

# **Ofcom Broadcast Bulletin**

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## Introduction

Under the Communications Act 2003, Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives<sup>1</sup>, Ofcom must include these standards in a code or codes. These are listed below.

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

- a) Ofcom's Broadcasting Code ("the Code"), which, can be found at: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>.
- b) the Code on the Scheduling of Television Advertising ("COSTA") which contains rules on how much advertising and teleshopping may be scheduled in programmes, how many breaks are allowed and when they may be taken. COSTA can be found at: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/advert-code/>.
- c) certain sections of the BCAP Code: the UK Code of Broadcast Advertising, which relate to those areas of the BCAP Code for which Ofcom retains regulatory responsibility. These include:
  - the prohibition on 'political' advertising;
  - sponsorship and product placement on television (see Rules 9.13, 9.16 and 9.17 of the Code) and all commercial communications in radio programming (see Rules 10.6 to 10.8 of the Code);
  - 'participation TV' advertising. This includes long-form advertising predicated on premium rate telephone services – most notably chat (including 'adult' chat), 'psychic' readings and dedicated quiz TV (Call TV quiz services). Ofcom is also responsible for regulating gambling, dating and 'message board' material where these are broadcast as advertising<sup>2</sup>.

The BCAP Code is at: [www.bcap.org.uk/The-Codes/BCAP-Code.aspx](http://www.bcap.org.uk/The-Codes/BCAP-Code.aspx)

- d) other licence conditions which broadcasters must comply with, such as requirements to pay fees and submit information which enables Ofcom to carry out its statutory duties. Further information on television and radio licences can be found at: <http://licensing.ofcom.org.uk/tv-broadcast-licences/> and <http://licensing.ofcom.org.uk/radio-broadcast-licensing/>.

Other codes and requirements may also apply to broadcasters, depending on their circumstances. These include the Code on Television Access Services (which sets out how much subtitling, signing and audio description relevant licensees must provide), the Code on Electronic Programme Guides, the Code on Listed Events, and the Cross Promotion Code. Links to all these codes can be found at: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/>

It is Ofcom's policy to describe fully the content in television and radio programmes that is subject to broadcast investigations. Some of the language and descriptions used in Ofcom's Broadcast Bulletin may therefore cause offence.

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

<sup>2</sup> BCAP and ASA continue to regulate conventional teleshopping content and spot advertising for these types of services where it is permitted. Ofcom remains responsible for statutory sanctions in all advertising cases

## Standards cases

### Resolved

#### Sponsorship of Hit of the Hour

*Buzz Asia, 20 August 2011, 09:00 to 11:00*

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##### Introduction

Buzz Asia is a local commercial radio station serving the Asian community in the London area.

On 20 August 2011 between 09:00 and 11:00, the station twice broadcast a sponsorship credit for a restaurant called Flavors of India. The sponsorship credit stated:

*“Hit of the Hour is brought to you by Flavors of India in Hounslow. Authentic Indian food. Eat as much as you can for just fifteen pounds and bring your own booze.”*

A complainant alerted Ofcom to the fact that he had visited the restaurant and was told that the offer of all you can eat for fifteen pounds was no longer available, and that as the restaurant’s sponsorship contract with Buzz Asia had finished, Buzz Asia had broadcast the credit without its consent.

Ofcom considered that this material raised issues warranting investigation under Rule 10.7 of the Code which states:

*“Commercial references in programming must comply with the advertising content and scheduling rules that apply to radio broadcasting.”*

The advertising content and scheduling rules that apply to radio broadcasting are set out in The UK Code of Broadcast Advertising (“the BCAP Code”)<sup>1</sup>. Rule 3.1 of the BCAP Code states:

*“Advertisements must not materially mislead or be likely to do so.”*

We therefore asked Buzz Asia Limited (“Buzz Asia” or “the Licensee”) for its comments as to how this content complied with both Rule 10.7 of the Code, and Rule 3.1 of the BCAP Code.

