however that a broadcaster’s right to freedom of expression, although applicable to commercial sexual content and pornography, is more restricted in this context compared to, for example, political speech. This right can be legitimately restricted if it is for the protection of the public, including the protection of those under 18.

In applying BCAP Code Rule 32.3 Ofcom had first to decide if the broadcast material was unsuitable for children. With regards to this broadcast, Ofcom noted that on a number of occasions between 21:00 and 21:30 (and as early as 21:03) the female presenter adopted sexually provocative positions - for example, kneeling on all fours with her buttocks in the air and thrusting heavily and gyrating her hips. She was also seen lying on her back for prolonged periods with her legs open to camera and thrusting her hips. Ofcom noted that whilst in this position the on-screen graphics obscured the presenter’s genital area to some extent. In adopting these positions, in Ofcom’s view, the presenter was mimicking sexual intercourse. In Ofcom’s opinion, this material was clearly unsuitable for children.

Ofcom then went on to consider whether relevant timing restrictions had been applied to the material in question. Ofcom noted that this programme was broadcast on a channel without mandatory restricted access in the period immediately after the 21:00 watershed, which is in place to protect minors.

Ofcom then considered the likely expectations of the audience for programmes broadcast at this time of day on a channel without mandatory restricted access. In its opinion, viewers (and in particular parents) would not expect such material to be broadcast so soon after 21:00. Ofcom took account of the fact that the Dirty Talk

channel is in the 'adult' section of the Sky EPG and is available without mandatory restricted access.

As regards timing restrictions for scheduling, Ofcom has made clear in numerous previous published findings that stronger material should appear later in the schedule and that the transition to more adult material should not be unduly abrupt at the 21:00 watershed<sup>2</sup>. Ofcom therefore considered that the time of broadcast and the location of the channel were not sufficient to justify the broadcast of sexually provocative behaviour such as that included in this broadcast so soon after the 21:00 watershed. Given the images described above were broadcast between 21:00 and 21:30, Ofcom considered relevant timing restrictions were not applied on this occasion to broadcast content which was unsuitable for children. This broadcast was therefore in breach of BCAP Code Rule 32.3.

### Breach of BCAP Code Rule 32.3

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<sup>2</sup> For example:

Free Blue 1 Babeworld.tv, 9 July 2010, 21:00 to 21:30

(<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb168/issue168.pdf>)

Sport XXX Babes, 16 May 2010, 21:00 to 21:30

(<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb164/issue164.pdf>)

Friendly TV Various programmes, various dates between 3 April 2009 and 5 July 2009

(<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb153/issue153.pdf>)

## In Breach

### **Bluebird**

*Essex Babes, 16 September 2010, 17:45 to 18:15*

### **Bluebird**

*Essex Babes, 27 September 2010, 22:30 to 23:10*

### **40 Plus Reader's Wives**

*Essex Babes, 27 September 2010, 23:10 to 24:00*

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The channel Essex Babes is owned and operated by the licensee Satellite Entertainment Limited ("SEL" or "the Licensee").

Essex Babes is situated in the 'adult' section of the Sky electronic programme guide and is available freely without mandatory restricted access. It is broadcast on Sky channel number 955. At the times indicated above the channel promoted a service on screen known and branded as Bluebird TV. The channel broadcasts programmes during the day based on daytime chat, and after the 21:00 watershed programmes based on interactive 'adult' sex chat 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 then 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."

Ofcom received complaints about alleged inappropriate content broadcast at around:

- 18:00 on 16 September 2010; and,
- 22:30 and 23:10 on 27 September 2010

In order to make an initial assessment of the complaints (to consider whether or not to investigate the issue), Ofcom requested from the Licensee recordings of material from 17:45 to 18:15 on 16 September 2010, and from 22:30 to 24:00 on 27 September 2010.

### **Response**

Between 4 October and 27 October 2010 Ofcom formally asked SEL on several occasions, and set explicit deadlines, to provide recordings of its output at the times and dates specified. In response, the Licensee failed to provide recordings of the programmes requested.

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 comments in response. Ofcom therefore proceeded to reach a decision.

## 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).

In particular, 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 so that Ofcom could view them and decide whether they raised any potential issues under the Code. The Licensee failed to provide the recordings and provided no valid reasons to justify this failure. There were therefore two clear and separate breaches of Condition 11 (Retention and production of recordings) of SEL's licences 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 to regulate television and radio broadcasts.

