

# **Ofcom Broadcast and On Demand Bulletin**

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## Contents

Introduction	3
<u>Note to Broadcasters</u>	
<b>Broadcasting Code Review: Section Three</b>	6
<b>Broadcast Standards cases</b>	
<u>In Breach</u>	
<b>Jekyll and Hyde</b> <i>ITV, 25 October 2015, 18:30</i>	7
<b>Benefits Brits by the Sea</b> <i>5*, 14 and 19 October 2015, 20:00</i>	20
<b>The One Show</b> <i>BBC1, 4 November 2015, 19:00</i>	24
<b>Saturday Morning Show</b> <i>Irvine Beat FM, 19 September 2015, 10:45</i>	29
<b>Music video</b> <i>Sangat TV, 13 August 2015, 20:30</i>	33
<b>Bay FM News</b> <i>Bay FM Radio, 13 October 2015, 15:00</i>	39
<b>Big Church Day Out</b> <i>TBN UK, 17 October 2015, 10:00</i> <i>TBN UK, 2 November 2015, 01:30</i>	43
<b>Television Advertising Scheduling cases</b>	
<u>In Breach</u>	
<b>Advertising minutage</b> <i>NDTV 24x7, 18 September 2015, 12:00 and 26 September 2015, 23:00</i>	46
<b>Broadcast Fairness and Privacy cases</b>	
<u>Upheld</u>	
<b>Complaint by Mr Songo Didier Aypone</b> <i>Welcome TV, MATV, 18 July 2015</i>	48
<u>Not Upheld</u>	
<b>Complaint by Dr Arsalan Iftikhar</b> <i>Ikhtafali Note, Dunya News, 3 July 2015</i>	53

## **Tables of cases**

<b>Investigations Not in Breach</b>	<b>58</b>
<b>Complaints assessed, not investigated</b>	<b>59</b>
<b>Complaints outside of remit</b>	<b>68</b>
<b>Investigations List</b>	<b>70</b>

## Introduction

Under the Communications Act 2003 (“the Act”), Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives<sup>1</sup>. Ofcom also has a duty to secure that every provider of a notifiable On Demand Programme Services (“ODPS”) complies with certain standards requirements as set out in the Act<sup>2</sup>. Ofcom must include these standards in a code, codes or rules. These are listed below.

The Broadcast and On Demand Bulletin reports on the outcome of investigations into alleged breaches of those Ofcom codes and rules below, as well as licence conditions with which broadcasters regulated by Ofcom are required to comply. We also report on the outcome of ODPS sanctions referrals made by the ASA on the basis of their rules and guidance for advertising content on ODPS. These Codes, rules and guidance documents include:

- a) [Ofcom’s Broadcasting Code](#) (“the Code”) for content broadcast on television and radio services.
- b) the [Code on the Scheduling of Television Advertising](#) (“COSTA”) which contains rules on how much advertising and teleshopping may be scheduled in television programmes, how many breaks are allowed and when they may be taken.
- 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 for on television and radio services. These include:
  - the prohibition on ‘political’ advertising;
  - sponsorship and product placement on television (see Rules 9.13, 9.16 and 9.17 of the Code) and all commercial communications in radio programming (see Rules 10.6 to 10.8 of the Code);
  - ‘participation TV’ advertising. This includes long-form advertising predicated on premium rate telephone services – most notably chat (including ‘adult’ chat), ‘psychic’ readings and dedicated quiz TV (Call TV quiz services). Ofcom is also responsible for regulating gambling, dating and ‘message board’ material where these are broadcast as advertising<sup>3</sup>.
- 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 can be found on Ofcom’s website for [television](#) and [radio](#) licences.
- e) Ofcom’s [Statutory Rules and Non-Binding Guidance for Providers of On-Demand Programme Services](#) for editorial content on ODPS. Ofcom considers sanctions in relation to advertising content on ODPS on referral by the Advertising Standards Authority (“ASA”), the co-regulator of ODPS for advertising or may do so as a concurrent regulator.

[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

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

<sup>2</sup> The relevant legislation can be found at Part 4A of the Act.

<sup>3</sup> BCAP and ASA continue to regulate conventional teleshopping content and spot advertising for these types of services where it is permitted. Ofcom remains responsible for statutory sanctions in all advertising cases.

provide), the Code on Electronic Programme Guides, the Code on Listed Events, and the Cross Promotion Code.

**It is Ofcom's policy to describe fully the content in television, radio and on demand content. Some of the language and descriptions used in Ofcom's Broadcast and On Demand Bulletin may therefore cause offence.**

## Note to Broadcasters

### Broadcasting Code Review: Section Three

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On 13 January 2016 Ofcom published a consultation on proposed amendments to the rules in Section Three of the Code.

Section Three reflects Ofcom's statutory duties to prohibit the broadcast of material that is likely to encourage or to incite the commission of crime, or to lead to disorder, and to provide adequate protection to the public from harmful or offensive material. Ofcom also has a duty to review and revise the rules in the Code from time to time when we consider it appropriate.

The first breach of a rule in Section Three – for the broadcast of material likely to encourage or incite the commission of crime or lead to disorder – was recorded in 2012. To date, we have found four broadcasters in breach of Rule 3.1.

Given our enforcement activity under this rule and the high risk of harm associated with the relevant content, we consider there is a need to ensure Section Three is as clear as possible. Ofcom is therefore proposing changes to the Code to ensure broadcasters understand the relevant rules, and the way Ofcom applies them.

The consultation period is now open and stakeholders have until 18 March 2016 to submit a response. The consultation document can be found at the following link: [http://stakeholders.ofcom.org.uk/consultations/broadcasting\\_code\\_review/](http://stakeholders.ofcom.org.uk/consultations/broadcasting_code_review/)

If you have any questions or comments regarding this review, please contact [SectionThreeReview@ofcom.org.uk](mailto:SectionThreeReview@ofcom.org.uk).

**Broadcasters should note that, until Ofcom has concluded its review of the Section Three rules in 2016, the current Code rules remain in force.**

## Broadcast Standards cases

### In Breach

#### Jekyll and Hyde

ITV, 25 October 2015, 18:30

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#### Introduction

*Jekyll and Hyde* was an ITV fantasy drama series inspired by the Robert Louis Stephenson novel *The Strange Case of Dr Jekyll and Mr Hyde*<sup>1</sup>. The series commenced by briefly referring to the original character of Dr Jekyll/Mr Hyde, as featured in the novel, living in 1880s London. The majority of the series then took forward the storyline of the original novel by fifty years, with the action set primarily in 1930s London, telling the story of Robert Jekyll, the grandson of the original Dr Henry Jekyll portrayed in the novel. The series showed Robert Jekyll discovering he was also afflicted with his grandfather's condition that saw him unwillingly transform into Mr Hyde – an evil, aggressive and uninhibited alter ego with superhuman strength, who sometimes took over or controlled the character of Robert Jekyll.

The first episode of the series was broadcast on 25 October 2015 at 18:30. Ofcom received 504 complaints from viewers about this episode. The majority of viewers who contacted Ofcom considered that the programme's scenes of violence and its dark and frightening tone were unsuitable for children, and a number of complainants referred in particular to their concerns for younger children.

We noted the programme was preceded by the following pre-broadcast information:

*"It's time now on ITV for a brand new adventure. It's Jekyll and Hyde which has some violence and scenes younger children may find a bit scary".*

We noted the following scenes in the programme in particular:

- 1) Street attack: In the programme's opening scene, set on a dark and gloomy night in London in 1885, Edward Hyde (i.e. the alter ego of Henry Jekyll, Robert Jekyll's grandfather) was shown arguing with and then violently attacking a man in a dimly lit street. When the man started walking away from Mr Hyde, Mr Hyde knocked him to the cobbled street with two blows from his walking stick. Then, when he was lying on his front seemingly unconscious on the ground, Mr Hyde struck the man again across the back. These shots were interspersed with an eyewitness seeing the attack and screaming. When police whistles were heard, Mr Hyde scurried away, and while escaping, threatened to hit a young girl with his stick. At the conclusion of the scene, when someone called out to him when he has arrived at his front door, Mr Hyde turned around to roar at those pursuing him. This revealed, in close-up, his disfigured face with gnarled teeth and veins protruding from his skin.

Robert Jekyll later learned from his solicitor that Mr Hyde's victim was killed in the attack.

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<sup>1</sup> This was first published in 1886. The focus of the novel was the character, Dr Henry Jekyll, who was portrayed having two distinct personalities exist within him: one, the law-abiding and respectable Dr Jekyll, and the other, an evil alter ego, Mr Edward Hyde.

The action moved forward to the 1930s for scenes (2) to (6):

- 2) Girl under truck: Soon afterwards, the action moved forward to Ceylon in the 1930s, where Robert Jekyll, a young doctor, was living with foster parents. This scene was shown at about 18:36 and began with Robert Jekyll being shown treating patients in a rural clinic with his foster father, also a doctor. Unexpectedly, a truck lost control and crashed into the clinic building. When the lorry came to a halt, it was apparent a young girl was trapped under the wreckage of the truck. While using superhuman strength to lift up the truck to rescue the girl trapped underneath the truck, Robert Jekyll was shown turning into Mr Hyde. As Mr Hyde, he was shown to look down at the girl, and start sneering and laughing and pressing his foot down on the girl's chest, before Robert Jekyll regained control over Mr Hyde and released the girl.
- 3) The Harbinger: In 1930s London, a scene introduced the character of "*The Harbinger*" at around 18:44. At night three men were shown arriving under a dark bridge or viaduct and walking towards what appeared to be a lock up garage. The men wore gas masks and were carrying what appeared to be rifles. Snarling sounds and the noises of an animal moving around were heard from inside the garage. The men opened the door and revealed the creature inside: a human head which could speak attached to the monstrous and hairless body of a dog. In a snarling and menacing voice, the creature prophesied the coming of the "*all powerful one*" (i.e. Robert Jekyll) and threatened the men (operatives from a secret UK Government agency, "*MIO*"). The creature then sprang at the men to attack them but was shot by one of them. The animal was shown being carried away on a trolley, completely covered by a blanket.
- 4) Alley fight: At around 18:50, following Robert Jekyll's arrival at Gravesend docks from Ceylon, he was shown confronting a group of three men who were attacking a woman he had just met in a dimly lit and secluded tunnel or alley at the docks. Robert Jekyll transformed into Mr Hyde and rescued the woman. During the confrontation, Robert Jekyll was endowed with Mr Hyde's superhuman strength. He punched two of the male attackers with force enough to throw them into the air and knocked a third unconscious or killed him by charging into the attacker's chest, head first, with great force and speed. After the fight, Robert Jekyll (showing the evil, Mr Hyde side of his character) forcibly kissed the woman on the lips, who in response slapped him in the face. This in turn caused Robert Jekyll to return to normal, and apologise to the woman. This whole sequence lasted about two minutes and 20 seconds.
- 5) Vetali attack: In Ceylon, Robert Jekyll's foster family were attacked in their home at night by an evil character called Captain Dance, who was accompanied by several henchmen called "*Vetali*". The latter had skeletal faces and were dressed in black robes. This sequence was shown at around 18:57 and had a total duration of about two and a half minutes. It began against a background of foreboding music and menacing, guttural sounds made by the Vetali as they first knocked out Robert Jekyll's teenage foster brother with a blow to the head and then crept up on and surrounded Jekyll's foster parents, before Captain Dance suddenly burst in to the dining room. Captain Dance then unexpectedly fired his revolver at a plate and a family photograph on the wall before he shot Robert Jekyll's foster father in the abdomen. He then threatened Robert Jekyll's foster mother at gun point. The scene ended with Robert Jekyll's foster parents left tied up in their house while it burnt down in a fire started by the Vetali.

- 6) **Nightclub fight:** Later in the programme, Robert Jekyll learnt that his foster parents had been killed in the house fire. This trauma caused Robert Jekyll to transform into Mr Hyde. He smashed up his hotel bedroom and was then shown (at about 19:20) to visit a music hall/nightclub where he became drunk and behaved in a highly aggressive manner. This resulted in a fight involving several of the nightclub's clientele. During the fight, Mr Hyde was shown: being hit with a chair and glass bottle; punching or throwing opponents into the air; and finally being stabbed in the back with a knife. Later, the knife was shown being pulled out of Mr Hyde's back, causing him to howl in anguish. The final shot started in close up on Mr Hyde's menacing face as on his knees he roared in anger and frustration. The sequence of violence in the music hall/nightclub had a total duration of around two minutes.

Ofcom considered the programme raised issues warranting investigation under Rule 1.3 of the Code, which states:

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

We therefore requested formal comments from ITV Broadcasting Limited (“ITV” or “the Licensee”) about how the programme complied with this rule<sup>2</sup>.

## Response

ITV argued that this programme complied with the Code. It also said that, like Ofcom, it had received “several hundred complaints about the first episode of this series” but had received significantly less regarding subsequent episodes. In its view, the Licensee considered that a large number of the complaints would “have been encouraged by the press ‘furore’ about the programme following its broadcast”.

By way of background, the Licensee said that it “fully appreciate[d] that elements of fantasy do not necessarily or entirely negate the possible effect of violence on younger viewers” and that it has a “responsibility to ensure violence is suitably limited in pre-watershed programming, even in the context of fantasy drama”. However, ITV also noted that “Ofcom’s most recently issued Guidance to Section One<sup>3</sup> [of the Code] still cites earlier research such as “*How Children Interpret Screen Violence*” (2003)<sup>4</sup>, which suggested that children are “able to distinguish between fantasy violence and “real” violence (such as that shown in the news), and are more affected by real and realistically portrayed violence than by fantastical fictional violence”.

ITV said that its compliance staff were closely involved throughout production. These staff “were mindful from the outset of the intended scheduling for the series in an early evening slot”. The Licensee also said that “discussions between compliance and the producers highlighted [Rule] 1.3...and the audience expectations for pre-watershed drama programming of this sort on ITV”. ITV also said that it had “carefully

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<sup>3</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section1.pdf>

<sup>4</sup> How children interpret screen violence (2003) BBC, BBFC, BSC, ITC  
([http://ofcom.org.uk/static/archive/itc/uploads/HOW\\_CHILDREN\\_INTERPRET\\_SCREEN\\_VIOLENCE.pdf](http://ofcom.org.uk/static/archive/itc/uploads/HOW_CHILDREN_INTERPRET_SCREEN_VIOLENCE.pdf))

considered Ofcom's guidance notes on observing the watershed and protecting under 18s<sup>5</sup>]...particularly in relation to violence".

ITV said it had had regard to various previous examples of content broadcast pre-watershed, such as:

- the films *The Incredible Hulk* and *The Mummy: Tomb of the Dragon Emperor*. The Licensee said that it had taken into account guidance provided to it by Ofcom following investigations which concluded that the pre-watershed broadcasts of these films had not breached the Code<sup>6</sup>;
- films such as *Raiders of the Lost Ark*, *The Hobbit*, and the *Jurassic Park* and *Harry Potter* franchises as well as series made for television such as *Primeval* and *Demons*. ITV described this content as including "fantasy violence, monsters and/or the supernatural", but had not resulted in "significant viewer concern or Ofcom intervention";
- content shown "on other PSB channels pre-watershed...including *Dr Who* and *Star Trek*" which the Licensee stated had "featured monsters and mild violence in a sci-fi setting for over 50 years"; and
- "recent superhero content shown pre watershed, such as *Buffy the Vampire Slayer* (originally shown on BBC2 in early evening and currently shown on the Syfy Channel at 5pm), *Marvel's Agents of Shield* (20:00 on Channel 4), and *Supergirl* (currently shown on Sky One at 19:00 at weekends), all of which feature regular violent scenes with super powered heroes battling monsters such as vampires, demons or aliens".

ITV also commented on the specific scenes described in the Introduction.

- 1) Street attack: The Licensee considered "the violence at the start of this scene was editorially justified and suitably limited and inexplicit" and the "actual contact is barely visible as the blows are struck, and there is no bloodshed". ITV also said that "the expressionistic lighting in this street, and the cutaway to the girl in the window screaming, all help to suggest the horror of the scene, rather than explicit or graphic violence". It added that as the "victim is shown face down as Hyde leaves the scene...it is unclear at this point whether he is merely unconscious or dead. Only later in the episode do we hear...that Hyde had murdered" his victim. ITV also considered the scene was fantastical, "stylised and non-realistic throughout" and said it was revealed "almost immediately...that the blows were struck not by a normal man but by Hyde, a disfigured superhuman monster".
- 2) Girl under truck: The Licensee said the purpose of this scene was to "demonstrate the duality of Jekyll's character and his struggle with his alter ego Hyde". ITV considered it "justified editorially in establishing Jekyll as a selfless hero, but with uncanny powers and a 'dark' side that he has to keep in check, and that the menace shown towards the girl was suitably brief and limited". In ITV's view, the

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<sup>5</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/watershed-on-tv.pdf> and <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section1.pdf>

<sup>6</sup> These films were broadcast on ITV on 30 March 2013 and 31 March 2013. In summary, Ofcom's guidance to ITV urged it to take caution when scheduling films which contain violence – whether 'fantasy' or real – during the day to ensure the material complies with Section One of the Code.

scene was “clearly not a depiction of a threat of violence between two human characters”.