##### Response

Buzz Asia explained that the *Hit of the Hour* is broadcast once an hour between 07:00 and 19:00 at weekends. The restaurant Flavors of India had sponsored the *Hit*

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<sup>1</sup> The Advertising Standards Authority (“the ASA”) and Broadcast Committee of Advertising Practice (“BCAP”) regulate the content of broadcast advertising, under a Memorandum of Understanding with Ofcom. Specifically, BCAP supervises and reviews the codes that govern the regulation of broadcast advertising. The regulation of commercial references on radio, including sponsorship credits remains with Ofcom, as such references form part of radio broadcasters’ editorial content (i.e. they are not spot advertisements).

*of the Hour* between 1 July 2010 and 30 June 2011, at which point it had been replaced with a new sponsor.

Buzz Asia submitted that the Flavors of India sponsorship credit was broadcast in error on 20 August 2011 during the 09:00 to 10:00 and 10:00 to 11:00 clock hours. It explained that it had been unable to establish the circumstances surrounding the mistake, but assumed it had been caused by human error.

Buzz Asia acknowledged that by broadcasting this sponsorship credit after the restaurant offer had expired, it had breached Rule 10.7 of the Code and Rule 3.1 of the BCAP Code because it was likely to have misled its audience.

The Licensee offered its apologies to its audience and to the restaurant.

Buzz Asia told Ofcom that errors such as this were rare, as it has systems in place to ensure that the correct material is broadcast. It continued that “as with any system with a human interface, the potential for errors cannot be entirely eliminated”. As a result of this incident, Buzz Asia has reviewed its systems “to ensure that they are as robust as is practical and [it has] reminded those staff involved with the scheduling of the station’s output of the need to ensure the accuracy of the schedules”.

## **Decision**

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that “the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented”.

Rule 10.7 of the Code requires that commercial references in radio programming comply with the advertising content and scheduling rules that apply to radio broadcasting. Rule 3.1 of the BCAP Code states that advertisements must not materially mislead or be likely to do so.

In this case, the credit misled listeners, because the special offer promoted in the credit was no longer available at the restaurant.

However, Ofcom took into account that the sponsorship credit was broadcast as a result of human error. As the sponsorship contract had ceased on 30 June 2011, the broadcaster had not received payment from the advertiser to broadcast the credit on 20 August 2011. It was clear that the broadcaster had not intended for the credit to be transmitted on these two occasions. We also welcomed the steps the Licensee told us it has taken to improve its procedures in the scheduling of sponsorship credits.

Ofcom therefore considered the matter to be resolved.

## **Resolved**

## Advertising scheduling cases

### In Breach

#### SCXtra

Channel 5, 11 June 2011, 00:10 to 00:40

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#### Introduction

*SCXtra* ('Supercasino Extra') was a half-hour advertising (teleshopping) feature labelled throughout as a "commercial presentation".

On this date, much of the broadcast featured Supercasino gambling services describing how to register and deposit money. Promotion was given to two particular online games, Roulette Express Premium and the Rocky slot game. A holiday voucher offer for new players was also frequently promoted.

In addition there were items covering the world's top five casinos, how playing cards are made, the history of the Joker card, a casino in a South Coast resort town, how a roulette wheel works, and a spoof behind-the-scenes 'investigation' of Supercasino's presenters.

Ofcom monitored the feature and noted that it did not appear to contain sufficient direct offers for sale of products or services to constitute teleshopping. Teleshopping 'windows' are long-form advertising that must contain direct offers for sale, i.e. sales offers relating to goods or services that can be taken up immediately by the viewer from home without the need to obtain information or other material from another source, such as a website or a shop.

Ofcom therefore considered that the broadcast raised issues warranting investigation, and sought Channel 5's comments under the definition of teleshopping given at paragraph 3 h) of COSTA, which states:

"teleshopping' means television advertising which includes direct offers to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment";

Ofcom was also of the view that the duration of the broadcast raised issues under COSTA. Teleshopping features or 'windows' must be at least 15 minutes long. While there is no upper limit on the duration of teleshopping windows, broadcast material that does not contain direct offers cannot be classed as teleshopping. As COSTA imposes limits on the amount of other advertising that a broadcaster can transmit each hour, we sought Channel Five's comments under COSTA Rule 4, which states:

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

#### Response

Channel 5 explained that *SCXtra* was produced for the channel by Netplay TV Group Ltd ("Netplay"). Netplay provides Channel 5's long-form gambling teleshopping, *Supercasino*. *SCXtra* was commissioned as a long-form teleshopping feature to complement *Supercasino*, Channel 5 said. It explained that the feature's purpose

was to demonstrate and sell, by direct calls to action, the products and services of Supercasino.com.