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

Ofcom has previously and recently found the Licensee in breach of Condition 11 for failure to provide requested material on 8 November and 22 November 2010 as regards four individual broadcasts concerning three of its licences<sup>1</sup>. These two current contraventions are therefore additional and repeated examples of further individually serious breaches of one of SEL's licences. As a result of the breach of licences recorded on 22 November 2010, the Licensee was put on notice that those contraventions of its licences were being considered for the imposition of a statutory sanction. These two further breaches of one of its licences will be added to the Licensee's compliance record and will be considered for sanction in addition to the breaches previously recorded.

**Breach of Licence Condition 11 (retention and production of recordings) – 16 September 2010**

**Breach of Licence Condition 11 (retention and production of recordings) – 27 September 2010**

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<sup>1</sup> See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb169/issue169.pdf> published on 8 November 2010 and <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb170/issue170.pdf> published on 22 November 2010.

## Resolved

### Sky Sports News

*Sky Sports News, 7 September 2010, 11:30*

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#### Introduction

*Sky Sports News* broadcast a live press conference between David Haye and Audley Harrison. The press conference was given to promote the boxers' world heavyweight title fight scheduled for 13 November 2010. During the conference there were two instances of offensive language. As the boxers participated in a heated verbal exchange Haye said to Harrison: "*You're going to slink back to LA and hide out in the fucking hills*". Shortly after, as the taunts between the two men continued, Harrison said that he had seen other boxers knock Haye down. Haye challenged Harrison on who he was referring to and Harrison responded with: "*Jim Twite in the fucking ABAs, you forgetting?*"

Ofcom received a complaint from a viewer who objected to strong language being broadcast at this time of day. Ofcom wrote to BSkyB ("Sky"), which holds the licence for this service, for comments with regard to Rule 1.14 (the most offensive language must not be broadcast before the watershed).

#### Response

Sky apologised for the offensive language and for any offence caused to viewers. It explained that they have previously broadcast numerous live interviews and press conferences featuring both boxers without any similar incident occurring. Both boxers and their managers were advised before the conference that it would be broadcast live and that they should not swear. Given the clear guidance given and previous exemplary record of both boxers in this regard, the production team did not expect offensive language to feature.

Immediately after the second use of offensive language, the live coverage was stopped. On the return to the studio the presenter apologised to viewers. When coverage of the press conference resumed, the Sky Sports News reporter reminded those present that the broadcast was live and that they should "*mind their language*" and "*keep it clean*". After the conference ended without any further incident the studio presenter again apologised to viewers.

The broadcaster acknowledges that offensive language was used and that this is wholly unacceptable but believes that it took all reasonable steps prior to and during the broadcast to prevent and minimise any offence to viewers. It considers that it acted promptly and effectively in dealing with an unexpected event during the live broadcast.

#### Decision

Ofcom's audience research<sup>1</sup> shows that the word "fuck" and its derivatives are considered to be very offensive, and therefore this language should not be broadcast before the watershed.

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

Ofcom recognises that the transmission of 'live' programming presents particular difficulties and compliance challenges as regards the use of unexpected offensive language. In the circumstances of the live coverage of this press conference, we considered that the broadcaster took reasonable steps to limit potential offence and comply with the Code. For example, it gave guidance in advance about the unacceptability of offensive language and promptly cut away from the event as soon as there appeared a risk that the use of offensive language might escalate. Various apologies were given to viewers as soon as practicable after the bad language was used. In the circumstances and this occasion, Ofcom regards this matter as resolved.