- 3) The Harbinger: ITV described the Harbinger as “a CGI-created dog-like creature with a human head, akin to classical mythological creatures such as the sphinx or manticore”<sup>7</sup>. While the Licensee accepted the design of the creature was “certainly otherworldly...[it] did not consider the scene exceeded audience expectations of a fantasy drama of this kind, or was unsuitable for children”.
- 4) Alley fight: According to ITV “the fight scenes in *Jekyll and Hyde* [were] always carefully considered and edited in keeping with pre-watershed scheduling and with the overall action/adventure style of this series”. It added that “great care was taken to ensure that these action sequences were stage directed and shot in a highly choreographed, stylised and non-realistic manner, heightened with visual effects such as slow motion”. By way of illustration, the Licensee said that “when Hyde punches opponents they tend to fly through the air in comic book style, and without regard to the laws of physics. When he lifts someone off the ground by one hand to intimidate them he always grabs them by the lapels (never by the throat), and these feats of strength have an implausible and comic book quality, punctuated by sardonic jokes from Hyde”. In relation to the alley fight scene ITV said this had “the quality of ‘superhero’-style fantasy combat rather than a real street fight, and the violence [was] suitably limited, serving to demonstrate the character’s twin personas”. With regard to Mr Hyde kissing the female character against her will, the Licensee said that the scene revealed “the duality of Jekyll and Hyde” and that the female character’s reaction (i.e. slapping Mr Hyde) demonstrated, in ITV’s view, “something of [her] self-possessed character”. The Licensee said it did “not consider that the scene was unsuitable for children”.
- 5) Vetali attack: ITV accepted that this scene “create[d] a sense of menace”, but said that, in its view, Captain Dance’s “sardonic repartee” and “the inhuman nature of the Vetali henchmen” resulted in the scene being “clearly not...realistic”. ITV said this would have “mitigate[d] the tone and impact of that menace, even for younger viewers”. It also said that while Captain Dance shoots Robert Jekyll’s foster father “deliberately non-fatally, displaying his ruthlessness...there is no other explicit violence in the scene”. The Licensee also said that although Captain Dance was shown walking away from the burning building containing Robert Jekyll’s foster parents and “we assume that he has murdered [the foster parents]...we do not ever witness their deaths”. With regards to the attack on Robert Jekyll’s foster brother Ravi, ITV said he “is simply knocked...but is clearly not seriously hurt, as he comes round and then makes his escape”. In summary, the Licensee stated its belief that the “degree of menace and actual violence in this scene was suitably limited, and was editorially justified, in terms of establishing the character of Dance as a ruthless pursuer on the trail of Dr Jekyll”.
- 6) Nightclub fight: The Licensee described the nightclub fight scene as centred on the “depiction of Hyde’s personality rather than on realistic violence”. It also described the scene as “very carefully choreographed and shot partially in slow motion” with Mr Hyde “shown to be impervious as he is struck with furniture and bottles etc.” and his “opponents fly[ing] across the room when they are struck”. ITV also argued that the fight was “underpinned by a comic dance band soundtrack” and “Hyde’s wisecracks”. In the Licensee’s view, this served to give “the fight the same flavour of the highly unrealistic fistfights that feature in

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<sup>7</sup> The manticore is a Persian mythological figure with the body of a lion and human head.

countless Westerns, or the similar ‘slugfests’ that appear in superhero movies and TV series”. With regard to Mr. Hyde being stabbed in the back, ITV said that this “was carefully shot so as to avoid the viewer seeing the actual contact” with only “fleeting glimpses of the knife in his back”. The Licensee also described the attack as being, in its view, “entirely bloodless” and the subsequent scene in which the knife is removed from Mr Hyde’s back as including “no bloodshed or detail of the wound Hyde had received”. ITV also said the nightclub fight scene “evokes other ‘superhero’ characters such as Wolverine in *The X-Men*, who possess abnormal healing abilities”. In summary, the Licensee described the scenes of violence as suitably limited and “not unsuitable for children”.

In relation to both the “Nightclub” and “Alley” fight scenes, ITV argued that “there would be no question (even in the mind of a child viewer) that these were not simply fist-fights between human characters”. In the Licensee’s view these scenes were “stylised combats between the central “hero” character with supernatural power and strength, and relatively anonymous gangs of non-powered humans”.

The Licensee also said that “being mindful of the fact that this [was] a new series” and included “some limited violence and some CGI ‘monster’ effects that might conceivably frighten younger children” it preceded the programme with the following “explicit continuity announcement”:

*“It’s time now on ITV for a brand new adventure. It’s Jekyll and Hyde which has some violence and scenes younger children may find a bit scary”.*

ITV described this warning as similar to that which had been “used on many occasions by ITV in the past, to alert parents about pre-watershed content, particularly movie content, with some fantasy violence or supernatural storylines”.

In conclusion, the Licensee argued that in the context of an “escapist fantasy adventure”, it considered the violence included in this programme was neither unsuitable for children nor beyond the expectations of the audience. In addition, while ITV acknowledged that the programme included content which “might be scary for some young children”, it believed it had “struck the right balance in the design of the monsters, and in particular the use of CGI and makeup effects in this series”. The Licensee also considered that there was “nothing in the series, in terms of visual or psychological horror, that exceeded the established conventions of many other fantasy dramas pre-watershed by ITV and other broadcasters”.

#### Response to Preliminary View

The Licensee also provided representations in response to Ofcom’s Preliminary View (which was to find a breach of Rule 1.3). The Licensee disagreed with the Preliminary View and said Ofcom should consider whether a breach in this case “would have a damaging and “chilling effect” on broadcasters’ creative expression, and may raise uncertainties in future as to the scheduling of such content”. In ITV’s view also Ofcom had failed to:

- “take due account” of the comparisons drawn by ITV with “other pre-watershed fantasy dramas that Ofcom has in the past not chosen to investigate or considered as raising similar Code issues”;
- “properly assess audience expectations and the likely reception by most adults and children of such drama on ITV in this schedule slot, in the light of similar genre material broadcast in the past in early evening slots”; and,

- “take sufficiently into account research that Ofcom itself still cites in its own published guidance”.

### *Violence*

ITV noted that Ofcom had described the scenes of violence in the programme as having a “dark and menacing tone”. ITV submitted that the tone of the violent scenes was “inextricably linked” to the programme’s “non-naturalistic, fantastical nature”. In ITV’s view this was “clear to viewers from the start, by virtue of the universally widely known title of the series, and the extensive publicity both on and off screen devoted to the launch of the series”. The Licensee also considered that “it would have been clear that the series was based on a famous novel in the fantasy/horror genre”. ITV therefore considered that viewers could not possibly have been “caught unawares by [the programmes] content and tone...given the clear and unequivocal continuity announcement in regards to violence and that younger children might find some scenes “scary””.

ITV also disputed Ofcom’s view that the “fantastical elements” of the programme were “largely absent” from the programme’s violent scenes involving human characters. ITV said this was “entirely inconsistent with the actual context of those scenes”.

### *Scheduling*

The Licensee accepted that “on a mass audience channel like ITV there is an established expectation that programming at 18:30 will be suitable for a family audience”. The Licensee also accepted that “it was likely that some children under 10 may have been watching at that time or “were available to view””. However, in ITV’s opinion it was “unlikely that many children, particularly younger children (i.e. under 10) would have been watching unsupervised on a Sunday evening” and that “many if not most very young children (i.e. pre-school children) would be preparing for bedtime at this time”.

ITV also said it took into account all recent research and Ofcom guidance, and considered it had “provided an appropriate announcement that very clearly stated that the programme included some violence and “scenes younger children may find a bit scary””. Although the Licensee acknowledged that this was the first episode of a new series, it considered that Ofcom had “underestimated the audience’s likely prior knowledge of the Jekyll and Hyde story, and therefore its likely tone and content”. In ITV’s view “any programme with this name in the title would not have to state in terms to viewers in advance that this was a fantasy/horror programme, just as any programme with the name “Dracula” or “Frankenstein” would not need to do that either”.

## **Decision**

### Background

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

Rule 1.3 requires that children must be protected by appropriate scheduling from material that is unsuitable for them.

In applying Rule 1.3, Ofcom must have regard to the need for standards to be applied “in the manner that best guarantees an appropriate level of freedom of expression”. The Code is drafted in accordance with Article 10 of the European Convention on Human Rights, which sets out the right of a broadcaster to impart information and ideas and the right of the audience to receive them without unnecessary interference by a public authority. We took careful account of the Licensee’s comments that Ofcom should consider whether a finding of a breach of Rule 1.3 in this case “would have a damaging and chilling effect” on broadcasters’ creative expression, and may raise uncertainties in the future as to the scheduling of such content”.

Ofcom recognised that there is a rich tradition of pre-watershed drama programming on UK television – some of which were referred to by ITV in its representations – that sometimes incorporates themes of fantasy and limited acts of violence. Consistent with the right to freedom of expression, there is no prohibition on the broadcast of such content as long as children are protected by appropriate scheduling from material that is unsuitable for them.

In this case, we had particular regard to Ofcom’s July 2014 research on audience attitudes to violent content on television (“the Ofcom violence research”)<sup>8</sup>. This research highlighted the importance of a number of factors broadcasters should take into account in determining the appropriateness of broadcasting acts of violence pre-watershed. Of particular relevance in this case in Ofcom’s view were the time of broadcast, the channel, and the cumulative/ overall impact of the violence (including music or an ‘atmosphere of unease’ which can create a sense of threat and menace).

#### Material unsuitable for children

Ofcom first assessed whether *Jekyll and Hyde* contained material unsuitable for children. In light of the nature of the material in this case and the time of broadcast, and the concerns expressed by some complainants, Ofcom conducted this assessment with particular regard for children under ten years old, who given the time of broadcast would be available to view and may potentially be watching unsupervised.

In our view, taken as a whole, we considered the tone of this programme, its depictions of violence and other content likely to frighten and disturb younger children, meant that overall it contained material that was unsuitable for younger children in particular. We have set out our reasons for this view below.

Firstly, we noted several scenes that predominantly featured acts of violence. We considered these various scenes, as described in the Introduction, had a notably dark, menacing and violent tone. One of the factors cited in the Ofcom violence research as determining the audience’s attitude towards depiction of violence was the cumulative/overall impact scenes of violence when taken together, and influenced for example by other elements such as “music or an ‘atmosphere of unease’”<sup>9</sup>. The dark and menacing tone of the scenes of violence in this first episode would, in our view, have distressed some younger viewers in particular.

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<sup>8</sup> See [http://stakeholders.ofcom.org.uk/binaries/research/tv-research/violence/Violence\\_on\\_TV\\_Report.pdf](http://stakeholders.ofcom.org.uk/binaries/research/tv-research/violence/Violence_on_TV_Report.pdf)

We considered that the dark, menacing tone was established in the programme's opening scene (scene 1 – "Street attack"). This was set at night-time, accompanied by ominous music and depicted the original Dr Henry Jekyll (as Mr Edward Hyde) arguing with another man in a London street. As the man was shown trying to walk away, Mr Hyde struck him twice on the back with a walking stick (with a third blow heard but not seen by viewers). With the man knocked to the ground and apparently unconscious, Mr Jekyll struck him again across the back. An eyewitness screamed as she observed this brutal attack from a first floor window. Having threatened to violently attack a young girl he had knocked while escaping, at the conclusion of the scene, Mr Hyde suddenly turned around and roared, revealing to the audience in close up for the first time his disfigured face.

We considered that the manner in which this attack was depicted and the sudden revelation of Mr Hyde's unnatural and frightening features, resulted in a scene that would potentially distress younger viewers. We agreed with ITV's point that this scene did not depict "explicit or graphic violence" and contained no bloodshed. We also noted the Licensee's comment that the revelation that the murder had been committed by Mr Hyde introduced an element of the fantastical to the scene. However, we considered that the depiction of a man being bludgeoned to the ground, the witness' reaction, and the overall tone of the scene, created as the Licensee said an element of "horror". We did not consider that any alarm or distress caused to younger viewers by the violence in this scene would be materially mitigated by the potentially frightening revelation that, as the Licensee described, "the blows were struck not by a normal man but by Hyde a disfigured superhuman monster". In our view the impact of this scene would have been substantially increased by the fact that it was the opening scene of the programme (and indeed the series) and therefore viewers may well have been caught unawares by both its content and tone.

Ofcom also had concerns about the violence in scenes 4 and 6 ("Alley fight" and "Nightclub fight"). Both these sequences had a duration of approximately two minutes. We noted the Licensee's various arguments about the depiction of the acts of violence perpetrated by Mr Hyde in these scenes, such as that they: were "comic book style, and without regard to the laws of physics"; involved Mr Hyde always grabbing his adversaries "by the lapels (never by the throat)"; were "punctuated by sardonic jokes from Hyde"; and, in the case of the nightclub fight "underpinned by a comic dance band soundtrack". We considered that these two scenes clearly and repeatedly showed attacks (including punches and kicks, and uses of a bottle, a table, and a chair as weapons) making contact with their intended human target. Notably, the nightclub fight scene culminated in Mr Hyde being stabbed in the back with a large knife. Although the point of impact of the knife was not directly shown, viewers subsequently saw the knife hilt sticking out of his body. We noted that Mr Hyde was shown demonstrating his superhuman strength through a particularly brutal and ferocious style of hand-to-hand combat. This resulted in his adversaries being hit with such force they were thrown into the air or across the room. We also took into account the extensive use of slow-motion filming used in these sequences. Although, as suggested by the Licensee, this did to some extent reduce the realism of these fights, it also served in Ofcom's view to exaggerate the power and brutality of each Mr Hyde's blows. In summary, we considered the depictions of violence and its after-effects in these two scenes was unsuitable for younger children in particular.

Later in the programme, Captain Dance and his skeletal henchmen, the Vetali, were shown attacking Robert Jekyll's foster family in their home (Scene 5 – "Vetali

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<sup>9</sup> Ibid, paragraphs 1.7 and 5.4.6.

attack”). During the attack Jekyll’s teenage foster brother was knocked out<sup>10</sup>, his foster father was shot in the abdomen, his foster mother was threatened at gunpoint and the couple were left tied up in the house and unable to escape as it was set on fire. In Ofcom’s opinion, viewers would have (rightly) assumed that Robert Jekyll’s foster parents were both burnt to death in the fire that was engulfing their house.

Ofcom recognised the manner in which the individual violent acts in this scene were depicted was limited. We took into account ITV’s points that this scene was intended to establish “the character of Dance as a ruthless pursuer on the trail of Dr Jekyll” and that viewers did “not ever witness [the] deaths of Robert Jekyll’s foster parents”. We also noted that the Licensee considered that Captain Dance’s “sardonic repartee” and the supernatural appearance of the Vetali resulted in the scene being unrealistic. In our view, however, the presentation of a scene in which a family was violently attacked, threatened and ultimately left tied up to burn to death in their own home by demonic looking creatures had significant potential to distress some younger children. We did not consider the elements of the scene highlighted by the Licensee (i.e. the non-human nature of the Vetali and Captain Dance’s demeanour) significantly mitigated this potential to cause distress.

We noted that, in general, ITV considered the various scenes of violence in the programme to have been “shot in a highly choreographed, stylised and non-realistic manner”. The Licensee also compared the material to examples of pre-watershed programmes and films that contain fantasy violence (such as *Primeval*, *Demons*, *The Hobbit* and the *Harry Potter* series). While ITV accepted that “elements of fantasy do not necessarily or entirely negate the possible effect of violence on younger viewers” it pointed out that Ofcom’s Guidance to Section One<sup>11</sup> “still cites research<sup>12</sup> that suggested that children...are more affected by real and realistically portrayed violence than by fantastical fictional violence”.

In its comments made in response to the Preliminary View, the Licensee said that if Ofcom considered this research to still be valid “the different impact of fantasy as opposed to realistic violence should be taken into account”. Ofcom does consider this research to still be relevant and has taken account of it as appropriate, while noting it concentrated on children aged nine to thirteen and that Ofcom has published more recent research on audience attitudes to onscreen violence<sup>13</sup>. We also took into account our previous formal guidance provided to ITV in 2013 following pre-watershed broadcasts of the films *The Incredible Hulk* and *The Mummy: Tomb of the Dragon Emperor*. This guidance urged the Licensee to take care when scheduling pre-watershed films that contain fantasy violence.

Ofcom recognised that the programme as a whole did contain elements of fantasy. In Ofcom’s view however the scenes of violence noted above depicted relatively realistic and brutal acts of violence (including punches, kicks, a beating with a stick, a shooting, and a stabbing) taking place between human characters. Ofcom

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<sup>10</sup> The Licensee commented that Jekyll’s foster brother “was not seriously hurt as he comes round and then makes his escape”. However, Ofcom noted that this character was not seen again in this programme and this character’s fate was only revealed in a subsequent episode.

<sup>11</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section1.pdf>

<sup>12</sup> How children interpret screen violence (2003) BBC, BBFC, BSC, ITC ([http://ofcom.org.uk/static/archive/itc/uploads/HOW\\_CHILDREN\\_INTERPRET\\_SCREEN\\_VIOLENCE.pdf](http://ofcom.org.uk/static/archive/itc/uploads/HOW_CHILDREN_INTERPRET_SCREEN_VIOLENCE.pdf))

<sup>13</sup> See the 2014 research referred to in footnote 8.

considered these factors, when taken together in the context of this broadcast as a whole, distinguished the programme from many of the examples of pre-watershed fantasy violence given by ITV, in which often unrealistic violent acts typically occurred between extraordinary or non-human creatures such as vampires, demons and aliens.

We also considered the other scenes described in the Introduction which depicted acts or scenes of surreal fantasy. For example, soon after the character Robert Jekyll was first introduced (Scene 2 – “Girl under truck”), he was shown lifting up a truck which had pinned a young girl to the ground. In the process of rescuing her, he was briefly unable to control the Mr Hyde alter ego from taking control of his personality. While laughing diabolically, he was shown pressing his foot onto the young girl’s chest so that it appeared momentarily to viewers that he might crush her. ITV argued this scene was not “a depiction of a threat of violence between two human characters”. We disagreed. Ofcom considered that that the human appearance and nature of the Mr Hyde character would have resulted in the majority of viewers interpreting the scene as depicting precisely such an event.