The broadcaster said that both it and Netplay were aware of the distinction made in COSTA between teleshopping and other forms of advertising, as well as the advertising time limits imposed by COSTA. Channel 5 confirmed that, as *SCXtra* was commissioned and produced as teleshopping, consideration was given to the definition of teleshopping in paragraph 3 h) of COSTA.

Further, Channel 5 explained that a pilot episode and script were cleared by Clearcast, the company that advises on advertising scripts and films before production and transmission, on behalf of broadcasters, with the aim of ensuring BCAP Code and legal compliance. Channel 5 submitted that Clearcast did not indicate any concern in respect of whether or not the pilot met the definition of teleshopping.

More specifically, Channel 5 defended the broadcast under investigation by arguing that the feature did make direct offers to the public as it contained:

- calls to action to go online to Supercasino.com and register an account;
- demonstrations of how to register an account to play games featured on the website;
- calls to action to contact Supercasino.com by telephone or text message to register an account; and
- calls to action to download an app which allows games to be played.

The channel stressed that all of these calls to action were made with a view to the supply of goods or services, these being:

- over 90 games (the products) on Supercasino.com (the service); and
- a special bonus in the form of a hotel voucher as an incentive to opening an account that night.

Channel 5 pointed to various statements made in the course of *SCXtra* that it argued represented examples of direct offers. Among these statements were the following:

*“... and both games we will look at as the evening progresses, now you can play both of these online at Supercasino.com right now or you can stick around with us here at SCXtra and we’ll go over other ways for you a little bit later.”*

*“... tonight, when you register or when you make your very first deposit of £20 you will receive accommodation, you will receive a hotel accommodation voucher.”*

*“To get this you register, to register there are four ways. The telephone is one of them ... Our website is another way that you can start playing ... Again, another way for you to register is ... via your mobile phone. Finally, and the last way for you to register is by downloading our app.”*

*“The website is Supercasino.com, where you can find all your ts & cs etc, is Supercasino.com, and let’s have a little look at it right now. Here we go, this is what you’ll see when you type it in. This is the button you need to press to join. Roulette, there it is, live roulette, click here to play live roulette.”*



*“So that was Cashford [a member] playing Roulette Express Premium which is available at Supercasino.com. It’s an automated wheel, live studio, a live feed you will get. Do have a go, you can play it for free to try it out, see if you like it.”*

*“The website address is Supercasino.com and here is where you can go to join and to join all that you’ve got to do is click the button in the middle of the page. What button is this? Well it’s the red one you will find underneath where it says welcome to Supercasino. Upon clicking this button fill in your details, your name and address, there, fill in your name and address and come up with your unique player name. Make your deposit to get to tonight’s bonuses. Minimum deposit is just £20 to get you started.”*

In respect of a possible distinction between the promotion of registration with deposit, and the promotion of particular games of chance, Channel 5 argued that, “it is gambling that the broadcast seeks to procure”, and that:

*“The conceptual differentiation of registration and funds deposit (on the one hand) from the gambling offered on the website (on the other hand) is a fine one and in our view unnecessary. We do not see any need to abstract the specific component processes of ... ‘gambling’ ... the overarching purpose of the broadcast was obviously to generate actual gambling revenues – otherwise, the broadcast would have no commercial sense.”*

Channel 5 said of the bonuses that they “... are sales promotions and incentives to viewers” and that:

*“... they form an element of the overall offer. Without the bonus offers we would still regard the material being broadcast on SCXtra as teleshopping because the message remains the same: the direct offer to the public to go to the website and gamble immediately.”*

The broadcaster confirmed that in the absence of a bonus offer being taken up by the consumer, money deposited remained the consumer’s and could be withdrawn by the consumer at any time.

As Channel 5 believed the feature fulfilled the necessary requirement to contain direct offers, and that it was over 15 minutes in length, it said that it considered SCXtra to meet COSTA’s teleshopping requirements.

Channel 5 told us that on receipt of Ofcom’s letter about SCXtra it had suspended transmission of the feature, and emphasised that it took its compliance obligations very seriously.