**Resolved**

## Other Programmes Not in Breach

Up to 15 November 2010

Programme	Transmission Date	Broadcaster	Categories	Number of complaints
118 118's sponsorship of ITV Movies	n/a	ITV1	Generally accepted standards	1
118 118's sponsorship of ITV Movies	31/10/2010	ITV2	Generally accepted standards	1
118 118's sponsorship of ITV4 Movies	26/10/2010	ITV4	Generally accepted standards	1
4thought.tv	27/10/2010	Channel 4	Religious/Beliefs discrimination/offence	1
5 Live Breakfast	08/11/2010	BBC Radio 5 Live	Crime	1
71 Degrees North	02/11/2010	ITV1	Generally accepted standards	14
Antichrist	24/08/2010	Sky Movies Premier	Generally accepted standards	1
Argumental	09/11/2010	Dave	Generally accepted standards	1
ASOS' sponsorship of America's Next Top Model	11/10/2010	Living TV	Race discrimination/offence	1
BBC News	04/11/2010	BBC News Channel	Religious/Beliefs discrimination/offence	1
BBC News at Six	02/11/2010	BBC 1	Generally accepted standards	1
BBC Radio Solent Sport	09/10/2010	BBC Radio Solent	Gender discrimination/offence	1
Bear Grylls: Born Survivor	06/11/2010	Discovery +1	Animal welfare	1
Best of Oops TV	15/10/2010	Sky1	Under 18s in programmes	1
Best of Oops TV	18/10/2010	Sky1	Violence and dangerous behaviour	1
Blue Peter	18/10/2010	BBC 1	Disability discrimination/offence	1
Born Survivor: Bear Grylls	10/11/2010	Discovery	Animal welfare	1
Brainiac	20/10/2010	Sky 2	Violence and dangerous behaviour	1
Casualty	13/11/2010	BBC 1	Generally accepted standards	1
Celebrity Juice	04/11/2010	ITV2	Generally accepted standards	1
Celebrity Juice	11/11/2010	ITV2	Animal welfare	1
Channel 4 News	23/09/2010	Channel 4	Disability discrimination/offence	1
Channel 4 News	15/09/2010	Channel 4	Religious/Beliefs discrimination/offence	1
Channel 4 News	31/10/2010	Channel 4	Crime	1
Channel 4 News	04/11/2010	Channel 4	Due accuracy	1
Chris Moyles Show	05/11/2010	BBC Radio 1	Race discrimination/offence	1
Come Dine with Me	29/10/2010	Channel 4	Generally accepted standards	4
Come Dine with Me	30/10/2010	Channel 4	Generally accepted standards	1

Conference 2010	31/10/2010	BBC 1 Scotland	Generally accepted standards	1
Continuity announcement	06/10/2010	Watch	Generally accepted standards	1
Coppers	01/11/2010	Channel 4	Offensive language	6
Coppers	01/11/2010	Channel 4	Crime	1
Coppers	08/11/2010	Channel 4	Generally accepted standards	1
Coronation Street	25/10/2010	ITV1	Disability discrimination/offence	15
Coronation Street	22/10/2010	ITV1	Disability discrimination/offence	1
Coronation Street	29/10/2010	ITV1	Generally accepted standards	1
Coronation Street	05/11/2010	ITV1	Generally accepted standards	1
Coronation Street Omnibus	31/10/2010	ITV1	Disability discrimination/offence	1
Curry's sponsorship of The Simpsons	14/10/2010	Sky One	Sponsorship credits	1
Daybreak	05/11/2010	ITV1	Age discrimination/offence	1
Daybreak	03/11/2010	ITV1	Generally accepted standards	1
Daybreak	05/11/2010	ITV1	Disability discrimination/offence	1
Daybreak	10/11/2010	ITV1	Generally accepted standards	1
Deal or No Deal	12/11/2010	Channel 4	Generally accepted standards	1
Dispatches	18/10/2010	Channel 4	Due impartiality/bias	1
Dispatches	01/11/2010	Channel 4	Drugs, smoking, solvents or alcohol	1
Don't Forget the Lyrics	08/11/2010	Sky 3	Materially misleading	1
Downton Abbey	07/11/2010	ITV1	COSTA	1
Downton Abbey	24/10/2010	ITV1	COSTA	1
Early Bird	21/09/2010	Tease Me TV (Freeview)	Sexual material	1
Early Bird	14/10/2010	Tease Me TV (Freeview)	Sexual material	1
EastEnders	12/10/2010	BBC 1	Generally accepted standards	3
EastEnders	02/11/2010	BBC 1	Race discrimination/offence	2
EastEnders	26/10/2010	BBC 1	Under 18s - Coverage of sexual and other offences	1
EastEnders	01/11/2010	BBC 1	Under 18s in programmes	1
EastEnders	08/11/2010	BBC 1	Animal welfare	1
EastEnders	25/10/2010	BBC 1	Generally accepted standards	1
EastEnders	08/11/2010	BBC 1	Animal welfare	1
EastEnders Omnibus	07/11/2010	BBC 2	Under 18s in programmes	1
Fighting Talk	06/11/2010	BBC Radio 5	Religious/Beliefs	1