In Ofcom’s view, the dichotomous and unpredictable personality of the programme’s central character (as demonstrated in this scene at start of the episode shown around six minutes in to the episode) had the potential to scare some younger children. ITV argued that this was counteracted by Dr Jekyll’s role in defeating “the forces of evil”. We disagreed. In our view, any such role was not at all clearly established in this opening episode of the series so as to effectively counteract the likely level of distress caused to some younger children, caused for example by Mr Hyde’s behaviour in the scene where he seemed on the verge of letting a small girl be crushed to death by a truck. Viewers would have been left with the overall impression of Robert Jekyll as a character who was unable to control his alter ego, who unpredictably behaved in a cruel and violent way. We considered this aspect added to the potential for some of the content in this programme to cause distress or concern to younger children.

We also considered that the programme contained other elements that had significant potential to scare some younger children. In particular, we noted the character of The Harbinger (Scene 3 – “The Harbinger”), a dog-like monster with a human head. In Ofcom’s view, the realistic grafting of a human head onto an animal’s body was unsettling. We noted that while the Licensee accepted the creature was “certainly otherworldly” it did not consider “the scene exceeded audience expectations of a fantasy drama of this kind, or was unsuitable for children”. However, in Ofcom’s view, this creature’s appearance, combined with its menacing and aggressive behaviour and the ominous tone of the scene as a whole, resulted in material that was very likely to have unsettled and frightened younger viewers.

For all the above reasons, in our view this episode contained various scenes of violence and surreal fantasy which, which when together and in the context of the programme as a whole, resulted in the programme being unsuitable for younger children.

#### Appropriate scheduling

Ofcom then went on to consider whether this material was appropriately scheduled. Appropriate scheduling is judged against a number of factors including: the nature of the content; the likely number and age range of the audience, the start and finish time of the programme, and likely audience expectations.

As mentioned above, Ofcom recognised that there is a long history of science-fiction and fantasy programming being broadcast on television before the watershed. Such programmes may, and often do, include scenes that could potentially scare younger viewers or include some mild, limited violence. Nonetheless, Ofcom’s guidance to Section One of the Code<sup>14</sup> emphasises that the “watershed plays a crucial role for parents and carers with children aged 5 to 8 and trust in pre-watershed programming is essential, particularly leading up to 19:30”. Licensees must exercise particular care when scheduling programmes at peak family-viewing times which might frighten or cause undue concern to children, especially younger ones.

In relation to scheduling, we took into consideration that the Ofcom violence research identified time of broadcast as “a consistent key indicator of the appropriateness of content on television, for parents and non-parents alike [and] as a general rule, the earlier a programme is shown the greater the expectation of family-appropriate content”<sup>15</sup>. Another relevant factor, as highlighted by the Ofcom violence research was the channel of which the violent material was broadcast. Participants considered that in “general terms, the more mainstream the channel, the greater the expectation of family-appropriate content”<sup>16</sup>.

We therefore took into particular account in this case that this programme was broadcast at 18:30 on Sunday evening on the UK’s main commercial public service television channel. We also had regard to the fact that, as acknowledged by the Licensee, that the audience would have an established expectation that programmes shown at this time on this channel would be suitable for a family audience.

Ofcom noted that five of the six scenes highlighted in the Introduction were broadcast between 18:30 and 19:00. The sequence of the “Street attack” opened the programme, and we noted that the “Alley attack” (Scene 4) and “Vetali attack” (Scene 5) sequence each lasted around two minutes. Because this episode was shown on this channel at this time, there were therefore likely to be a significant number of children, including younger children, in the audience. In light of the time of broadcast, there was also clearly the potential for some of these younger children to be watching television unaccompanied by an adult.

We noted that the Licensee considered the content of *Jekyll and Hyde* was consistent with a range of other fantasy, science-fiction and superhero themed television series and films shown pre-watershed on both ITV and other UK channels. In ITV’s opinion, in its Preliminary View Ofcom had “failed to take due account of [ITV’s] submission in relation to the comparisons...with other pre-watershed fantasy dramas that Ofcom has in the past not chosen to investigate or considered as raising similar Code issues”. This was not the case in our view. Ofcom has taken careful account of all ITV’s submissions. However Ofcom points out that this Decision was necessarily based on the specific content of this programme and the context in which it was shown.

We also had regard to the Licensee’s comments that “any programme with this name in the title would not have to state in terms to viewers in advance that this was a fantasy/horror programme”. We recognised that audience expectations for the programme’s likely tone and content may have been shaped to some extent by prior

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<sup>14</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section1.pdf>

<sup>15</sup> See footnote 7, paragraph 1.4

<sup>16</sup> Ibid, paragraphs 1.7 and 5.4.8.

knowledge of the story of Jekyll and Hyde (either through the original novel or one its other adaptations).

However, Ofcom noted this was a very free adaptation of a story that has inspired a wide array of films and television series which have taken very different approaches to the source material in terms tone and content. Particularly given that this was the first episode of a new series, we considered that a more influential factor in shaping audience expectation would have been the scheduling of this programme early on a Sunday evening on the most widely watched commercial public service channel. With this in mind we considered that viewers may not have expected this programme to contain violent and scary scenes of the nature set out above, and especially in the first thirty minutes.

We noted that the programme was preceded by a pre-broadcast announcement which stated:

*“It’s time now on ITV for a brand new adventure. It’s Jekyll and Hyde which has some violence and scenes younger children may find a bit scary”.*

In light of the time of the programme’s broadcast Ofcom considered this announcement did not make sufficiently clear to parents the potential unsuitability of the programme for their young children to view. We were mindful of the Ofcom violence research which found that degree of preparation was a key factor in determining audience’s view of violence: “Unexpected exposure to violent content is more likely to offend or disturb viewers”<sup>17</sup>. In particular, we did not consider that the pre-broadcast warning in this case was adequate to prepare audiences for the level and tone of violence included in this first episode of the series.

### Conclusion

In conclusion, Ofcom considered that the programme’s content was not so strong that, with appropriate scheduling, it could not be broadcast pre-watershed. However, in the specific circumstances of this case, we considered that the content would have exceeded the expectations of viewers, and in particular parents and carers, at this time and on this channel. Therefore, while acknowledging this was a finely balanced decision, Ofcom concluded that children were not in this case protected from unsuitable material by appropriate scheduling, and there was a breach of Rule 1.3.

### **Breach of Rule 1.3**

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<sup>17</sup> See footnote 7, paragraphs 1.7 and 5.4.1.

## In Breach

### Benefits Brits by the Sea

5\*, 14 and 19 October 2015, 20:00

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#### Introduction

5\* is a general entertainment channel broadcast on a variety of digital platforms. It is owned and operated by Channel 5 Broadcasting Limited (“Channel 5” or “the Licensee”).

On 14 October at 20:00, the channel broadcast *Benefits Brits by the Sea*, an observational documentary about benefit claimants living in the seaside town of Great Yarmouth. Five days later, the programme was repeated on the same channel, also at 20:00. Three viewers contacted Ofcom to complain about the repeated use of offensive language in the broadcasts.

The programme included: 21 uses of the word “fuck” and variations of this word; 12 uses of “shit” or “shitting”; three of “piss” or “pissed”; two of “bastard”; one of “twat”; and, one of “prick”.

We considered this material raised issues warranting investigation under Rules 1.14, 1.16 and 2.3 of the Code, which state:

- Rule 1.14: “The most offensive language must not be broadcast before the watershed...”.
- Rule 1.16: “Offensive language must not be broadcast before the watershed (in the case of television)...unless it is justified by the context. In any event, frequent use of such language must be avoided before the watershed”.
- Rule 2.3: “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Such material may include, but is not limited to, offensive language...Appropriate information should also be broadcast where it would assist in avoiding of minimising offence”.

We therefore asked Channel 5 how this material complied with these rules.

#### Response

Channel 5 expressed “deep regret that the Ofcom Broadcasting Code should be so egregiously breached” and said it was “appalled at what has happened in this instance”.

The Licensee said the programme had been originally broadcast at 21:00. It subsequently decided that an edited version of the programme would be shown in a pre-watershed 20:00 timeslot. Channel 5 said “as is standard practice, the experienced Channel 5 Compliance Team reviewed the programme and edited it to remove language and material which was too strong for the proposed [20:00] timeslot or which would clearly breach” the Code.

The Licensee explained that “accordingly, there were two versions of the programme capable of being selected for broadcast: the original post-watershed version and the version the Compliance team had made appropriate for 8pm broadcast”.

Channel 5 told Ofcom that its broadcast management system has “an in-built safeguard against inappropriate scheduling of programmes” and that if the Licensee had decided that a programme was inappropriate for broadcast in a particular slot “a red flag appears to alert the scheduler that the version is inappropriate for the slot”. Channel 5 said that “despite the fact that the red flag came up, the scheduler selected the wrong version for broadcast”, selecting the “post-Watershed version and not the reversion which had been prepared for 8pm broadcast”.

The Licensee said that having been alerted to the issue by Ofcom, it “investigated the matter thoroughly” and the individual responsible for the scheduling was “unable to afford any explanation for what had occurred”. Channel 5 said that it had “accepted his resignation from his post”.

Channel 5 also informed Ofcom that, “to prevent any re-occurrence”, a separate member of its scheduling team would “check that correct versions have been scheduled for broadcast as the schedule approaches finalization”. In addition, Channel 5 said that a member of its compliance team would “check the schedules to ensure that no programme has been inadvertently or unaccountably scheduled in error”.

In summary, the Licensee said that this was “not a case where Channel 5 was seeking to push or test the boundaries set by” the Code but rather “a case of an inexplicable and unacceptable error”.

## **Decision**

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives which include ensuring “that persons under the age of eighteen are protected” and “that generally accepted standards are applied to the content of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material”. These objectives are reflected in Sections One and Two of the Code.

### Rule 1.14

Rule 1.14 states that “the most offensive language must not be broadcast before the watershed”. Ofcom research on offensive language<sup>1</sup> notes that the word “fuck” and variations of this word are considered by audiences to be amongst the most offensive language. Such language is unacceptable before the watershed.

As noted above, this pre-watershed programme included 21 uses of the most offensive language. It was therefore in clear breach of Rule 1.14.

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>

### Rule 1.16

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

In addition to the 21 uses of the most offensive language included in the programme, there were 19 instances of offensive language (“shit”, “piss”, “bastard”, “twat” and “prick”). We noted that Ofcom’s 2010 research on offensive language indicated that none of these words was regarded as generally acceptable on television before the watershed<sup>2</sup>.

We considered that 19 examples of offensive language during a one hour programme amounted to frequent use of offensive language. The content was therefore in breach of Rule 1.16.

### Rule 2.3

Rule 2.3 states that broadcasters must ensure that material which may cause offence is justified by the context.

In Ofcom’s view, the 21 uses of the most offensive language and the 19 instances of other offensive language in this programme were clearly capable of causing offence to viewers. We therefore considered whether this offensive material was justified by the context.

Factors which Ofcom takes into account when considering context include: the editorial content of the programme; the service on which the material was broadcast; the time of broadcast; and, the likely size, composition and expectation of the potential audience.

Given that *Benefits Brits by the Sea* was an observational documentary, viewers might have expected some instances of offensive language. Ofcom also noted that a warning which preceded the broadcast alerted viewers to “*offensive language, antisocial conduct and confronting themes*”.

However, this programme was transmitted at 20:00. Although the watershed is designed primarily to protect children from material that is unsuitable for them, it also shapes the expectations of adult viewers as to the level and type of offensive material they would expect on a channel before 21:00. In Ofcom’s view, given the time of broadcast, the frequent use of the most offensive and other forms of offensive language that this programme contained would have far exceeded audience expectations for a programme broadcast at this time on this channel.

Ofcom’s view was therefore that the broadcast of this offensive content was not justified by the context and breached Rule 2.3.

### Conclusion

This programme, containing multiple uses of the most offensive and other forms of offensive language, was broadcast twice on 5\* within a period of six days. Channel 5 fully acknowledged that the Code had been “egregiously breached” in this case and

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<sup>2</sup> <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>, pages 89-93.

said these serious errors had occurred because the scheduler responsible had twice “selected the wrong [post-watershed] version for broadcast” despite warnings. We noted that the Licensee said that it had investigated this incident, the individual responsible could not “afford any explanation” and had resigned, and that Channel 5 had introduced new compliance procedures to help ensure a similar error could not occur again. However, Ofcom was particularly concerned about the circumstances of this case. Should any similar breaches occur in the future, Ofcom will consider taking further regulatory action.

**Breaches of Rules 1.14, 1.16 and 2.3**

## In Breach

### The One Show

BBC1, 4 November 2015, 19:00

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#### Introduction

*The One Show* is a daily magazine programme broadcast every weekday in the early evening on BBC1. A total of 11 complainants alerted Ofcom to a joke made by the comedian Jimmy Carr, when he appeared on this programme. In summary, complainants objected to Jimmy Carr making a “disgusting” and “offensive” joke about a particular disabled group i.e. those who have dwarfism<sup>1</sup>. Three of the complainants either themselves, or had family members who, have dwarfism.

We noted the following exchange at approximately 19:26, between one of the programme’s presenters, Matt Baker (“MB”), and Jimmy Carr (“JC”):

MB: *“Which joke were you most surprised by that you thought was funny that you didn’t realise at the time?”*

JC: *“I don’t know, I’m just trying to think of my favourite all-time joke which might work on this show: ‘I’ve got a Welsh friend of mine. I asked him how many partners he had in his life. And he started to count and he fell asleep’”.*

[Laughter in the studio]

JC: [Looking into the camera and smiling] *“That’s just about alright, isn’t it?”*...[Looking at presenter] *I tried to write the shortest joke possible, so I wrote a two word joke, which was: ‘Dwarf shortage’. Just so I could pack more jokes into the show. [Looking into the camera] If you’re a dwarf and you’re offended by that: Grow up!”*

Towards the end of the programme, at approximately 19:58, Matt Baker said the following:

*“Listen, just a quick word to say that if anything that Rod<sup>2</sup> or Jimmy has let slip tonight that er – was a little bit close to the mark maybe but we’re sorry, we’re sorry”.*

We considered that Jimmy Carr’s joke (“*Dwarf shortage*”) and his follow-up statement (“*If you’re a dwarf and you’re offended by that: Grow up!*”) raised potential issues under the following rule of the Code:

Rule 2.3: “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context... Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity,

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<sup>1</sup> Dwarfism is an umbrella term for a wide range of conditions (most commonly achondroplasia) that result in an individual being short in stature (typically defined as those under 4’10”).

<sup>2</sup> This is a reference to the performer, Rod Stewart, who was also interviewed in this programme.

discriminatory treatment or language (for example on the grounds of age, disability, gender, race, religion, beliefs and sexual orientation). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence”.

We therefore sought comments from the BBC as to how this content complied with Rule 2.3.

## Response

The BBC said that “any humour alluding to disability has the potential to offend and, although the BBC received very few complaints on the issue, the *One Show’s* Editor...sincerely regrets any offence that has been caused by it”. The BBC recognised the “need for sensitivity and careful consideration in respect of the inclusion of material of this nature”. It added that “*The One Show* is heavily involved with the Rickshaw Challenge initiative that raises money for *Children in Need*, and in that capacity has worked closely with young people with disabilities including achondroplastic dwarfism. The production team is very well aware of, and sympathetic to, the sensitivities of those affected by disability to humour that alludes to it”.

By way of background, the BBC said that Jimmy Carr is a “high profile comedian who enjoys wide exposure on mainstream television and is renowned for his edgy humour...[who] has been a guest on *The One Show* on numerous previous occasions without arousing any controversy”. It added that all guests on the programme are required to sign a letter before appearing on the programme which states:

“As with all our guests, we are obliged to point out that you are about to go before a live family audience and to please refrain from swearing or using language that might cause offence”.

According to the BBC it “was evident from the preamble that led up to Jimmy Carr telling the joke in question, in which both he and the presenters alluded to the limited suitability of much of his material for *The One Show*, that this had been discussed prior to the broadcast”. It added however that “clearly there is a limit to which the presenters can control what is said in the live elements of the show”.

During the interview with Jimmy Carr, the BBC said that the discussion “developed from the information that he was presenting a new show compiled from the most successful elements of material he had already used”. This prompted one of the presenters to ask Jimmy Carr:

*“Which joke were you most surprised by that you thought was funny that you didn’t realise at the time?”*

In response, Jimmy Carr said:

*“I don’t know, I’m just trying to think of my favourite all-time joke which might work on this show”.*

The BBC argued that Jimmy Carr’s response was an “indication that what was to follow could be at the margin of suitability”. The broadcaster added that Jimmy Carr then “gave an example of a brief joke that hinged on a stereotype (about the Welsh) which could be regarded as offensive in some contexts.” The BBC said that a

discussion followed about “short jokes”, at which point Jimmy Carr “told the joke in question, which consisted of only two words and again hinged on wordplay”. The BBC stated its belief that “this context was remote from one in which it would appear to viewers that a particular condition was the butt of the humour”. The BBC also referred to the comments made by Matt Baker towards the end of the programme at about 19:58 (see Introduction).

In light of this incident with Jimmy Carr, the BBC said that it had amended the letter that guests are asked to sign prior to appearing on *The One Show* to include the following line: “Jokes made at the expense of minorities are likely to cause offence, so please save them for other arenas”.

In conclusion, the BBC stated “*The One Show’s* Editor takes the view that [Jimmy Carr’s] joke was not appropriate for *The One Show*”. However, it added that “while *The One Show* production team takes a particular view on the tone they would like to adhere to, and feels this joke was inappropriate in light of that, the BBC does not believe that it amounted to a breach of Rule 2.3 of the Code”. In this context, the BBC stated its belief that “the humour here was based on wordplay in the context of illustrating particular types of joke rather than the condition of dwarfism itself” and therefore Jimmy Carr’s joke did not have the “capacity to cause widespread offence” and it was not the case that similar material could never appear in our output without raising an issue under the Code.

## Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, which includes providing adequate protection for members of the public from harmful and/or offensive material. This objective is reflected in Section Two of the Code.