## **Decision**

Under the Communications Act 2003, Ofcom has a duty to secure the standards objective “that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with.”

One aspect of the UK’s international obligations is the regime for the control of advertising ‘minutage’ contained within the Audiovisual Media Services (AVMS)

Directive<sup>1</sup> and implemented by COSTA. As explained above, COSTA restricts the time that can be used for television spot advertising in any clock hour to 12 minutes.

SCXtra was advertising material and had a scheduled duration of 30 minutes. Were this broadcast to be general advertising it would be in breach of the hourly limits imposed. However, were the broadcast to be teleshopping it would be exempt from those limits.

Teleshopping must be distinct from both programming and spot advertising: as a form of advertising exempted from the usual advertising 'minutage' restrictions, teleshopping must adopt a particular – and easily distinguishable – character. Without this, the dispensations available for teleshopping lose purpose and justification.

COSTA paragraph 3 h) states that teleshopping is a form of advertising "which includes" direct offers. The wording of this definition derives directly from the AVMS Directive which states that "'teleshopping' means direct offers broadcast to the public with a view to the supply of goods or services ... in return for payment ...".

In Ofcom's view, a direct offer must clearly identify the particular product or service which is available for purchase by the consumer. Therefore, where a trader operates through a website which houses many different products or services, and where registration or deposit, or both, are merely preliminary steps to the ability to purchase any of those products, then the offer must be clear about the individual products or services being offered; it is not sufficient simply to highlight the website itself or any process of 'signing up' as this would not, in and of itself, directly provide the person wishing to take up the 'offer' with any good or service in return for payment.

A general example of this distinction would be a home delivery grocery website: promoting the name of the website, its logo, the delivery options and so on, with the intention of increasing registrations to the site, would not amount to a direct offer. However, the direct offer of a particular product available from the site (i.e. a direct offer of the product with a view to the supply of that product) could satisfy the teleshopping requirements, provided that the direct offers formed the basis of the feature.

In all teleshopping the direct offers must be constant or nearly so. In that respect Ofcom advises that constant on-screen displays giving product, price and ordering details should be used in teleshopping.

In this case the particular products for which payment would be made (as opposed to the deposit of funds) were the individual games of chance offered on the website: different 'slot' games, roulette games, card games, dice etc. This edition of SCXtra did include some promotion of particular games – live roulette, Roulette Express Premium and the Rocky slot game – but these occupied only a small fraction of the 30-minute advertisement, some six minutes. The much greater emphasis given to registration and deposit does not qualify as a direct offer as no payment need be made to achieve this: when a consumer registers and makes a deposit (or merely makes a deposit to an existing account) there is no payment made, the consumer can recover the money without penalty.

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<sup>1</sup> Chapter VII, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:095:0001:0024:EN:PDF>

Similarly, the emphasis on registration was made with a view to promoting the availability of a much greater choice of games of chance (some 90+ separate games) than the relatively few games that were expressly referred to.

Further, *SCXtra* included much material that contained no element of offer for sale at all – items covering the world’s top five casinos, how playing cards are made, the history of the Joker card, a casino in a South Coast resort town, how a roulette wheel works, and a spoof behind-the-scenes ‘investigation’ of Supercasino’s presenters.

As to Channel 5’s comment that “the overarching purpose of the broadcast was obviously to generate actual gambling revenues – otherwise, the broadcast would have no commercial sense”, this would be the objective of all advertising for the website, not just teleshopping, and therefore cannot in Ofcom’s view be relied on to distinguish the material in question as teleshopping rather than general advertising.

By contrast, where paying entry to a particular game of chance is offered and viewers can enter remotely (by phone, web etc) and the game is played frequently (so requiring that each game is resolved in the course of the broadcast), this will contain the necessary ingredients of teleshopping. In such a case frequent direct offers are made for a specified service (a game of chance). It is this format that is in fact adopted for transactional gambling channels and ‘windows’ that are run legitimately as teleshopping. These generally feature successive games of roulette conducted and resolved during the broadcast. Indeed, this is the format of usual *Supercasino* material on Channel 5.