		Live	discrimination/offence	
Friends	06/11/2010	E4	Offensive language	1
GMTV	28/07/2010	ITV1	Promotion of products/services	1
Grand Designs	20/10/2010	Channel 4	Harm	1
Harry and Paul	02/11/2010	BBC 2	Race discrimination/offence	1
Harry Hill's TV Burp	30/10/2010	ITV1	Offensive language	3
Harry Hill's TV Burp	06/11/2010	ITV1	Generally accepted standards	1
Harry Hill's TV Burp	07/11/2010	ITV1	Generally accepted standards	2
Harry Hill's TV Burp	13/11/2010	ITV1	Generally accepted standards	1
Have I Got a Bit More News for You	06/11/2010	BBC 2	Race discrimination/offence	1
Heart Breakfast	22/10/2010	Heart 96.1 FM (Colchester)	Advertising/editorial separation	1
Hollyoaks	03/11/2010	Channel 4	Sexual material	1
How I Met Your Mother (trailer)	03/11/2010	E4	Offensive language	1
How to Look Good Naked	06/11/2010	E4	Nudity	1
How to Take Stunning Pictures	19/10/2010	Five	Materially misleading	1
Iain Dale	25/10/2010	LBC 97.3FM	Due impartiality/bias	1
I'm a Celebrity, Get Me Out of Here! (trailers)	n/a	ITV1	Animal welfare	1
I'm a Celebrity, Get Me Out of Here! (trailers)	n/a	ITV1	Generally accepted standards	1
Islam In Focus	14/10/2010	Peace TV	Religious/Beliefs discrimination/offence	1
Jim Hawkins in the Morning	19/10/2010	BBC Radio Shropshire	Crime	1
Kungarna av Tylösand	15/09/2010	Kanal 5	Drugs, smoking, solvents or alcohol	1
Lee Mack Live	14/11/2010	Dave	Offensive language	1
Luther	25/05/2010	BBC 1	Race discrimination/offence	1
MasterChef Australia	01/11/2010	Watch	Offensive language	1
Matt Spokes	19/10/2010	Galaxy Yorkshire	Generally accepted standards	1
Midsomer Murders	05/11/2010	ITV1	Offensive language	1
Mighty Ducks	15/11/2010	Disney Cine HD	Offensive language	1
Mike Parry and Mike Graham	27/10/2010	Talksport	Race discrimination/offence	1
Mike Parry and Mike Graham	29/10/2010	Talksport	Generally accepted standards	1
Misfits (trailer)	25/10/2010	E4	Offensive language	1
Muntada al dimukratiya	08/10/2010	Al Mustakillah Television	Religious/Beliefs discrimination/offence	1
Never Mind the Buzzcocks	04/11/2010	BBC 2	Generally accepted standards	2
News	26/08/2010	NDTV 24x7	Religious/Beliefs discrimination/offence	1
News	11/10/2010	ARY	Generally accepted standards	1