In reaching a Decision in this case, Ofcom acknowledged the importance attached to the broadcaster’s and audience’s right to freedom of expression, which encompasses the right to hold opinions and to receive and impart information and ideas without undue interference by public authority. Therefore, Ofcom must seek an appropriate balance between ensuring members of the public are adequately protected from material which may be considered offensive on one hand and the broadcaster’s and audience’s right to freedom of expression on the other.

Furthermore, Ofcom took into account that there is a long history on British television and radio of broadcast comedy tackling difficult issues and deliberately pushing at boundaries of contemporary taste. In accordance with the right to freedom of expression, the Code does not prohibit broadcast content from referring to any particular topic, subject or group of people. However, under Rule 2.3, broadcasters must ensure that potentially offensive material (including offensive and discriminatory language) is justified by the context. This means that although there is significant room for innovation, creativity and challenging material within programming, broadcasters do not have *unlimited* licence to include offensive material in programmes.

In coming to a Decision in this case, we therefore assessed first whether the material in this programme had the potential to cause offence. During this programme, Jimmy Carr referred to his attempt to write the “*shortest joke possible*”. The joke in question was “*Dwarf shortage*”. He then made the statement: “*If you’re a dwarf and you’re offended by that: Grow up!*” We considered that, as both the joke and the follow up

statement attempted to derive humour from dwarfism (a medical condition causing restricted growth which often causes a person with the condition to be regarded as disabled), these statements clearly had the potential to cause offence.

We went on to consider whether the broadcast of this potentially offensive material was justified by the context. As noted in the Code, context includes but is not limited to: the editorial content of the programme; the service on which the material was broadcast; the time of broadcast; what other programmes are scheduled before and after; the degree of harm or offence likely to be caused; likely audience expectations; warnings given to viewers; and, the effect on viewers who may come across the material unawares.

This case involved a popular comedian, well-known for his edgy and controversial brand of humour.

We first carefully considered the content of Jimmy Carr's potentially offensive comments. In our view, the joke "*Dwarf shortage*" by itself would have had the potential to have caused offence. This is because it was a play on words which specifically referred to the physical characteristics of people with dwarfism, many of whom are regarded as disabled. However, we considered the potential for offence in this case was greatly increased by Jimmy Carr's immediate follow-up statement ("*If you're a dwarf and you're offended by that: Grow up!*"). This is because this statement was attempting to derive humour from the physical characteristics of those who have dwarfism. Furthermore, the comedian said this statement straight to camera and in what Ofcom considered viewers would have regarded as a dismissive tone. In our view these factors would have been likely to have increased the level of offence caused by the statement. The degree of offence would, in our view, have been heightened even more by the fact that then Jimmy Carr, in a play on words, told people with dwarfism who objected to his joke to "*Grow up!*" – a command which due to the nature of their medical condition, members of this community could of course not comply with. In our view, we considered that the audience would have been offended by Jimmy Carr's apparent suggestion that those with dwarfism would not be justified if they felt personally offended by his attempt to derive humour from their condition.

Given the nature of Jimmy Carr's comments outlined above, we strongly disagreed with the BBC's various arguments that: the context of Jimmy Carr's comments about dwarfism "was remote from one in which it would appear to viewers that a particular condition was the butt of the humour"; "the humour here was based on wordplay in the context of illustrating particular types of joke rather than the condition of dwarfism itself"; and Jimmy Carr's joke did not have the "capacity to cause widespread offence". While some context was provided by the fact that at that point in the programme, Jimmy Carr was delivering examples of the "*shortest joke possible*", we considered that this factor alone was not sufficient to mitigate the likely level of offence caused in this case. In our view, it would have been clear to the audience – and a substantial level of offence would have been likely to have been caused – by Jimmy Carr combining his initial joke ("*Dwarf shortage*") with his follow up statement ("*If you're a dwarf and you're offended by that: Grow up!*") in order to derive humour from people with the medical condition of dwarfism.

We agreed with the BBC's argument that "it was not the case that similar material could never appear in our output without raising an issue" under the Code. Ofcom points out that this Decision does not in any way suggest that dwarfism is prohibited under the Code as a subject of humour in broadcast output. Further, we recognise that when dealing with sensitive matters, it is likely that comedy will often cause

offence. However, such offence must be justified by the context. Therefore, given *The One Show's* format and likely audience composition, we considered that Jimmy Carr's particular brand of challenging comedy, as shown by these particular comments, would have exceeded audience expectations in this case.

We noted that during the interview Jimmy Carr was asked which of his past jokes had he been "*most surprised by that [he] thought was funny that [he] didn't realise*" originally. In response, Jimmy Carr said:

*"I'm just trying to think of my favourite all-time joke which might work on this show".*

In our view, Jimmy Carr's stressing of the word "*might*" would likely to have been interpreted as his recognition that much of his usual comedy repertoire might not be appropriate for a pre-watershed audience such as that of *The One Show*.

He also acknowledged that one of the jokes he delivered prior to the joke referring to dwarfism might, in his view, be challenging to the audience of *The One Show*. After delivering that joke ("*I've got a Welsh friend of mine. I asked him how many partners he had in his life. And he started to count and he fell asleep*") he immediately spoke to camera and said:

*"That's just about alright, isn't it?"*

These allusions to the strength of Jimmy Carr's usual comedy material would, in our view, have provided only a limited warning to viewers about Jimmy Carr's subsequent statements referring to dwarfism.

Ofcom took into account that *The One Show* is a magazine programme broadcast in the early evenings on BBC1 and which is targeted at a general family audience. We did not consider the fact that Jimmy Carr had appeared on the programme on a number of occasions previously in any way justified his attempt to derive humour by referring to people with dwarfism in the way he did.

We also noted that one of the presenters broadcast an apology towards the end of the programme, as outlined in the Introduction, that referred to Jimmy Carr's appearance. However, we considered that the tone and manner of these remarks made half an hour after Jimmy Carr's comments about dwarfism were not sufficient to mitigate the offence caused by those comments.

In reaching our Decision, we noted the BBC statements that "*The One Show's* Editor takes the view that [Jimmy Carr's] joke was not appropriate for *The One Show*" and "*The One Show* production team takes a particular view on the tone they would like to adhere to, and feels this joke was inappropriate in light of that". We also noted that the BBC would be amending the letter that guests are asked to sign prior to appearing on *the One Show* to make clear they should refrain from making jokes "at the expense of minorities". Nonetheless, the BBC argued that Jimmy Carr's comments did not amount to a breach of Rule 2.3 of the Code.

However, on the facts of this particular case, we considered that Jimmy Carr's jokes intended to derive humour from people with dwarfism were likely to cause offence, and for all the reasons set out above were not justified by the context. Therefore, our view was that there was a breach of Rule 2.3 of the Code.

### **Breach of Rule 2.3**

## In Breach

### Saturday Morning Show

*Irvine Beat FM, 19 September 2015, 10:45*

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#### Introduction

Irvine Beat FM is a community radio station licensed to provide a service for people in the Fullarton, Harbourside, Redburn, Vineburgh, Springside and Castlepark areas of Irvine, Scotland. The licence is held by Irvine Beat FM (SCIO) (“Irvine Beat FM” or “the Licensee”).

A listener complained to Ofcom that the word “*chinky*” was used by the presenter to describe a Chinese take-away meal during the Saturday morning programme and this was a “racial slur”.

Ofcom noted that the word was used as part of a discussion about how “cultured” listeners were. The presenter asked listeners a list of ten questions such as: “*Do you read daily newspapers?*”, “*Do you watch Question Time?*” and:

*“Do you host dinner parties or do you tell your pals to come round and bring a chinky? – well you’re not cultured if that’s the case”.*

Ofcom considered the use of the word “*chinky*” raised potential issues under Rule 2.3 of the Code which states:

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

We therefore asked the Licensee for its comments on how the material complied with this rule.

#### Response

Irvine Beat FM explained that it had spoken to the presenter and it had “no doubts” that the use of the word “*chinky*” in this broadcast was not intended to cause offence. The Licensee said that the presenter was an experienced broadcaster who had completed training in the Broadcasting Code and was “well aware of what should or should not be said on air.” The Licensee added that “the comment was a throwaway remark which he accepts could have caused some offence and he has apologised for this oversight.”

The Licensee stated that, in the presenter’s defence, it considered the word “*chinky*” when referring to “any type of far eastern food” was a recognised word in the west of Scotland and would not be seen as a racist slur. It noted that, had the word been used to describe “a person of oriental descent”, then this would be viewed as “highly offensive and racist.”

However, to prevent anything of this nature occurring again, the Licensee stated that all presenters on Irvine Beat FM had been informed that “no local colloquialisms should be used on air with immediate effect.” The Licensee also apologised “unreservedly” for any offence “however unintentionally this happened.”

Irvine Beat FM made some further comments in response to Ofcom's Preliminary View, which was to find a breach of Rule 2.3. In summary it said that: "we have to question at which point did the word "chinky" become unacceptable or whether it is still in the process of becoming unacceptable."

The Licensee referred to Ofcom's 2010 research on offensive language<sup>1</sup> (see below under Decision), and said that in its opinion the research findings were "rather hazy in its references to attitudes to the word 'chink'". Irvine Beat FM pointed out that the research examined the term "chink", and not "chinky", to describe takeaway food.

Irvine Beat FM also commented on Ofcom's reference in its Preliminary View to a Scottish Government report from 2005/6<sup>2</sup> (again see below under Decision), which did consider the use of the word "chinky" when referring to Chinese food and restaurants. The Licensee highlighted that the survey was conducted across Scotland and therefore "we would expect a large variation in responses across the regions and cities in our country, depending on the racial demographics in each area and the experiences of those living there." The Licensee also added that "rightly or wrongly, the word "chinky" is a local colloquialism in the West of Scotland. Its use is declining as a younger generation is being made more aware of diversity in their community. However, older generations still use this and other words without considering them to be offensive."

Nonetheless the Licensee apologised again for "any unintentional offence" caused and said it had updated our on-air style guide to re-iterate that these types of words must not be used on air."

## Decision

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

Under Rule 2.3, broadcasters must ensure that potentially offensive material (including offensive and discriminatory language) is justified by its context. This means that although there is significant room for innovation, creativity and challenging material within programming, broadcasters do not have *unlimited* licence to include offensive material in programmes.

In this case, Ofcom considered firstly whether the use of the word "*chinky*" had the potential to cause offence.

In reaching our view on this point, we took into account the Licensee's comments in response to the Preliminary View, namely that: Ofcom's 2010 research on offensive language did not specifically assess the word "chinky" as opposed to "chink", and that the Scottish Executive report from 2005/6 did not consider possible regional variations in the acceptability of the use of the word "chinky".

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>

<sup>2</sup> <http://www.gov.scot/Resource/Doc/148647/0039524.pdf>: Scottish Executive, *One Scotland Many Cultures*

We noted that Ofcom's 2010 Research on offensive language<sup>3</sup> on the use of the word "chink" referred only to the word when used to describe a person from China, rather than the word "chinky" broadcast in this case. However, because the word "chinky" is clearly identifiable as related to Chinese people and culture, we considered that the research findings would be helpful in guiding Ofcom with this case.

The 2010 research noted that where a word was considered to be discriminatory, but it had not received the same level of public disapproval as other racist words, some participants from across the UK considered it to be less offensive. For example, some participants felt that "chink" was less offensive than the words "paki" or "nigger" because it was not as "well known to be socially unacceptable". However, other participants considered that, in principle, "chink" was as discriminatory as these words and should be treated in the same way even though it may not be as well known.

We also noted a report by the Scottish Executive from 2005-6<sup>4</sup> which identified that there had been "a real movement over time in terms of the unacceptability of indirect verbal racist comments" in Scotland such as the term "chinky" when used to describe food and shops.

Ofcom considered it was likely that listeners throughout the UK would be of the view that the word "chinky" was a derogatory word and that the use of the word was therefore capable of causing offence and falling short of generally accepted standards, in particular to members of the Chinese community.

We then went on to consider whether the broadcast of this offensive word was justified by the context in this case. As noted in the Code, context includes but is not limited to: the editorial content of the programme, the service on which the material was broadcast, the degree of harm or offence likely to be caused and the likely audience expectation.

In terms of the editorial content of this programme, the word was used by the presenter of a community radio station based in the west of Scotland to describe Chinese take away food. Ofcom considered there was no specific editorial context to justify its use other than to describe a particular type of meal.

We also considered the likely expectations of the audience and whether the fact that the service was based in a particular region provided justification for its use. As discussed above, it is Ofcom's view that the use of the word "chinky" – whether it is used to describe someone from Chinese descent or food, shops or restaurants associated with the Chinese community – has the potential to offend. We noted the Licensee's view that in the areas served by the community radio station this word would not be considered "a racist slur". However, the 2005-6 research by the Scottish Executive cited above indicated that people in Scotland were aware of the word's racist connotations when used to describe shops and restaurants. Given this, and the fact that the word was used without any specific contextual justification, we did not consider that the expectations of listeners in the station's broadcasting area were likely to be significantly different to those in the UK as a whole.

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<sup>3</sup> <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>

<sup>4</sup> <http://www.gov.scot/Resource/Doc/148647/0039524.pdf>: Scottish Executive, *One Scotland Many Cultures*

We noted that the Licensee apologised for any offence caused and had changed its compliance procedures in response to this incident.

Nonetheless, for all of the reasons set out above, Ofcom concluded that the use of the word did not meet generally accepted standards, in breach of Rule 2.3 of the Code.

### **Breach of Rule 2.3**

## In Breach

### Music video

*Sangat TV, 13 August 2015, 20:30*

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#### Introduction

Sangat TV broadcasts a religious and general entertainment service in English and Punjabi, which is primarily directed towards the South Asian Punjabi community in the UK. The licence for Sangat TV is held by Regis 1 Limited (“Regis 1” or “the Licensee”).

Ofcom was alerted by a viewer to a music video broadcast on Sangat TV featuring a song called *Jinde Sukha Anthem – Tigerstyle*. The complainant considered that the video glorified the actions of two Sikh nationalists Harjinder Singh Jinda and Sukhdev Singh Sukha (“Jinda” and “Sukha” respectively). These two men, who were members of the Khalistan Commando Force<sup>1</sup>, were hanged in 1992 for the assassination of General Arun Shridhar Vadiya, the Chief of the Indian Army responsible for Operation Bluestar<sup>2</sup> in 1984. They were also found responsible for the murder of two Indian politicians<sup>3</sup>.

Ofcom noted that the music video in this case was approximately four and a half minutes in duration and incorporated the theme song for the newly released Punjabi film *The Mastermind Jinda Sukha*. The music video consisted of clips of two artists performing a song interspersed with clips of scenes from the film *The Mastermind – Jinda Sukha*, which showed the actors who played Jinda and Sukha in the film as well as other Sikh symbols and imagery. For example, there were clips showing the actors in the film depicting Jinda and Sukha: triumphantly raising their hands while in handcuffs; participating in a renowned bank robbery; and embracing one another. The music video also featured images of armed Sikh warriors and roaring lions (these animals having a particular significance in Sikhism and representing courage, majesty and strength).

Ofcom translated the lyrics of the song included in the music video, which were as follows:

*“When cruelty and oppression reaches its peak.  
And when, o people, even the courts look the other way.  
And the respectable mothers from whose womb*

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<sup>1</sup> The Khalistan Commando Force (“KCF”) was an armed Sikh nationalist organisation formed in response to the Indian army’s storming of the Golden Temple at Amritsar in June 1984. The Indian government has designated the KCF as a banned terrorist organisation (see <http://www.mha.nic.in/BO>) but it is not similarly designated in the UK.

<sup>2</sup> Operation Bluestar was the Indian Army’s controversial military operation against the Golden Temple at Amritsar in June 1984. The Golden Temple is highly revered as a sacred site by the Sikh community, and Operation Bluestar was aimed at removing a number of Sikhs who were arguing for an independent Sikh homeland from the Golden Temple, which they were occupying at that time.

<sup>3</sup> In 1985 Jinda and Sukha assassinated the Indian Congress MP Lalit Maken (as well as his wife and a friend) and Indian Congress Leader Arjun Dass as a result of these politicians’ involvement in the 1984 anti-Sikh riots which followed Operation Bluestar and resulted in the deaths of many Sikhs in parts of India.

*martyrs are born shed their tears.*

*And then some brave sons rise up for the struggle.  
Upon meeting each other, these two sons took  
the destiny of the nation in their hands.  
Bhindranwale's<sup>4</sup> brave lions roared once again.  
O people, there are few as brave as courageous Jinda.  
They were like brave lions, O people!"*

[MUSIC]

*"Jinda and Sukha early one morning went looking for [General] Vadiya in Pune<sup>5</sup>  
and surrounded the car [This line was repeated three times].  
And then the Khalsa<sup>6</sup> [i.e. the assassins] obliterated the car.*

*They knew what they were doing and celebrated and gave each other sweets  
upon hearing they had been sentenced to death.  
The mission of these martyrs had been fulfilled  
[This line was repeated three times].*

*It is not in every person's destiny to be as courageous as Jinda and Sukha.  
In every house there are young men born who have such destiny  
[This line was repeated three times]."*

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

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

We therefore asked Regis 1 how the material complied with this rule

## **Response**

The Licensee stated that on being contacted by Ofcom it had "removed" the music video from its schedule "pending further investigation into the matter".

Regis 1 said that the music video was "a promotional extract" of the Punjabi language cinema film *The Mastermind – Jinda Sukha*, which was due to be released in UK cinemas in September 2015. It added that *The Mastermind – Jinda Sukha* was of "significant historic value to the Punjabi community worldwide". In addition, it said that it had received no remuneration for broadcasting the music video and that it makes no "financial gain from promotional videos and/or advertisements that are deemed to be in the interest of the community".