In this respect Ofcom would draw attention to a previous Finding published on 18 April 2011<sup>2</sup>, about an advertising feature found in breach of COSTA. That item, *World of PKR*, also promoted a gambling website.

This edition of *SCXtra* was in breach of Rule 4 of COSTA. In our opinion the previous published Finding should have alerted Channel 5 to the likelihood of questions arising under COSTA about the format of *SCXtra*, even if the broadcaster had until that point been of the view that the format was compliant. However, we note the steps that Channel 5 had previously taken to seek the view of Clearcast, and the broadcaster’s decision to cease its transmission of the feature.

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

### **Note to Broadcasters**

This case and an earlier one, *World of PKR*, that Ofcom reported on in Broadcast Bulletin 180<sup>3</sup> on 20 April 2011, raise the important matter of distinguishing between types and formats of advertising, in this case specifically what may constitute teleshopping. In that context licensees’ and other stakeholders’ attention is drawn to COSTA.

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<sup>2</sup> Broadcast Bulletin 180. This Bulletin is available at <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb180/obb180.pdf>

<sup>3</sup> See footnote 2.

The principles discussed in the Findings for *SCXtra* and *World of PKR* have wide significance to the development of teleshopping formats. Ofcom therefore wishes to re-iterate the following points:

- teleshopping spots, 'windows' (that is teleshopping features run for at least the minimum duration of 15 minutes) and channels must feature direct offers to the public;
- 'direct offers' are those capable of being taken up by viewers without the need to seek information or other material from any other place;
- where the teleshopping is offering gambling services, the service – i.e. the entry into a particular game of chance or betting contract – must be directly offered and be capable of being taken up by the viewer 'off the screen' using a means of remote purchase, including via a website. (This does not preclude the need for an initial player registration process);
- a direct offer must clearly identify the particular product or service which is available for purchase by the consumer. Therefore, where a trader operates through a website which houses many different products or services, and where registration or deposit, or both, are merely preliminary steps to the ability to purchase any of those products, then the offer must be clear about the individual products or services being directly offered. It is not sufficient simply to highlight the website itself or any process of 'signing up' as this would not, in and of itself, directly provide the person wishing to take up the 'offer' with any good or service in return for payment; and
- the character of teleshopping must be one in which the presentation of direct offers is the principal purpose of the broadcast; other material included that does not itself contain direct offers must be justifiable as related to the direct offers and be appropriately limited.

The last bullet point above should not be understood as meaning that teleshopping must be solely composed of direct offers – although much teleshopping is – but that any associated content that does not make offers directly to the viewer, that does not seek immediate purchase in other words, must be both highly limited and clearly related to the offers themselves.

Ofcom recognises that the sale of different products and the mode of selling chosen will alter the balance of direct offers. For example, the direct sale of package holiday breaks is likely to be illustrated with more 'showcase' or 'brochure' sequences than is, say, the sale of household goods. Advertisers, including advertiser-licensees, may in any event choose more or less assertive selling techniques. Even so, the overwhelming bulk of content that is intended to be classed as teleshopping must concern direct offers: direct offers should be constant or near constant.

Much teleshopping uses 'L's: permanent on-screen overlays that display the price and characteristics of the goods or services offered and typically also the payment methods accepted. This technique may often help to create the necessary frequency and emphasis on direct offers, although the use of an 'L' or similar will not automatically render as teleshopping material that otherwise contains very few or no direct offers or is not obviously related to the goods or services being sold.

## In Breach

### Advertising minutage

*STV, 4 January 2010 to 2 March 2011, various dates and times*

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#### Introduction

Rule 14 of the Code on the Scheduling of Television Advertising (“COSTA”) states:

“Breaks during programmes on public service channels may not exceed 3 minutes 50 seconds, of which advertisements may not exceed 3 minutes 30 seconds.”

STV Group Plc (STV or “the Licensee”) is the company that owns the two regional Channel 3 licensees in northern and central Scotland.

STV notified Ofcom that the length of advertising breaks during programmes (or “centre breaks”) it had broadcast between 4 January 2010 and 2 March 2011 exceeded the permitted duration on 85 separate occasions, during 36 individual programmes.

STV notified Ofcom that this had happened on its service in relation to three series of programmes which had also been transmitted simultaneously across the Channel 3 Network (“Network Programmes”).