Nick Ferrari	19/10/2010	LBC 97.3 FM	Gender discrimination/offence	1
Nigella Bites	24/10/2010	Good Food	Gender discrimination/offence	1
Paranormal Investigation Live	30/10/2010	Living	COSTA	1
Phones 4 U's sponsorship of Hollyoaks	02/11/2010	Channel 4	Race discrimination/offence	1
Phones 4 U's sponsorship of Hollyoaks	04/11/2010	E4	Generally accepted standards	1
Psychic Sally's Big Fat Operation	31/10/2010	Livingit	Harm	1
Question Time	04/11/2010	BBC 1	Race discrimination/offence	2
Richard Bacon	18/10/2010	BBC Radio 5 Live	Race discrimination/offence	1
Russell Howard's Good News	28/10/2010	BBC 3	Offensive language	1
Sex and the City (trailer)	27/10/2010	Comedy Central	Generally accepted standards	1
Sharon Osbourne: A Comedy Roast	13/11/2010	Channel 4	Offensive language	1
Sky Sports News	15/10/2010	Sky Sports News	Due accuracy	7
Smallville	05/10/2010	E4	Generally accepted standards	1
Snog, Marry, Avoid?	02/11/2010	BBC 3	Offensive language	1
Spirit Of Islam	14/10/2010	Peace TV	Religious/Beliefs discrimination/offence	1
Strictly Come Dancing	30/10/2010	BBC 1	Generally accepted standards	4
Strictly Come Dancing	06/11/2010	BBC 1	Disability discrimination/offence	1
Strictly Come Dancing	06/11/2010	BBC 1	Sexual material	1
Supernanny US	14/11/2010	E4	Generally accepted standards	1
Taggart	24/10/2010	STV	Violence and dangerous behaviour	1
Takeshi's Castle	23/10/2010	Bravo	Race discrimination/offence	1
The Alan Titchmarsh Show	01/11/2010	ITV1	Sexual orientation discrimination/offence	1
The Alan Titchmarsh Show	02/11/2010	ITV1	Generally accepted standards	1
The Alan Titchmarsh Show	01/11/2010	ITV1	Sexual material	1
The Apprentice	03/11/2010	BBC 1	Sexual material	1
The Event	27/10/2010	Channel 4	COSTA	1
The Genius of British Art	31/10/2010	Channel 4	Offensive language	3
The Inbetweeners	08/10/2010	Channel 4	Generally accepted standards	1
The Increasingly Poor Decisions of Todd Margaret (trailer)	07/11/2010	Channel 4	Sexual material	1
The Jeremy Kyle Show	04/11/2010	ITV1	Generally accepted standards	3
The Jeremy Kyle Show	01/11/2010	ITV1	Generally accepted standards	1
The Jeremy Kyle Show	08/11/2010	ITV1	Generally accepted standards	1
The Kevin Bishop Show	02/11/2010	4Music	Generally accepted	1

			standards	
The Little House (trailer)	06/11/2010	ITV1	Scheduling	1
The Memory Keeper's Daughter	05/11/2010	Five	Nudity	1
The Million Pound Drop Live	29/10/2010	Channel 4	Competitions	1
The Million Pound Drop Live	28/10/2010	Channel 4	Advertising/editorial separation	1
The Million Pound Drop Live	05/11/2010	Channel 4	Competitions	1
The News Quiz	08/10/2010	BBC Radio 4	Offensive language	1
The Official Chart with Reggie Yates	31/10/2010	BBC Radio 1	Sexual orientation discrimination/offence	1
The Simpsons	12/11/2010	Channel 4	Offensive language	1
The Taking of Prince Harry	21/10/2010	Channel 4	Generally accepted standards	4
The Trouble with the Pope	13/09/2010	Channel 4	Religious/Beliefs discrimination/offence	1
The Truth Exposed	12/10/2010	Peace TV	Religious programmes	1
The Weakest Link	01/11/2010	BBC 1	Generally accepted standards	1
The Wright Stuff	03/11/2010	Five	Race discrimination/offence	1
The Wright Stuff	04/11/2010	Five	Due impartiality/bias	1
The Wright Stuff	08/11/2010	Five	Generally accepted standards	1
The X Factor	28/08/2010	ITV1	Transgender discrimination/offence	11
The X Factor	31/10/2010	ITV1	Generally accepted standards	3
The X Factor	09/10/2010	ITV1	Undue prominence	1
The X Factor	10/10/2010	ITV1	Undue prominence	1
The X Factor	23/10/2010	ITV1	Advertising/editorial separation	1
The X Factor	31/10/2010	ITV1	Flashing images/risk to viewers who have PSE	1
The X Factor	06/11/2010	ITV1	Race discrimination/offence	5
The X Factor	06/11/2010	ITV1	Sexual material	2
The X Factor	07/11/2010	ITV1	Offensive language	3
The Xtra Factor	30/10/2010	ITV2	Under 18s in programmes	1
This Morning	09/11/2010	ITV1	Generally accepted standards	115
This Week	21/10/2010	BBC 1	Generally accepted standards	1
Thorne	24/10/2010	Sky1	Under 18s - Coverage of sexual and other offences	1
Time Team	31/10/2010	Channel 4	Under 18s in programmes	1
True Stories: The Dancing Boys of Afghanistan	28/09/2010	More4	Due impartiality/bias	1
Warship	01/11/2010	Five	Scheduling	1
What the Green Movement Got Wrong	04/11/2010	Channel 4	Due impartiality/bias	3
Zane Lowe	18/10/2010	BBC Radio 1	Offensive language	1