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<sup>4</sup> Jamail Singh Bhindranwale was the leader of the Sikh militants who occupied the Golden Temple in Amritsar in June 1984 – see footnote 2.

<sup>5</sup> A city in India.

<sup>6</sup> A form of military formation such as a battalion.

Before broadcasting the music video the Licensee said that its editorial team had “confirmed with the local agents of the movie” that the video included extracts from the film and as such “had been approved by the BBFC<sup>7</sup> for public screening”. The Licensee stated its understanding was that “any movie or an extract of a movie cleared by the BBFC for public screening and where the audio version of it was also being broadcast over the UK radio stations, would be suitable for public broadcast on Sangat TV as well”.

As a consequence, Regis 1 said that it had not only checked the music video “briefly” prior to broadcast. It added that it was “confused as to how a movie cleared by BBFC for public screening could fall foul of Ofcom guidelines and would appreciate Ofcom educating us on this matter, to ensure that no incidents such as this recurs in the future”.

## Decision

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

In reaching this Decision, Ofcom acknowledged the importance attached to the audience’s and broadcaster’s right to freedom of expression, set out in Article 10 of the European Convention on Human Rights (“ECHR”). This encompasses the right to hold opinions and to receive and impart information and ideas without undue interference by public authority. Therefore, Ofcom must seek an appropriate balance between ensuring members of the public are adequately protected from material which may be considered offensive on one hand and the right to freedom of expression on the other.

In addition, Ofcom has had regard to Article 9 of the ECHR, which states that everyone “has the right to freedom of thought, conscience and religion”. This Article goes on to make clear that freedom to “manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of...health...or for the protection of the rights and freedoms of others”.

Ofcom has also had regard to the fact that music videos are an artistic and creative medium, which can and do sometimes contain challenging content and songs with lyrics which can articulate the full range of human experiences and emotion, and which some may find offensive. Ofcom recognised that as a channel targeted at the Sikh community, Sangat TV will want to broadcast content that has an interest to Sikhs, such as a music video and song from a Sikh cinema film due to be released into cinemas in the UK. We also took into account that just because content in a lyrical form praises the bravery and courage of individuals who have committed criminal acts, this does not mean that there has been a breach of Section Two of the Code.

Rule 2.3 requires that broadcasters ensure that the broadcast of potentially offensive material must be justified by the context.

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<sup>7</sup> British Board of Film Classification.

Ofcom therefore first considered whether this material had the potential to cause offence.

Ofcom noted that the lyrics and music video contained numerous positive references that could be reasonably interpreted as glorifying the actions of the two men who assassinated a senior member of the Indian army and two elected Indian politicians. Ofcom noted that the song lyrics variously commemorated the two men as being “*brave sons*” and “*like brave lions*” and stated that there were few “*as brave as courageous Jinda*”. The song lyrics also described in positive terms Jinda’s and Sukha’s murder of General Vadiya (“*the Khalsa obliterated the car*”, “*they knew what they were doing and celebrated*”, “*the mission of the martyrs had been fulfilled*” and they took “*the destiny of the nation in their hands*”). Finally, the song lyrics stated that while “[i]t is not in every person’s destiny to be as courageous as Jinda and Sukha” there are “[i]n every house...young men born who have such destiny”. In Ofcom’s opinion, broadcast content containing such positive references to two convicted killers and one of the three acts of murder they had committed, which was still within living memory and is still an active source of dissension and controversy, had the potential to cause serious offence.

Ofcom then went on to consider whether the material was justified by context.

Ofcom recognises that the Sikh community reveres figures who are regarded as martyrs because they have died or undergone suffering in the name of Sikhism. We also recognise that martyrdom represents an important element in this faith. However, while some Sikh martyrs are widely and universally accepted as martyrs by Sikhs, dating back to the seventeenth century, it is Ofcom’s understanding that there is considerably less consensus in the Sikh community about the status of certain Sikhs who have died, or undergone suffering, including imprisonment, in the name of the Sikh faith more recently. Therefore while some Sikhs may well regard Jinda and Sukha as martyrs, we understand this would not be the universal view of all Sikhs. Ofcom also acknowledges the long-standing dispute that exists between members of the Sikh community in India and the Indian authorities as to the degree of self-determination that should be afforded to the Sikh community in India. In this context, it appears that some Sikhs regard Jinda and Sukha as “freedom fighters” because of their involvement in the killing of General Vadiya and their subsequent hanging.

Consistent with both the right to freedom of expression and right to freedom of thought, conscience and religion, the Code does not prevent broadcasters from referring to individuals who some in a particular community think have taken legitimate action against members of the army and politicians and who they consider to be responsible for violent acts against that community. However, in doing so, broadcasters must ensure that references to such individuals who have carried out extreme acts of violence, including murder, are sufficiently contextualised to ensure compliance with the Code.

In Ofcom’s view, taking the lyrics and accompanying imagery within the music video together, we considered that the Licensee had broadcast a music video which sought only to describe in positive terms two convicted killers, the “*courageous*” and “*brave*” Jinda and Sukha, specifically for the murder of General Vadiya, and without placing their actions in any context. This was a stand-alone music video, not shown as part of any programme material and scheduled between advertising and before a news programme. There was therefore no editorial context provided by the Licensee to place the lyrics and images in any wider context. For example, at no point was the unqualified praise for Jinda and Sukha challenged or otherwise placed in context, by stating, for instance, that the two men had been convicted for murder. In addition, we

considered that the images of armed Sikh warriors and roaring lions in the video – the latter having a particular significance in Sikhism and represents courage, majesty and strength – further endorsed unequivocally the theme of Jinda and Sukha’s bravery and martyrdom as set out in the song’s lyrics.

Further, although the lyrics were referring to an historical event, because the murder of General Vadiya and the two other politicians took place relatively recently in the mid-1980s, we considered it likely that many in the audience would still have direct memories of these acts taking place. This in our view was likely to have made the events referred to more immediate and therefore the potential for offence was likely to have been higher. In addition, while acknowledging that the majority of Sangat TV’s audience is likely to be Sikh, it was Ofcom’s view that the content would have been likely to have exceeded the likely expectations of UK audiences about content on any UK channel in general.

We noted the following lyrics at the end of the song:

*“It is not in every person’s destiny to be as courageous as Jinda and Sukha.  
In every house there are young men born who have such destiny”.*

We considered that these lyrics could not be reasonably interpreted as being an unambiguous call to young Sikhs to emulate the actions of Jinda and Sukha<sup>8</sup>. This is because the song lyrics did not state that all people would follow a course of violence in pursuing their aim to further the Sikh cause: rather the lyrics spoke only about some, like Jinda and Sukha, who did follow this course. However, we considered that by implying strongly that it was the “*destiny*” some young male Sikhs to act in the same manner as Jinda and Sukha, this content would in our view have caused considerable offence.

For these reasons, our view was that this music video was not sufficiently contextualised to justify the potential offence caused by positive references to the two men found guilty of murder.

In reaching our decision, we took careful account of the Licensee’s representations. Firstly, Regis 1 said that this music video was a “promotional extract” from a film which was “of significant historic value to the Punjabi community worldwide”. Ofcom recognised that, as a channel targeted at the Sikh community in the UK, Sangat TV would want, and has the editorial freedom, to broadcast content that is of interest to Sikhs. However, in doing so, the Licensee has a responsibility to ensure that any material it chooses to broadcast, which may cause offence, is justified by the context. In this case Ofcom was of the view that there was insufficient context to mitigate the offence which this video may have caused.

Second, Ofcom noted the Licensee’s comments that, as the music video “was a promotional extract” of a Punjabi language movie and included extracts from that film it therefore had been “approved by the...BBFC for public screening”. Sangat TV confirmed its understanding was that “any movie or an extract of a movie cleared by the BBFC for public screening and where the audio version of it was being broadcast over UK radio stations would be suitable for public broadcast on Sangat TV as well”.

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<sup>8</sup> Ofcom therefore did not pursue this case under Rule 3.1 of the Code, which states: “Material likely to encourage or incite the commission of crime or to lead to disorder must not be included in television or radio services”.

In response, Ofcom would like to clarify that it is not the case that just because a music video or other broadcast material includes extracts from a cinema film or associated content which has received a certificate for the purposes of cinema exhibition from the BBFC, that it is necessarily compliant with the Code if transmitted on an Ofcom licensed service. This is principally because the BBFC does not apply the Code when deciding whether, and if so how, to classify a film for showing in cinemas or other distribution. In this case, the BBFC did not classify this music video. Further, because the BBFC has classified a feature film this does not mean that a licensee can broadcast extracts from that film in a different context and consider that this material would necessarily comply with the Code. We were therefore greatly concerned that because the Licensee considered that BBFC approval for the film itself (but not the music video) was sufficient for its compliance purposes, Sangat TV only checked the music video “briefly” prior to broadcast. Regis 1 had responsibility for satisfying itself prior to broadcast that the content in this video (including the lyrics and not just the extracts taken from the film) was compliant with the Code. This regulatory requirement is irrespective of the rules of any other regulatory body, particularly where those rules relate to content delivered in an entirely different medium (i.e. cinema films).

It is Ofcom’s view that, in the particular circumstances of this case, the material was offensive and not contextually justified and this was a breach of Rule 2.3 of the Code.

### **Breach of Rule 2.3**

## In Breach

### Bay FM News

*Bay FM Radio, 13 October 2015, 15:00*

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#### Introduction

Bay FM Radio is a community radio station targeting the Exmouth area. The licence for Bay FM Radio is held by Bay FM Radio Limited (“Bay FM” or “the Licensee”).

A complainant alerted Ofcom to a news item, which the complainant considered was not duly accurate.

On assessing this content, we noted that during an edition of *Bay FM News*, there was a news item that referred to the scale of Bay FM Radio’s listenership in the local area. In the news item, the newsreader said the following:

*“A recent independent survey on 499 residents in Exmouth indicates that Bay FM is paving the way in popularity and hitting the spot locally, with only Heart reaching 0.8 per cent more than Bay FM, and station manager Andy Green is delighted”.*

Andy Green then said:

*“Well of course it’s absolutely fantastic news for the station and the community it serves. The survey shows the listeners love the station, its great music and its true localness. Bay FM is not just registered in Exmouth, with studios miles away, it’s based in Exmouth, serving Exmouth and the surrounding areas and that’s why people love Bay FM”.*

As part of its assessment, Ofcom asked Bay FM to provide further details of the survey mentioned in this news item. The Licensee confirmed that the survey was carried out by volunteers linked to Bay FM Radio. Given that the survey referred to in the news item had been carried out by Bay FM Radio volunteers but the survey had been described as an “*independent survey*” in the news item, Ofcom considered that the material raised issues warranting investigation under Rule 5.1 of the Code, which states:

“News, in whatever form, must be reported with due accuracy and presented with due impartiality”.

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

#### Response

By way of background, Bay FM said it had undertaken the survey referred to in the news item by “using volunteers from Bay FM who are not known by sight (being background volunteers at the station), who carried out the survey as accurately as possible dressed in plain clothes, making no reference to Bay FM or any other radio station whatsoever”. It added that it “was in the interests of Bay FM to endeavour to undertake as neutral a survey as possible in order to obtain the most accurate results”. The Licensee also said that the survey was “an honest attempt to confirm

the success of a popular but under-resourced community radio station and the station merely wished to celebrate the result of not only surviving but thriving in the face of considerable hostile competition”.

Bay FM said as a community radio station with limited resources it “made use of its volunteer commitment by undertaking a street survey that was conducted under the most fair conditions that could be implemented”. It added that “[s]treet surveys are one of the most well used methods of measuring audiences that community radio stations can deploy and have been recommended for years as best practice by academics, community radio practitioners, and the wider sector”. However, the Licensee added that: “In hindsight, it is regretted that our methods could be misconstrued for potentially being less than neutral but it was not the intention of Bay FM to conduct a less than objective street survey”. In this context, Bay FM said that in an edition of *Bay FM News* broadcast on 20 October 2015 it broadcast an apology for this incident.

## Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that news included in television and radio services is reported with due accuracy and presented with due impartiality. This objective is reflected in Section Five of the Code.

When applying this objective, Ofcom must take into account the broadcaster’s and the audience’s right to freedom of expression as set out in Article 10 of the European Convention on Human Rights.

Rule 5.1 contains the requirement on broadcasters to report the news with “due accuracy”. The notes published alongside the rules makes clear that “due” means adequate or appropriate to the subject and nature of the programme. In addition, the published Guidance to Section Five states that: “Broadcasters should take care to report surveys and statistics in context”<sup>1</sup>. The rule is primarily intended to ensure that viewers can trust news broadcasters to report the facts of the news, and the factual background to it, with appropriate accuracy. It goes to the heart of the relationship of trust between a news broadcaster and its audience.

In this case, the news item reported on a survey which had been carried out in Exmouth, the area where Bay FM Radio is received, which indicated the station’s relative popularity amongst radio listeners in the locality. There is no prohibition under the Code for a radio station to report on such a matter in its news output. However, in doing so it must ensure its reporting is duly accurate.

In the news item the survey in question was referred to as an “*independent*” survey which the news item said “*indicates*” that Bay FM Radio was “*hitting the spot locally*” with only one other local station being found to be slightly more popular amongst the survey respondents. We noted that the survey had been carried out by Bay FM Radio volunteers. We also noted that the Licensee argued that the volunteers who carried out the survey were: “not known by sight” to the survey respondents; “carried out the survey as accurately as possible dressed in plain clothes”; and, made “no reference to Bay FM or any other radio station whatsoever”. However, we considered

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<sup>1</sup> See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section5.pdf>, paragraph 1.16.

that there was potential for the audience to have been misled by the information provided about the survey. In particular, we considered that the labelling of the survey as “*independent*” in the broadcast gave listeners the impression that the survey had been carried out by an organisation or individuals separate to, and independent from, Bay FM and its staff and volunteers, when this had not been the case. In our view, it was likely that listeners would have been left with the impression that the survey in this case had been carried out by a polling organisation using established sampling and weighting methods, for example of the type advocated by the British Polling Council<sup>2</sup>.

We also took into account that the news item included Bay FM Radio’s station manager’s statements: welcoming the results of the survey as “*absolutely fantastic news for the station and the community it serves*”; that “*the survey shows the listeners love the station, its great music and its true localness*”; and that the reasons “*why people love Bay FM [Radio]*” was because Bay FM Radio “*is not just registered in Exmouth, with studios miles away, it’s based in Exmouth, serving Exmouth and the surrounding areas*”. In our view, these statements of the station manager reacting to the survey results would have been likely to have reinforced the misleading impression given to listeners that the survey had been carried out by an independent third party.

It is important that the content of news programmes can be relied on by audiences, particularly as audience trust in these programmes is likely to be higher. In this context, we considered that, because the Licensee was basing the overwhelmingly positive references to its own service on a survey it had itself carried out, the potential for undermining audience trust was correspondingly higher.

In reaching our Decision, we took into account Bay FM’s arguments that it undertook the survey in good faith in as thorough a way as possible using its own resources to try to measure the success of the station. In response, Ofcom acknowledges the resourcing challenges that community radio stations can face, and that radio stations may want to report on their relative popularity amongst their listeners. Further, the Code does not prevent broadcasters from referring to surveys carried out by any organisation, including themselves, or organisations linked to them. However, in doing so, broadcasters must refer to the provenance of such surveys with due accuracy.

We noted the Licensee said that “In hindsight, it is regretted that our methods could be misconstrued for potentially being less than neutral [and] it was not the intention of Bay FM to conduct a less than objective street survey”. In addition, we noted that Bay FM broadcast the following apology in its news output five days after the programme:

*“We recently broadcast in our news bulletin the results of a local radio survey. We suggested the survey was independent and, we have since been informed that we should have stated that the survey was carried out by plain clothed volunteers and, although there was no mention during the survey of Bay FM, or any other radio station we should not have used the word independent. It was not our intention to mislead anyone and we apologise for any misunderstanding”.*

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<sup>2</sup> The British Polling Council (BPC) is an association of polling organisations that publishes opinion polls, and consists of all the leading polling organisations in the UK. The BPC states that it “aims to encourage the highest professional standards in public opinion polling and to advance the understanding, among politicians, the media and general public, of how polls are conducted and how to interpret poll results” (see <http://www.britishpollingcouncil.org/>).

However, Ofcom considered the statement referring to the survey carried out by Bay FM volunteers as “*independent*” was not duly accurate in breach of Rule 5.1.

**Breach of Rule 5.1**

## In Breach

### Big Church Day Out

TBN UK, 17 October 2015, 10:00

TBN UK, 2 November 2015, 01:30

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#### Introduction

TBN UK is a religious channel available on satellite and digital terrestrial platforms that broadcasts a variety of Christian programming. The licensee for this service is Governance Ministries (or “the Licensee”).

*Big Church Day Out* is an annual contemporary Christian music festival held in West Sussex. This programme featured highlights of the festival and interviews with a number of performers. A complainant alerted Ofcom to the broadcast of flashing images during a performance of the song “Strobot” by LZ7 both in the initial broadcast on 17 October 2015 and a repeat transmission on 2 November 2015.

Certain types of flickering or intermittent images can trigger seizures in viewers who are susceptible to photosensitive epilepsy (“PSE”). Ofcom therefore carried out a technical assessment of the content against Ofcom’s guidance to broadcasters on flashing images (“the PSE Guidance”)<sup>1</sup>. The PSE Guidance states that a sequence containing flashing at a rate of more than three flashes per second which exceeds specific intensity thresholds may be potentially harmful.

Ofcom’s technical assessment of the material identified two sequences during the programme in which the limits set out in the Guidance were exceeded. In both instances, strobe lighting effects were projected onto the back of the stage, creating rapid and pronounced changes in brightness over the whole screen area. These sequences, which lasted just over three seconds in total, contained an average rate of nine flashes per second.