Ofcom considered the case raised issues warranting investigation under Rule 14 of COSTA. STV provided a detailed explanation for these incidents and Ofcom considered these as formal comments from STV under this rule.

#### Response

STV explained that in January 2010 there was a change to its arrangements with ITV Network in relation to programme sponsorship. In summary, there were times when, for the broadcast of a Channel 3 Network Programme on the STV service, STV accepted the ITV sponsor and other times when it could seek to source its own sponsor or not enter into any sponsorship arrangements at all.

STV said that it outsources its Presentation Scheduling<sup>4</sup> to ITV which manages the scheduling of STV’s commercial breaks on its behalf. The Licensee submitted that in January 2010 it first came to light that there was an “alignment gap” between STV and Channel 3 Network Programmes. This occurred when STV transmitted Network Programmes without sponsorship and therefore without sponsorship credits. In other words, a gap in STV’s schedules was identified in all instances where services in England and Wales transmitted on ITV1 had entered into a sponsorship arrangement – and STV had not – but the centre break duration had been created across the whole Channel 3 Network to accommodate a sponsorship arrangement.

It was clear, said STV, that this was a situation that had not been encountered previously, or anticipated by either party. STV said that a new process was implemented immediately (in January 2010) to remedy the schedule “gap” on STV:

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<sup>4</sup> Presentation scheduling includes planning daily programme schedules with the scheduling of commercial breaks; publicising the schedule and running validation and verification checks; creating and completing the automated play-list; and reporting pre and post transmission”.

as a solution, station promotions were used to fill the sponsorship credit gaps. Further, STV said that subsequently this process was revealed as flawed because it did not take account of the fact that ITV1's centre break included sponsorship credits, which did not count towards the centre break length, while STV's centre breaks included trailers and promotional material, which did. However, at the time no consequent compliance issues were identified from this process.

STV went on to explain that, subsequently, on 23 February 2011, following routine internal checks, it discovered that it had broadcast a centre break within a Network Programme (in this case, *Jeremy Kyle*) of four minutes and 14 seconds in duration. Because this did not comply with the requirements of Rule 14 of COSTA, STV launched an investigation into the matter.

STV explained that this investigation had revealed that, unlike the transmissions of the Network Programme *Jeremy Kyle* on ITV1, this programme had not included sponsorship credits when it had been broadcast on STV. This triggered further implementation of the process initiated in January 2010, described above. STV said that its staff responsible for scheduling had therefore filled the space left in its schedules by the absence of sponsorship credits on STV with trailers and station promotions.

STV said the investigation had also sought to identify any other incidents in which station promotions had been added to centre breaks to fill this type of alignment gap. STV discovered the flawed process was initiated in January 2010, was followed once in May 2010 and consistently followed in the same programme series from 4 January 2011 to 2 March 2011. This finding was reported immediately to Ofcom.

STV explained that it had inadvertently exceeded the permitted duration for centre breaks because the time scheduled between the end of each programme part to the start of the next programme part remained exactly the same across the whole Channel 3 Network, in all the reported incidents, but ITV1's centre break included sponsorship credits that did not count toward the length of a centre break, whereas at that point in time STV's break did not. Instead, STV's break included programme trailers and promotions which do count towards the length of a centre break.

The Licensee acknowledged that none of the monitoring systems in place across the Channel 3 Network identified what it described as this "substitutional" activity to correct an "alignment gap", but said that this activity should have been flagged by ITV's system reports.

The Licensee argued that in order to avoid what it described as an "inadvertent" breach of Rule 14 of COSTA by STV, the duration of the centre break should have been recalculated and reduced accordingly across the Network by the duration of the sponsorship credits to accommodate the alternative schedule requirements of STV. According to STV, these changes could only be made by ITV as STV said it was not able to reduce the break time during individual programmes simultaneously transmitted across the entire Channel 3 Network.

Nevertheless, STV said that, following its investigation in February 2011, it ensured it had a sponsorship arrangement in place for programmes which were (a) scheduled for simultaneous transmission across the Channel 3 Network; (b) sponsored on ITV1; and not (c) sponsored by STV, all to ensure alignment with the programme schedule configurations for ITV1. The Licensee said this was the only content that would enable it to meet the requirements of COSTA when centre breaks were already at the maximum duration permitted.