The broadcast on 2 November 2015 was accompanied by an on-screen warning:

“The following programme contains flashing images, strobe lights and flash photography”.

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

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

Ofcom therefore requested comments from the Licensee on how the programme material complied with this rule.

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<sup>1</sup>See page 14 of Guidance Notes on Section Two: Harm and Offence  
<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section2.pdf>

## Response

The Licensee said that its compliance editors considered that to the human eye the lighting in the programme did not make a strobing effect and that the intensity of the lighting did not raise issues under Ofcom's rules. Therefore, the programme was released for broadcast without any technical analysis of the compliance editors' initial judgement. It said that, in response to Ofcom's initial correspondence about the programme broadcast on 17 October 2015, it inserted an on-screen warning directly before the programme when it was broadcast the second time on 2 November 2015. However, it acknowledged that this information was not at this time also verbally communicated to audiences as required by Rule 2.12.

Governance Ministries added that in response to this incident it had reviewed its compliance procedures when reviewing material containing flashing images. The Licensee said that it had carried out special training for its staff and now implemented a system to ensure that no programme could be broadcast unless it had first successfully passed a technical assessment.

## Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that "generally accepted standards are applied to the content of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and / or offensive material".

Broadcasters are required under Rule 2.12 of the Code to ensure that adequate precautions are taken to minimise risk to viewers who have PSE. Given the significant potential harm that can result to viewers with PSE who are exposed to flashing images, Rule 2.12 makes clear that Ofcom expects broadcasters to maintain a low level of risk in this regard.

Ofcom's technical assessment found that just over three seconds of material were broadcast which did not comply with the PSE Guidance.

As Rule 2.12 makes clear, there may be circumstances where "it is not reasonably practicable to follow the Ofcom [PSE] guidance", and broadcasters can demonstrate that it is editorially justified to broadcast the problematic material containing the flashing images, provided that an adequate warning is given at the start of the programme and/or programme item.

Ofcom began by assessing whether it was "reasonably practicable" for the Licensee to have followed the PSE Guidance in this case. We noted this programme was pre-recorded and not broadcast live. The Licensee therefore had the opportunity to edit or manipulate the material digitally to eliminate or materially reduce the flashing images in the programme which exceeded the limits set out in the PSE Guidance. In Ofcom's view, as it was reasonably practicable in this case for the Licensee to have followed the PSE Guidance, it was therefore not necessary to go on to consider whether the inclusion of the flashing images was editorially justified and whether an adequate warning was given.

While we note the measures undertaken by the Licensee to avoid a recurrence of this problem, we consider both these programmes breached of Rule 2.12 of the Code.

Ofcom underlines that it is not acceptable for a licensee to conclude that material containing flashing images is suitable for broadcast purely on the basis of the subjective reaction of a small group of people. Such content should always be subject to a robust technical assessment as appropriate.

### **Breaches of Rule 2.12**

## Television Advertising Scheduling cases

### In Breach

#### Advertising minutage

*NDTV 24x7, 18 September 2015, 12:00 and 26 September 2015, 23:00*

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#### Introduction

NDTV 24x7 is a 24-hour news and current affairs channel broadcasting in English, and originating from India. The licence for NDTV 24x7 is held by New Delhi Television Limited (“NDTV Limited” or “the Licensee”).

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

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

During monitoring of licensees’ compliance with COSTA, Ofcom noted that there were two instances when the channel exceeded the permitted allowance per clock hour. On 18 September, the 12:00 clock hour exceeded the allowance by 25 seconds and on 26 September the 23:00 clock hour contained 2 minutes more advertising than permitted by Rule 4 of the COSTA.

Ofcom considered the matter raised issues warranting investigation in respect of Rule 4 of COSTA. We therefore asked the Licensee for its comments under this rule.

#### Response

NDTV Limited apologised for these overruns. The Licensee said that on 18 September, an additional advertisement “was scheduled in error, and most unfortunately the error was not picked up before broadcast”.

On 26 September, NDTV Limited explained that there was a last minute schedule change, as the programme intended for broadcast at 23:30 was replaced by a news programme. The Licensee said the replacement news programme contained an extra advertising break, which meant that the advertising that was planned to run in the first advertising break in clock hour 00:00 was pulled forward into the preceding hour, causing the overrun.

NDTV Limited said it “will be looking at appropriate steps to protect against future similar errors”.

#### Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content which it considers are best calculated to secure a number of standards objectives. One of these objectives is that “the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”.

Articles 20 and 23 of the Audiovisual Media Services Directive set out strict limits on the amount and scheduling of television advertising. Ofcom has transposed these

requirements by means of key rules in COSTA. Ofcom undertakes routine monitoring its licensees' compliance with COSTA.

In this case, the amount of advertising broadcast on NDTV 24x7 exceeded the permitted allowance on two occasions.

Ofcom noted the Licensee's explanation for how these incidents occurred. It is the responsibility of NDTV Limited to ensure it has robust compliance procedures in place to ensure compliance with the requirements of Ofcom's codes and rules including COSTA.

Ofcom notes that NDTV Limited has said it will be looking at improving its compliance in this area. However, we are concerned that the Licensee appeared to have insufficient procedures in place to avoid exceeding the minutage requirement in Rule 4 of COSTA when scheduling an extra advertisement on 18 September. In addition, as a 24-hour news service, NDTV Limited should have anticipated that a change to the schedule on 26 September would have implications for the amount of advertising broadcast in that clock hour.

As the amount of advertising broadcast by NDTV 24x7 on 18 and 26 September exceeded the permitted advertising allowance, Ofcom is recording a breach of Rule 4 of COSTA in each case. Ofcom will continue to monitor the Licensee's compliance with COSTA.

#### **Breaches of Rule 4 of COSTA**

## Fairness and Privacy cases

### Upheld

#### Complaint by Mr Songo Didier Aypone

*Welcome TV, MATV, 18 July 2015*

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#### Summary

Ofcom has upheld Mr Songo Didier Aypone's complaint of unjust or unfair treatment in the programme as broadcast.

The live discussion programme *Welcome TV* discussed matters relating to the Congolese community living in the UK. Two clips of archive interview footage of Mr Aypone discussing his political views were shown in the programme. Mr Aypone complained that these clips were six years old and included "personal political opinions" that he no longer held.

Ofcom found that, in the particular circumstances of this case, the broadcaster had not taken sufficient care to satisfy itself that the material facts relating to Mr Aypone's contribution were not presented, disregarded or omitted in a way that was unfair to him.

#### Introduction and programme summary

Midlands Asian Television ("MATV") is a satellite television service that broadcasts principally Indian programming in Hindi, English, Gujarati and Punjabi. MATV has also broadcast some programming in Lingala<sup>1</sup> and French, which was the case with this edition of the programme *Welcome TV*. An independent English translation of the programme was obtained by Ofcom. Neither party objected to Ofcom using this translation for the purpose of investigating this complaint.

On 18 July 2015, MATV broadcast an edition of *Welcome TV*. This particular edition of the programme, presented by Mr Coco Aris and "Madame F", discussed matters relating to the Congolese community living in the UK. Madame F explained:

*"...we want to look at what the diaspora can bring to the Congo, and what the Congo can bring to us, the diaspora".*

Madame Peggy Manolisa, a guest on the programme, then said:

*"...we the people of the diaspora, who have been in the diaspora for a number of years, we are already part of an institution which is established here where we live, throughout Europe. We have schools, we have the NHS, there are many services that we use. So we would like to build from that basis and say what can we, as Madame F said, what can we bring to the Congo?"*

They then went on to discuss education in the Congo. Madame Manolisa said:

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<sup>1</sup> Lingala is a Bantu language spoken throughout the north-western part of the Democratic Republic of the Congo ("DRC") and a large part of the Republic of the Congo.

*“Education makes the difference between everything, and that is what we would like to accomplish back home, in our country, in the Congo”.*

They then spoke about investment plans in the Congo. Madame F stated:

*“So, for our investment plans in the Congo, we need them, given that we have a ministry, a minister of the diaspora, we need that minister to do these things for us. If we have our projects, we need that person to take them, to show them to other ministers, help them come to fruition because we would like to bring manpower. Because you see, the Chinese are there, it is easy for them to do many many things there. Why shouldn't it be easy for us, the people of the diaspora? So we need to encourage investments, going to have people there who will open doors for us”.*

The programme then went to a commercial break.

Directly after the commercial break, two clips were shown. The first clip showed a man (Mr Aypone) standing outside being interviewed. He said:

*“Proper behaviour. Why don't they make a mess? I blessed the President<sup>2</sup>, [inaudible] I act for order, peace, [inaudible], today even pastors have become [inaudible] because today here is no trouble. Because the President supports the five visions, the five building projects, if the weather really happens, let me finish, [inaudible] if people pay them \$600, those small churches will close. If they pay \$600, they will stop going to church, they will go to work”.*

This cut straight to a second clip of Mr Aypone being interviewed. The clip included the following exchange:

Interviewer: *“There is this new trend, pastors write ‘I bought a (church) venue/hall. We have bought at church. This church is ours [interrupted]’.*

Mr Aypone: *“Celebrities. People make light of marriages and separate married people. People break marriage because they're not informed, they have not been called/appointed. Yet they are in the festive atmosphere. That is one of the problems we have today in Congo”.*

Interviewer: *They recently invited me to Germany and they feared that I would forget or make a mistake, so they said Pastor, that people could think that this pastor didn't [inaudible] me, in Germany, they said Pastor, you put that child to the ground. This is a bit off topic but, you put that child down, as long as you're here we know that you put that child down. You gave that child the name of Cerruti. Your name is Salomon<sup>3</sup>, and your child is Cerruti, the name of a brand. Pastor [interrupted]”.*

The clip ended abruptly and the programme returned to Mr Coco Aris and Madame F in the studio.

Directly after the clip was shown, Mr Aris stated:

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<sup>2</sup> The translator explained that the word “Rais” in this context referred specifically to the President of the DRC.

<sup>3</sup> Ofcom understands that Mr Aypone is known by the name “Salomon”.

*“In Germany. This is your programme, La Voix du Peuple, still collaborating with Madame F TV series. Madame F we were interrupted, so to finish our subject about importing and exporting things for us, the Congolese of the diaspora, to help us export things to the Congo, in a nutshell what can we do us, to conclude?”*

The discussion continued on the topics of importing and exporting of goods from and to the Congo and education. No further footage of Mr Aypone was included in the programme, nor was he referred to again.

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

Mr Aypone complained that he was treated unjustly or unfairly in the programme as broadcast because footage of him being interviewed six years ago was included in the programme without his consent. He said that the content was “maliciously broadcast” in order to “humiliate and belittle my personality”. He said that the clips included revealed “personal political opinions” that he no longer held.

By way of background, Mr Aypone explained that he had recorded the interview in support of the government of the Democratic Republic of the Congo (“DRC”). However, he said that he had since changed his views on the regime since it had “...changed its vision from protecting the rights of its citizens to killing and raping men and women and serving for their own interest”. He said that “Since I had joined the opposition [to the DRC government], my message both on the TV and social media are in favour of the democracy in the Congo and to stop the barbaric action of the actual regime which kills and destroys the Congo”. He said that MATV supported the regime.

In response, MATV said that nothing wrong was said against Mr Aypone in the programme. It said that Madame F, one of the presenters on the show, had been trying to encourage and to motivate Congolese people to work for peace in the Congo, a country divided by conflict.

MATV said that Mr Aypone had recorded a video when he travelled to the DRC to promote peace and had brought it back with him on his return to the UK. MATV said that this recording had been previously broadcast on other channels and was available on YouTube. It said that Mr Aypone had also “earlier” asked a presenter on MATV “...to use it for his publicity”.

The broadcaster reiterated that nothing was said against Mr Aypone in the programme. In fact, it said that Mr Aypone was shown talking for peace and praising the Congolese Government’s programme. MATV said that it wondered how Mr Aypone could consider its use of the interview footage in the programme as “tarnishing his image” while it was him who had produced the video and asked MATV to broadcast it.

### **Ofcom’s Preliminary View**

Ofcom prepared a Preliminary View in this case which was to uphold the complaint. Both parties were given the opportunity to make representations on the Preliminary View. While Mr Aypone said that he disagreed with some of the comments made in the broadcaster’s response to the complaint (as summarised above), Mr Aypone said that he agreed with Ofcom’s Preliminary View to uphold his complaint. MATV chose not to provide representations on the Preliminary View.

## Decision

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

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

In reaching this Decision, Ofcom carefully considered all the relevant material. This included a recording of the programme as broadcast and translated transcript, both parties' written submissions, and supporting documentation.

When considering and deciding complaints of unjust and unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of the Code.

Ofcom considered Mr Aypone's complaint that he was treated unjustly or unfairly in the programme as broadcast because footage of him being interviewed six years ago was included in the programme without his consent. He said that the content was "maliciously broadcast" in order to "humiliate and belittle my personality". He said that the clips included revealed "personal political opinions" that he no longer held.

In considering this complaint, we had particular regard to Practice 7.9 of the Code. This states that before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation. Ofcom considered whether the inclusion of the footage of Mr Aypone in the programme was consistent with this.

Ofcom first acknowledged the disparity between the recollections of Mr Aypone and MATV regarding whether he gave consent for the footage to be included in the programme. While MATV stated in its response to the complaint that Mr Aypone had "told us [to] Broadcast it", we noted that MATV did not specify when exactly Mr Aypone had allegedly provided his consent for the material to be broadcast or any details about the nature of this consent. We therefore considered that, based on the information available to us, Mr Aypone had not given his explicit consent for the material to be included in the programme broadcast on 18 July 2015.

We then considered, in the absence of Mr Aypone's consent whether the inclusion of the footage resulted in unfairness to him.

Having carefully viewed the programme and examined the translated transcript of it, we noted, in particular, that in one of the clips Mr Aypone stated: "*I blessed the President [of the DRC]*". From the information provided in his complaint, Ofcom understood that the interviews had been filmed six years ago. We understood that the President referred to by Mr Aypone was President Joseph Kabila who had been President of the DRC since January 2001. In these circumstances, we considered that, viewers would have understood that Mr Aypone had been referring to President

Kabila, and that given the programme did not make clear that the footage had been recorded six years ago, that Mr Aypone, at least up until the day of broadcast, supported him.

We noted that Mr Aypone said that since recording the interviews, he had changed his political views because he believed that President Kabila's "regime" had "...changed its vision from protecting the rights of its citizens to killing and raping men and women and serving for their own interest". While Ofcom was in no position to decide on the veracity, or otherwise, of Mr Aypone's claims about President Kabila and his government, we considered that, in this case, by failing to make clear that the footage had been recorded six years ago, viewers would have been left with the clear impression that Mr Aypone had made his comments recently and that he still held those views on the day of broadcast. This had the clear potential of affecting viewers' perceptions of Mr Aypone in a material and adverse way.

Therefore, in the particular circumstances of this case, Ofcom considered that the broadcaster had not taken sufficient care to satisfy itself that the material facts relating to the interview footage of Mr Aypone were not presented, disregarded or omitted in a way that was unfair to him.

**Therefore, Ofcom has upheld Mr Aypone's complaint of unjust or unfair treatment in the programme as broadcast.**

## Not Upheld

### Complaint by Dr Arsalan Iftikhar

*Ikhtafali Note, Dunya News, 3 July 2015*

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#### Summary

Ofcom has not upheld Dr Arsalan Iftikhar's complaint of unjust or unfair treatment in the programme as broadcast.

The programme included a discussion about a news report in which it was alleged that Dr Iftikhar had travelled to Monte Carlo, France in 2010 with Ms Ayyan Ali, a model who, the programme said, had recently been arrested in Pakistan. The offence was not disclosed. Photographs of Dr Iftikhar were shown throughout.

Ofcom found that the broadcaster took reasonable care to satisfy itself that the claims made about Dr Iftikhar were not presented, disregarded or omitted in a way that was unfair.

#### Programme summary

Dunya News is a news and current affairs television channel broadcast in Urdu. A transcript in English (translated from the original Urdu) of the programme as broadcast was prepared by Ofcom. A copy was provided to the complainant and the broadcaster and neither party raised any objections to Ofcom using the translation for the purpose of considering the complaint.

On 3 July 2015, Dunya News broadcast an edition of *Ikhtafali Note*, a talk show debating current affairs issues. The programme's presenter introduced the story and said:

*"Welcome back viewers, you've been seeing some photographs on screen, and we have also referred to the tale of 'Arsalan to Ayyan'. This then is the tale. On 2nd [July 2015] Dunya News published a report, and in it they mentioned Arsalan and Ayyan in very veiled terms. Arsalan has very deep rooted links to the legal world, and yet to date we have received no request for a retraction of this story. No legal action has been initiated by him. So what's going on here Babar Sahib?"*

Accompanying this introduction were a number of separate photographs of Ms Ali and Dr Iftikhar shown on screen. Ms Ali and Dr Iftikhar's first names, "Ayyan" and "Arsalan", appeared in text underneath their photographs. In addition, an on-screen banner was shown which said: *"Why haven't they asked for [a] retraction?"*

Dr Babar Awan, a political analyst and commentator on the programme, said:

*"Look, this story is from a highly respected reporter who is also the resident editor. This story has many angles..."*

Dr Awan went on to explain one version of events in more detail and the following exchange with the presenter took place:

Dr Awan: *"Well, this model that has been arrested. Why has she not been charged to this day? That's number one, and a possible explanation is*

*that the investigation has decided to encompass the matters referred to here.*

Presenter: *“Correct, correct.*

Dr Awan: *And it’s also possible that people are not investigating this, out of a great fear. As you will recall, the Chief Executive of Bahria Town, during his case, he brought forward this type of information/detail about ‘financial bungling’ [sic]. That case has also not been decided on the merits. Before this, this person’s father [the complainant’s father], the former Chief Justice of Pakistan, who during General Musharraf’s tenure had a reference made against him to the Supreme Judicial Council. Well that matter has still not been decided on the merits of the case either. It was challenged in another place in the Supreme Court’s jurisdiction, and that matter was quashed. In other words no hearings were held. The fourth angle to this story that arises, is did the FIA<sup>1</sup> with reference to this story...*

Presenter: *[interrupting] Yes, but also tell us what the actual story is that was published on the 2<sup>nd</sup> [July 2015].”*

A newspaper article, along with photographs of Ms Ali and Dr Iftikhar, was shown on-screen. The presenter then said:

*“Yes, well the story goes that in 2010 the former Chief Justice’s son travelled from London to Monte Carlo, and it is being said he was accompanied on the journey by this model [Ms Ali]. It is also being said about Arsalan Iftikhar who made the journey, that he spent a great deal of money, about £360,000 which it is being suggested was spent on shopping and accommodation. This is what has come to light”.*

At this point, an on-screen message was shown which said: *“Ayyan and Arsalan, why has there been no retraction?”*

The following exchange then took place between the presenter and Dr Awan:

Dr Awan: *“Now of course there is the possibility that two people simply travelled together sitting side by side, or it may be coincidental that you end up sitting together like on a plane or on a bus. There is that possibility”.*

Presenter: *“But, in this report, it is said that they remained together throughout”.*

Dr Awan then spoke about an FIA investigation into *“an artist”* who was arrested at an unspecified airport over articles found in her handbag, speculated as to why the FIA, only showed *“such eagerness and haste in investigating cases from Karachi or those involving political opponents of the government of the day? Why doesn’t it show the same eagerness over here?”*

There was no further mention of Dr Iftikhar in the programme and no further photographs of him were shown.

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<sup>1</sup> The Federal Investigation Agency is a federal law enforcement agency in Pakistan.

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

Dr Iftikhar complained that he was treated unjustly or unfairly in the programme as broadcast because the programme made “false and baseless” allegations against him aimed at defaming him and casting doubts about his reputation. In particular, Dr Iftikhar said that the programme suggested he was corrupt and a “morally dishonest” person because it associated him with Ms Ali, a model, who had been arrested on suspicion of money laundering. Dr Iftikhar said the inclusion of photographs of him, of his name and of his father's name in the programme made him identifiable and therefore associated him with the allegations made in the programme.

In response, the broadcaster said that Dr Iftikhar's association with Ms Ali was not breaking news as it was already information which was in the public domain and added that Dr Awan had only “followed up” on the story. Dunya News provided Ofcom with website links to news articles<sup>2</sup> which were published the day before the programme was broadcast which included details about the alleged association between Dr Iftikhar and Ms Ali. The broadcaster said that throughout the programme, Dr Awan made it clear that it was only alleged that Ms Ali had travelled with Dr Iftikhar to Monte Carlo and that it could have been a coincidence that Ms Ali had travelled on the same flight, or had sat close to Dr Iftikhar. The broadcaster said that Dr Iftikhar had not denied he had taken this trip.

Dunya News said that the details of Dr Iftikhar's alleged trip to Monte Carlo in 2010 had already been presented in court as part of the evidence in relation to an allegation that Dr Iftikhar had received bribes. Dunya News provided Ofcom with a link to an article published on The Guardian newspaper website in 2012<sup>3</sup> which provided details of the court case. The broadcaster also said that the information included in the programme that Ms Ali allegedly travelled with Dr Iftikhar to Monte Carlo was incidental to the news story about allegations that Dr Iftikhar had received “bribes in the form of gifts and foreign holidays in return for him being able to influence his father on court judgments”.

## Ofcom's Preliminary View

Ofcom prepared a Preliminary View on this case that the complaint should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View, but neither chose to do so.

## Decision

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

In carrying out its duties, Ofcom has regard to the need to secure that the application of these standards is in the manner that best guarantees an appropriate level of

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<sup>2</sup> <http://www.thenewstribe.com/?s=arsalan+iftikhar;>  
[http://en.dailypakistan.com.pk/pakistan/arsalan-iftikhar-too-enjoyed-company-of-ayyan-ali-234/;](http://en.dailypakistan.com.pk/pakistan/arsalan-iftikhar-too-enjoyed-company-of-ayyan-ali-234/) and, “<http://www.suchtv.pk/pakistan/general/item/23928-arsalan-iftikhar-travels-with-ayyan-ali-in-2010.html>”.

<sup>3</sup> <http://www.theguardian.com/world/2012/jun/12/pakistan-chief-justice-son-gifts>.

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 this decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast, a translated transcript of it, and both parties' written submissions and supporting documentation.

When considering complaints of unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of Ofcom's Broadcasting Code ("the Code").

Ofcom considered Dr Iftikhar's complaint that the programme made "false and baseless" allegations against him and suggested that he was corrupt and a "morally dishonest" person because it associated him with Ms Ali, who had been arrested on suspicion of money laundering.

When assessing the complaint, we had particular regard to Practice 7.9 of the Code which provides that before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to the individual or organisation. Whether a broadcaster has taken reasonable care to present material facts in a way that is not unfair to an individual or organisation will depend on all the particular facts and circumstances of the case including, for example, the seriousness of any allegations and the context within which they are made.

The Code recognises the importance of freedom of expression and the public interest need to allow broadcasters the freedom to broadcast matters in news and current affairs programmes. However, in presenting material in programmes, reasonable care must be taken by broadcasters not to do so in a manner that causes unfairness to individuals or organisations in programmes.

Ofcom viewed the programme and examined carefully the translated transcript of it, noting in particular the comments made by the presenter and Dr Awan in relation to the allegation relating to Dr Iftikhar and his 2010 trip to Monte Carlo (see the "Programme summary" section above).

Ofcom considered that the comments made by the presenter and Dr Awan in the programme were said in the context of a programme that provided commentary on recent news and current events stories that had been reported previously either in the broadcaster's own news reporting programmes or in newspapers. We noted that this particular story was introduced by the presenter stating that a new story had been broadcast the previous day on *Dunya News* in which "*Arsalan and Ayyan are mentioned in very veiled terms*". Following this, a wider discussion ensued in which Dr Awan referred further to the allegations that had been made in newspaper articles that Dr Iftikhar and Ms Ali had travelled to Monte Carlo together in 2010. We also noted that the presenter and an on-screen caption also questioned why neither Dr Iftikhar nor Ms Ali had issued a "retraction" of the allegation.

We understood from Dr Iftikhar's complaint that he considered that the programme had unfairly associated him with Ms Ali and that it had made "false and baseless" allegations about him. However, having carefully considered the content of the programme complained of, Ofcom took the view that although the programme did

comment on allegations relating to Dr Iftikhar and Ms Ali, it did not present them as fact. The programme made it clear that the story had come from “*a highly respected reporter*” and that the allegations had been made in other media sources and that its presenter and Dr Awan were providing comment on the news story. Importantly, Dr Awan explained that there were other possible reasons for Dr Iftikhar and Ms Ali to be travelling together, such as coincidence. We also noted that although the presenter stated that they had remained together throughout [the trip to Monte Carlo], he had qualified the statement by prefixing it with “*But in this report...*”. We therefore considered that this was sufficient to indicate to viewers that these were not the views necessarily held by the presenter and Dr Awan, but that they were providing commentary on a recent news story. While we noted that the presenter and the on-screen caption questioned why Dr Iftikhar and Ms Ali had not requested a retraction of the allegations or initiated legal proceedings, we considered that this was also said in the context of legitimate comment on the news story and the response (or lack of response) to it by the parties involved. In our view, the manner in which the comments were presented in the programme was not misleading or unfair, but rather allowed viewers to form their own opinions about the truth or otherwise of allegations commented upon by the presenter and Dr Awan.

While we appreciated that Dr Iftikhar was unhappy that about allegations suggesting a connection between him, Ms Ali and a trip to Monte Carlo, we considered that the allegations, which had been widely disseminated previously in newspaper articles and news broadcasts, were repeated in this programme as part of a comment and round up discussion of recent news and current affairs. Given this, we did not consider that the comments made by the presenter and Dr Awan were, in themselves, likely to have materially and adversely affected viewers’ perceptions of Dr Iftikhar in a way that was unfair to him.

Therefore, taking all the factors above into account, Ofcom did not consider that material facts were presented, disregarded or omitted in a way that resulted in unfairness to Dr Iftikhar.

**Ofcom has not upheld Dr Iftikhar’s complaint of unjust or unfair treatment in the programme as broadcast.**

## Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed between 4 and 17 January 2016 and decided that the broadcaster or service provider did not breach Ofcom's codes, rules, licence conditions or other regulatory requirements.

### Investigations conducted under the Procedures for investigating breaches of content standards for television and radio

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission date</b>	<b>Categories</b>
Family Guy	BBC 3	29/11/2015	Transgender discrimination/offence
Nick Ferrari	LBC 97.3 FM	16/11/2015	Religious/Beliefs discrimination/offence
Most Haunted Live	Really	31/10/2015	Materially misleading
Live Appeal	Ummah Channel	29/08/2015	Charity appeals
Noreen Khan	BBC Asian Network	12/11/2015	Race discrimination/offence

## Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 4 and 17 January 2016 because they did not raise issues warranting investigation.

### Complaints assessed under the Procedures for investigating breaches of content standards for television and radio

For more information about how Ofcom assesses complaints about content standards on television and radio programmes, go to:

<http://stakeholders.ofcom.org.uk/broadcasting/procedures/standards/>

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
8 Out of 10 Cats Christmas Special	4Music	27/12/2015	Generally accepted standards	1
Access	5USA	19/12/2015	Due impartiality/bias	1
Programming	Arise News	07/01/2016	Outside of remit / other	1
Bangladesh victory day advertisement	ATN Bangla	27/12/2015	Political advertising	1
Programming	BBC / Sky Sports	n/a	Outside of remit / other	1
And Then There Were None	BBC 1	27/12/2015	Offensive language	1
And Then There Were None	BBC 1	27/12/2015	Race discrimination/offence	4
And Then There Were None	BBC 1	28/12/2015	Suicide and self harm	1
Bargain Hunt	BBC 1	14/01/2016	Disability discrimination/offence	1
BBC News at Six	BBC 1	04/01/2016	Television Access Services	1
BBC News at Six	BBC 1	11/01/2016	Outside of remit / other	1
BBC News at Ten	BBC 1	11/01/2016	Outside of remit / other	1
Breakfast	BBC 1	15/01/2016	Scheduling	1
Catherine Tate's Nan	BBC 1	27/12/2015	Generally accepted standards	4
Class of '92: Out of Their League	BBC 1	n/a	Offensive language	1
Countryfile	BBC 1	06/12/2015	Outside of remit / other	1
Dickensian	BBC 1	06/01/2016	Scheduling	1
Doctor Who	BBC 1	25/12/2015	Disability discrimination/offence	1
Doctor Who	BBC 1	25/12/2015	Gender discrimination/offence	1
Doctor Who	BBC 1	25/12/2015	Scheduling	1
EastEnders	BBC 1	23/12/2015	Generally accepted standards	1
EastEnders	BBC 1	26/12/2015	Scheduling	1
EastEnders	BBC 1	28/12/2015	Scheduling	3

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
EastEnders	BBC 1	28/12/2015	Sexual orientation discrimination/offence	1
EastEnders	BBC 1	29/12/2015	Violence and dangerous behaviour	15
EastEnders	BBC 1	06/01/2016	Religious/Beliefs discrimination/offence	2
EastEnders	BBC 1	06/01/2016	Scheduling	1
EastEnders	BBC 1	07/01/2016	Disability discrimination/offence	1
EastEnders	BBC 1	07/01/2016	Generally accepted standards	3
EastEnders	BBC 1	07/01/2016	Product placement	1
EastEnders	BBC 1	07/01/2016	Religious/Beliefs discrimination/offence	1
EastEnders	BBC 1	08/01/2016	Materially misleading	1
EastEnders	BBC 1	11/01/2016	Religious/Beliefs discrimination/offence	1
Great Barrier Reef with David Attenborough	BBC 1	03/01/2016	Outside of remit / other	1
Iron Man 3	BBC 1	02/01/2016	Violence and dangerous behaviour	1
Luther	BBC 1	15/12/2015	Generally accepted standards	2
Madagascar	BBC 1	28/12/2015	Sexual orientation discrimination/offence	1
Not Going Out	BBC 1	24/12/2015	Generally accepted standards	16
Oxford Street Revealed	BBC 1	18/12/2015	Race discrimination/offence	1
Panorama	BBC 1	11/01/2016	Generally accepted standards	1
Panorama	BBC 1	11/01/2016	Offensive language	3
Panorama	BBC 1	11/01/2016	Under 18s in programmes	1
Pointless	BBC 1	30/12/2015	Generally accepted standards	2
Question Time	BBC 1	14/01/2016	Outside of remit / other	1
Silent Witness	BBC 1	11/01/2016	Generally accepted standards	1
Sports Personality of the Year 2015	BBC 1	20/12/2015	Generally accepted standards	1
The Graham Norton Show	BBC 1	31/12/2015	Disability discrimination/offence	1
The Graham Norton Show	BBC 1	04/01/2016	Generally accepted standards	1
The One Show	BBC 1	05/01/2016	Materially misleading	1
The Voice UK	BBC 1	09/01/2016	Outside of remit / other	1
The Voice UK	BBC 1	n/a	Crime	1
Tracey Ullman's Show	BBC 1	11/01/2016	Generally accepted standards	3
Dragons' Den	BBC 2	27/12/2015	Generally accepted standards	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Dragons' Den	BBC 2	27/12/2015	Scheduling	1
Equestrian	BBC 2	20/12/2015	Offensive language	1
Live at the Apollo	BBC 2	07/12/2015	Generally accepted standards	1
Love You to Death: A Year of Domestic Violence	BBC 2	18/12/2015	Under 18s in programmes	1
New Year's Day Concert Live From Vienna 2016	BBC 2	01/01/2016	Generally accepted standards	1
Newsnight	BBC 2	18/12/2015	Transgender discrimination/offence	1
Newsnight	BBC 2	06/01/2016	Outside of remit / other	1
The Daily Politics	BBC 2	06/01/2016	Offensive language	1
The Daily Politics	BBC 2	12/01/2016	Religious/Beliefs discrimination/offence	1
The Terminal	BBC 2	01/01/2016	Offensive language	2
Family Guy	BBC 3	30/12/2015	Disability discrimination/offence	1
Puss In Boots	BBC 3	10/01/2016	Outside of remit / other	1
Reggie Yates' Extreme UK	BBC 3	15/12/2015	Generally accepted standards	1
Siblings	BBC 3	04/01/2016	Generally accepted standards	1
6 Day War	BBC 4	07/12/2015	Generally accepted standards	1
Jeremy Vine	BBC Radio 2	07/12/2015	Generally accepted standards	1
Book of the Week	BBC Radio 4	31/12/2015	Generally accepted standards	1
The World at One	BBC Radio 4	30/12/2015	Offensive language	1
6-0-6	BBC Radio 5 Live	10/01/2016	Outside of remit / other	1
Sitarey Kya Kehte Hain	Brit Asia TV	15/09/2015	Materially misleading	1
Scottish Football	BT Sport 1	28/12/2015	Race discrimination/offence	3
Steven Universe	Cartoon Network UK	n/a	Sexual orientation discrimination/offence	1
Everest's sponsorship of CBS Drama	CBS Drama	15/12/2015	Sponsorship credits	1
Donal MacIntyre: Unsolved (trailer)	CBS Reality	29/12/2015	Materially misleading	1
Advertisement	Channel 4	08/01/2016	Advertising content	1
Alan Carr: Chatty Man	Channel 4	25/12/2015	Drugs, smoking, solvents or alcohol	2
Alan Carr's New Year Specstacular	Channel 4	31/12/2015	Disability discrimination/offence	1
Alan Carr's New Year Specstacular	Channel 4	31/12/2015	Generally accepted standards	1
Alternative Christmas Message	Channel 4	25/12/2015	Due impartiality/bias	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Bernard Matthews' sponsorship of The Simpsons	Channel 4	12/01/2016	Sponsorship credits	1
Big Fat Quiz of the Year	Channel 4	29/12/2015	Generally accepted standards	1
Britain's Wildest Weather 2015	Channel 4	09/01/2016	Offensive language	1
Channel 4 News	Channel 4	04/01/2016	Crime	1
Channel 4 News	Channel 4	05/01/2016	Disability discrimination/offence	2
Derren Brown: Pushed to the Edge (trailer)	Channel 4	09/01/2016	Violence and dangerous behaviour	1
Hollyoaks	Channel 4	13/01/2016	Generally accepted standards	1
Mary Portas: Secret Shopper	Channel 4	06/01/2016	Transgender discrimination/offence	2
Million Pound Motors	Channel 4	27/12/2015	Offensive language	1
Specsavers' sponsorship of Films on Four	Channel 4	24/12/2015	Sponsorship credits	2
TFI Friday	Channel 4	11/12/2015	Violence and dangerous behaviour	1
The Undateables	Channel 4	04/01/2016	Disability discrimination/offence	1
5 News at 5	Channel 5	06/01/2016	Due accuracy	1
Britain's Favourite Christmas Songs	Channel 5	25/12/2015	Generally accepted standards	1
Britain's Favourite Christmas Songs	Channel 5	25/12/2015	Offensive language	1
Can't Pay? We'll Take it Away!	Channel 5	09/12/2015	Materially misleading	1
Can't Pay? We'll Take it Away!	Channel 5	06/01/2016	Under 18s in programmes	1
Can't Pay? We'll Take it Away!	Channel 5	09/01/2016	Offensive language	2
Celebrity Big Brother	Channel 5	05/01/2016	Gender discrimination/offence	1
Celebrity Big Brother	Channel 5	05/01/2016	Offensive language	1
Celebrity Big Brother	Channel 5	05/01/2016	Sexual material	1
Celebrity Big Brother	Channel 5	05/01/2016	Sexual orientation discrimination/offence	418
Celebrity Big Brother	Channel 5	07/01/2016	Gender discrimination/offence Sexual orientation discrimination/offence	76
Celebrity Big Brother	Channel 5	07/01/2016	Race discrimination/offence	1
Celebrity Big Brother	Channel 5	08/01/2016	Generally accepted standards	300
Celebrity Big Brother	Channel 5	08/01/2016	Religious/Beliefs discrimination/offence	2
Celebrity Big Brother	Channel 5	08/01/2016	Sexual orientation discrimination/offence	55

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Celebrity Big Brother	Channel 5	08/01/2016	Voting	17
Celebrity Big Brother	Channel 5	10/01/2016	Offensive language	1
Celebrity Big Brother	Channel 5	11/01/2016	Generally accepted standards	33
Celebrity Big Brother	Channel 5	13/01/2016	Generally accepted standards	1
Celebrity Big Brother	Channel 5	13/01/2016	Offensive language	1
Celebrity Big Brother's Bit on the Side	Channel 5	05/01/2016	Generally accepted standards	3
Celebrity Big Brother's Bit on the Side	Channel 5	07/01/2016	Generally accepted standards	1
Celebrity Big Brother's Bit on the Side	Channel 5	08/01/2016	Generally accepted standards	7
Celebrity Big Brother's Bit on the Side	Channel 5	08/01/2016	Sexual orientation discrimination/offence	1
Celebrity Big Brother's Bit on the Side	Channel 5	08/01/2016	Suicide and self harm	1
Chas and Dave's Xmas Knees-Up	Channel 5	25/12/2015	Outside of remit / other	1
Danger: Teen Bingers	Channel 5	07/12/2015	Materially misleading	1
Harry and the Hendersons	Channel 5	01/01/2016	Offensive language	2
On Benefits: Cashing in for Christmas	Channel 5	24/12/2015	Generally accepted standards	1
Puppies Make You Laugh Out Loud	Channel 5	08/01/2016	Animal welfare	1
Puppies Make You Laugh Out Loud	Channel 5	08/01/2016	Scheduling	1
Supercasino	Channel 5	n/a	Gambling	1
The Dam Busters	Channel 5	29/12/2015	Generally accepted standards	2
The Wright Stuff	Channel 5	14/01/2016	Sexual orientation discrimination/offence	1
World's Strongest Man 2015	Channel 5	27/12/2015	Generally accepted standards	2
News	Classic FM	22/12/2015	Generally accepted standards	1
Mock the Week	Dave	04/01/2016	Generally accepted standards	1
Mock the Week	Dave	07/01/2016	Generally accepted standards	1
Storage Hunters UK	Dave	30/12/2015	Offensive language	1
Top Gear	Dave	13/01/2016	Materially misleading	1
Dynamo: Magician Impossible	Dave Ja Vu	13/12/2015	Offensive language	1
Advertisements	Drama	n/a	Advertising minutage	1
Pride and Prejudice	Drama	01/01/2016	Advertising scheduling	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Beverley Hills Cop 2 (trailer)	E4	05/01/2016	Religious/Beliefs discrimination/offence	1
Hollyoaks Omnibus	E4	10/01/2016	Generally accepted standards	1
New Year's Eve programming (trailer)	E4	31/12/2015	Scheduling	1
The Big Bang Theory	E4	06/01/2016	Drugs, smoking, solvents or alcohol	1
The Inbetweeners	E4	10/01/2016	Generally accepted standards	1
Inglorious Basterds	Film4	08/01/2016	Generally accepted standards	1
Life of Pi	Film4	23/12/2015	Animal welfare	1
American Horror Story	Fox	22/12/2015	Violence and dangerous behaviour	1
BAFTA Celebrates Downton Abbey	ITV	21/12/2015	Race discrimination/offence	1
Benidorm	ITV	11/01/2016	Generally accepted standards	1
Benidorm (trailer)	ITV	31/12/2015	Violence and dangerous behaviour	1
Beowulf: Return to the Shieldlands (trailer)	ITV	n/a	Scheduling	1
Birds of a Feather	ITV	07/01/2016	Generally accepted standards	1
Coronation Street	ITV	06/01/2016	Religious/Beliefs discrimination/offence	1
Coronation Street	ITV	08/01/2016	Crime	1
Coronation Street	ITV	08/01/2016	Materially misleading	1
Emmerdale	ITV	31/12/2015	Generally accepted standards	6
Emmerdale	ITV	05/01/2016	Suicide and self harm	4
Emmerdale	ITV	07/01/2016	Materially misleading	1
Emmerdale	ITV	13/01/2016	Violence and dangerous behaviour	1
Emmerdale	ITV	n/a	Generally accepted standards	1
Endeavour	ITV	03/01/2016	Religious/Beliefs discrimination/offence	1
Endeavour	ITV	10/01/2016	Religious/Beliefs discrimination/offence	1
Good Morning Britain	ITV	04/01/2016	Generally accepted standards	1
Good Morning Britain	ITV	04/01/2016	Offensive language	1
Good Morning Britain	ITV	05/01/2016	Offensive language	1
I'm a Celebrity, Get Me Out of Here!	ITV	06/12/2015	Animal welfare	4
It'll be Alright on the Night	ITV	30/12/2015	Generally accepted standards	2
ITV Evening News	ITV	04/01/2016	Generally accepted standards	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
ITV Evening News	ITV	06/01/2016	Generally accepted standards	1
ITV News	ITV	04/01/2016	Crime	1
ITV News and Weather	ITV	02/01/2016	Outside of remit / other	1
ITV News at Ten and Weather	ITV	23/12/2015	Generally accepted standards	1
ITV News at Ten and Weather	ITV	06/01/2016	Due impartiality/bias	1
ITV News London	ITV	07/01/2016	Generally accepted standards	1
Jekyll and Hyde	ITV	25/10/2015	Outside of remit / other	1
Jekyll and Hyde	ITV	01/11/2015	Scheduling	35
Jekyll and Hyde	ITV	08/11/2015	Scheduling	8
Jekyll and Hyde	ITV	22/11/2015	Scheduling	5
Jekyll and Hyde	ITV	29/11/2015	Scheduling	1
Jekyll and Hyde	ITV	06/12/2015	Scheduling	4
Jekyll and Hyde	ITV	13/12/2015	Scheduling	3
Jekyll and Hyde	ITV	20/12/2015	Outside of remit / other	1
Jekyll and Hyde	ITV	23/12/2015	Scheduling	1
Jekyll and Hyde	ITV	27/12/2015	Scheduling	1
Jekyll and Hyde	ITV	n/a	Outside of remit / other	1
Loose Women	ITV	05/01/2016	Gender discrimination/offence	3
Lewis	ITV	10/11/2015	Drugs, smoking, solvents or alcohol	1
Loose Women	ITV	07/01/2016	Race discrimination/offence	1
Lorraine	ITV	08/01/2016	Materially misleading	1
Lorraine	ITV	13/01/2016	Religious/Beliefs discrimination/offence	1
Lorraine	ITV	15/01/2016	Generally accepted standards	1
McCain's sponsorship of Emmerdale	ITV	06/10/2015	Sponsorship credits	1
Midsomer Murders	ITV	30/12/2015	Offensive language	1
Ninja Warrior UK	ITV	02/01/2016	Gender discrimination/offence	1
Peter and Wendy	ITV	26/12/2015	Offensive language	1
Take Me Out	ITV	09/01/2016	Violence and dangerous behaviour	1
The Jeremy Kyle Show	ITV	15/12/2015	Materially misleading	1
The Jeremy Kyle Show	ITV	10/01/2016	Offensive language	1
The Jonathan Ross Show	ITV	09/01/2016	Offensive language	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
This Morning	ITV	05/01/2016	Due impartiality/bias	1
This Morning	ITV	06/01/2016	Generally accepted standards	1
You've Been Framed!	ITV	09/01/2016	Gender discrimination/offence	2
Jurassic Park	ITV2	03/01/2016	Offensive language	1
Take Me Out	ITV2	04/01/2016	Generally accepted standards	1
Emmerdale Omnibus	ITV3	02/01/2016	Outside of remit / other	1
Ladies of London	ITVBe	23/12/2015	Race discrimination/offence	1
Ian Collins	LBC 97.3 FM	07/01/2016	Race discrimination/offence	1
James O'Brien	LBC 97.3 FM	14/12/2015	Crime	1
Katie Hopkins	LBC 97.3 FM	28/12/2015	Race discrimination/offence	1
Steve Allen	LBC 97.3 FM	24/12/2015	Race discrimination/offence	1
Anthems	Like Radio UK	23/12/2015	Offensive language	1
Programming	London Live	n/a	Television Access Services	1
Magic in the Morning with Nick Snaitth	Magic FM	06/01/2016	Commercial communications on radio	1
It Was Alright in the 1960s	More4	31/12/2015	Generally accepted standards	1
Ben and Holly's Little Kingdom	Nick Jr	28/12/2015	Scheduling	1
Danone sponsorship	Pick TV	15/12/2015	Sponsorship credits	1
Danone sponsorship	Pick TV	18/12/2015	Sponsorship credits	1
Danone sponsorship	Pick TV	n/a	Sponsorship credits	1
Justice	Power 106 FM	n/a	Harm	1
Born Survivor: Bear Grylls	Quest	31/12/2015	Animal welfare	1
Wake Up Essex	Radio Essex	11/12/2015	Scheduling	1
Jon Holmes Breakfast Show	Radio X	30/12/2015	Generally accepted standards	1
Born to Kill	Really	16/12/2015	Scheduling	1
Kingsman: The Secret Service	Sky Movies Premiere	01/01/2016	Scheduling	1
Sky News	Sky News	23/11/2015	Due impartiality/bias	1
Sky News Tonight with Adam Boulton	Sky News	05/01/2016	Crime	1
Live Capital One Cup Football	Sky Sports 1	02/12/2015	Offensive language	1
Boxing	Sky Sports Box Office	12/12/2015	Advertising scheduling	1
Good Morning Sports Fans	Sky Sports News	31/12/2015	Race discrimination/offence	1
Sky Sports Football Promotion	Sky Sports News	11/01/2016	Generally accepted standards	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Sky Sports Football Promotion	Sky Sports News	12/01/2016	Generally accepted standards	1
The Simpsons	Sky1	06/01/2016	Offensive language	1
Studio 66	Studio 66	11/12/2015	Participation TV - Offence	1
Elaine C Smith's Burdz Eye View of Hogmanay	STV	31/12/2015	Due impartiality/bias	98
Drivetime	Talksport	05/01/2016	Race discrimination/offence	1
Family Guy	TV6	24/12/2015	Generally accepted standards	1
Teachers	TVLand	13/01/2016	Outside of remit / other	1
Programming	Various	20/12/2015	Participation TV - Protection of under 18s	1
Programming	Various	n/a	Television Access Services	1

### Complaints assessed under the General Procedures for investigating breaches of broadcast licences

For more information about how Ofcom assesses complaints about broadcast licences, go to: <http://stakeholders.ofcom.org.uk/broadcasting/procedures/general-procedures/>

Licensed service	Licensee	Categories
Access FM	Bridgwater Young Men's Christian Association	Key Commitments
London Live	ESTV Limited	Programming Commitments

### Complaints assessed under the Interim Breach Procedures for investigating breaches of rules for On Demand programme services

Programme	Service name	Accessed date	Categories	Number of complaints
Fosters' sponsorship of Original Comedy on 4	All 4	12 December 2015	Sponsorship credits	1

For more information about how Ofcom assesses complaints about on demand services, go to: [http://stakeholders.ofcom.org.uk/binaries/broadcast/on-demand/rules-guidance/interim\\_procedures.pdf](http://stakeholders.ofcom.org.uk/binaries/broadcast/on-demand/rules-guidance/interim_procedures.pdf)

## Complaints outside of remit

Here are alphabetical lists of complaints received by Ofcom that fell outside of our remit. This is because Ofcom is not responsible for regulating the issue complained about. For example, the complaints were about the content of television, radio or on demand adverts, accuracy in BBC programmes or an on demand service does not fall within the scope of regulation.

For more information about what Ofcom's rules cover, go to:

<http://consumers.ofcom.org.uk/complain/tv-and-radio-complaints/what-does-ofcom-cover/>

### Complaints about television or radio programmes

For more information about how Ofcom assesses complaints about television and radio programmes, go to:

<http://stakeholders.ofcom.org.uk/broadcasting/procedures/standards/>

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Advertisement	5*	29/12/2015	Advertising content	1
BBC News at Ten	BBC 1	06/01/2016	Due impartiality/bias	8
BBC News at Ten	BBC 1	12/01/2016	Due impartiality/bias	2
Breakfast	BBC 1	09/01/2016	Promotion of products/services (tv)	1
Question Time	BBC 1	14/01/2016	Due impartiality/bias	4
Silent Witness	BBC 1	12/01/2016	Due impartiality/bias	3
The Andrew Marr Show	BBC 1	10/01/2016	Due impartiality/bias	1
The Daily Politics	BBC 2	06/01/2016	Due impartiality/bias	24
BBC News	BBC News Channel	04/01/2016	Due accuracy	1
Jeremy Vine	BBC Radio 2	06/01/2016	Due impartiality/bias	1
Party Political Broadcast by the Conservative Party	BBC1	13/01/2016	Materially misleading	1
Advertisement	BT Sport 1	12/01/2016	Advertising content	1
Advertisement	Cartoon Network	07/01/2016	Advertising content	1
Advertisement	Channel 4	29/12/2015	Advertising content	1
Advertisement	Channel 4	02/01/2016	Advertising content	1
Advertisement	Channel 4	08/01/2016	Advertising content	2
Advertisement	Channel 4	13/01/2016	Advertising content	1
Advertisement	Channel 4	14/01/2016	Advertising content	1
Advertisement	Channel 5	08/01/2016	Advertising content	1
Advertisement	Channel 5	13/01/2016	Advertising content	1
Advertisement	Discovery Channel	14/01/2016	Advertising content	1
Advertisement	Drama	13/01/2016	Advertising content	1
Advertisement	E4	12/01/2016	Advertising content	1
Advertisements	E4 / Yesterday	07/01/2016	Advertising content	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Advertisement	Gold	02/01/2016	Advertising content	1
Advertisement	ITV	30/12/2015	Advertising content	1
Advertisement	ITV	31/12/2015	Advertising content	1
Advertisement	ITV	02/01/2016	Advertising content	1
Advertisement	ITV	12/01/2016	Advertising content	1
Advertisement	ITV	02/01/2016	Advertising content	8
Advertisement	ITVBe	02/01/2016	Advertising content	1
Advertisement	More4	30/12/2015	Advertising content	1
Advertisement	More4	31/12/2015	Advertising content	1
Advertisement	n/a	n/a	Advertising content	1
Advertisement	Nat Geo Wild	01/01/2016	Advertising content	1
Advertisement	Nat Geo Wild	03/01/2016	Advertising content	1
Advertisement	PBS America	10/01/2016	Advertising content	1
Advertisement	TLC	08/01/2016	Advertising content	1
Advertisement	True Entertainment	11/01/2016	Advertising content	1
Advertisement	Various	08/01/2016	Advertising content	1
Advertisement	Various	n/a	Advertising content	2
Advertisement	Yesterday	11/01/2016	Advertising content	1

### Complaints about on demand services

Programme	Service name	Accessed date	Categories	Number of complaints
Family Guy	BBC iPlayer	29 December 2015	Outside of remit / other	1
Can't Pay? We'll Take it Away!	Demand 5	12 December 2015	Outside of remit / other	1

For more information about how Ofcom assesses complaints about on demand services, go to [http://stakeholders.ofcom.org.uk/binaries/broadcast/on-demand/rules-guidance/interim\\_procedures.pdf](http://stakeholders.ofcom.org.uk/binaries/broadcast/on-demand/rules-guidance/interim_procedures.pdf)

## Investigations List

If Ofcom considers that a broadcaster or service provider may have breached its codes, rules, licence condition or other regulatory requirements, it will start an investigation.

**It is important to note that an investigation by Ofcom does not necessarily mean the broadcaster or service provider has done anything wrong. Not all investigations result in breaches of the codes, rules, licence conditions or other regulatory requirements being recorded.**

Here are alphabetical lists of new investigations launched between 4 and 17 January 2016.

### Investigations launched under the Procedures for investigating breaches of content standards for television and radio

Programme	Broadcaster	Transmission date
Ayurvedic	DM News Plus	3 October 2015
Yasmin	DM News Plus	17 November 2015
Pentagon Vauxhall sponsorship	Gem 106	29 September 2015
Good Morning Britain	ITV	8 December 2015
Breakfast Show / DJ John in the Mix	Koast Radio	14 December 2015
Programming	Sikh Channel	15 November 2015
Live NFL	Sky Sports 1	26 November 2015
Frances and Friends	SonLife	18 December 2015
Advertising minutage	Venus TV	Various

For more information about how Ofcom assesses complaints and conducts investigations about content standards on television and radio programmes, go to: <http://stakeholders.ofcom.org.uk/broadcasting/procedures/standards/>

### Investigations launched under the Procedures for the consideration and adjudication of Fairness and Privacy complaints

Programme	Broadcaster	Transmission date
The Murder Detectives	Channel 4	30 November 2015

For more information about how Ofcom considers and adjudicates upon Fairness and Privacy complaints about television and radio programmes, go to:

<http://stakeholders.ofcom.org.uk/broadcasting/procedures/fairness/>

**Investigations launched under the General Procedures for investigating breaches of broadcast licences**

<b>Licensee</b>	<b>Licensed Service</b>
1 Ummah FM Community Interest Company	1 Ummah FM

For more information about how Ofcom assesses complaints and conducts investigations about broadcast licences, go to:

<http://stakeholders.ofcom.org.uk/broadcasting/procedures/general-procedures/>