STV also submitted that it had reviewed and carried out refresher training for relevant members of staff. Staff were also reminded by STV to continue to report any elements in the schedule that did not appear to accord with COSTA. STV said that while it remained confident in continuing to rely on ITV's scheduling practices in relation to simultaneously broadcast Network programmes, a manual process has been implemented between ITV and STV schedulers to highlight any schedule differences in advance to prevent such incidents occurring in the future. Further, STV said that ITV agreed to review its technical reporting mechanisms.

Finally, STV assured Ofcom that, because only station promotion material was used to fill the sponsorship credit gaps, none of the 85 instances across the three programme series it had identified as not being compliant with COSTA Rule 14 contained any additional commercial content, and the commercial minutage that it transmitted across each hour and each day remained compliant with COSTA.

## Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content which it considers 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 EU Audiovisual Media Services (AVMS) 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.

Additionally, COSTA also contains rules that derive from specific UK advertising requirements, including, for example, those that apply to public service broadcasters in the UK and are intended to preserve the nature of their public service programming.

Rule 14 of COSTA requires that centre breaks on public service channels are no longer than 3 minutes and 50 seconds long in their entirety, and allows only 3 minutes and 30 seconds of such breaks to contain advertising content. This acknowledges that, in a centre break that includes the maximum permitted three minutes and 30 seconds of advertisements, an extra 20 seconds can be made up of other content. This 20 seconds (or more) of other content may be information given to viewers about or in connection with programmes.

However, sponsorship credits – defined and outlined in Section Nine of Ofcom's Broadcasting Code<sup>5</sup> – are not included in the calculation of centre breaks.

In this case, STV had filled the gaps in its centre break schedules, occurring when ITV1 entered into sponsorship arrangements and broadcast sponsorship credits and STV did not, with trailers and station promotions. This caused the durations of the centre breaks on STV to breach Rule 14 of COSTA on 85 occasions.

In relation to STV's assertion that the duration of the centre break should have been recalculated and reduced accordingly across the Channel 3 Network by the duration of the sponsorship credits to accommodate the alternative schedule requirements of

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<sup>5</sup> <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/commercial-references-television/>

STV, and that these changes could only be made by ITV, Ofcom took the view that it was STV's responsibility under the terms of its broadcast licence to ensure compliance with COSTA and all relevant Codes. Ofcom noted the particular circumstances of this case resulting from the simultaneous broadcasting of programmes where sponsorship is not taken by all broadcasters across the Channel 3 Network.

We welcomed the measures taken by the Licensee to address this compliance failure once it had been correctly identified. We also acknowledged that the centre break overruns had not included any additional commercial content.

Nevertheless, the total number of breaches across the three programme series (85), when considered together with the significant period of time over which they occurred, indicated to Ofcom a serious compliance failing. Moreover, Ofcom was concerned that an incorrect remedy had been applied when the alignment issue had been first identified, and continued to be applied for some considerable time. This demonstrated to Ofcom that staff at STV responsible for compliance had not been fully trained in the detailed requirements of COSTA, and remained inadequately trained for the entire period in question.

Ofcom expects STV to ensure both that its schedules are fully compliant with COSTA, and that its staff remains adequately trained in the relevant Ofcom rules at all times.

#### **Breaches of Rule 14 of COSTA**



## In Breach

### Advertising minutage

*Kanal 7 Avrupa, 4 April 2011, various times*

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#### Introduction

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 identified seven instances when the amount of advertising transmitted by Kanal 7 Avrupa in a single clock hour exceeded the maximum 12 minutes permitted by Rule 4.

Specifically, on 4 April 2011, Kanal 7 Avrupa broadcast advertising exceeding the amount permitted by Rule 4 of COSTA as follows:

- In the 10:00 clock hour, approximately 13 minutes of advertising;
- In the 11:00 clock hour, in excess of 12 minutes of advertising;
- In the 13:00 clock hour, in excess of 16 minutes of advertising;
- In the 15:00 clock hour, in excess of 14 minutes of advertising;
- In the 16:00 clock hour, in excess of 13 minutes of advertising;
- In the 17:00 clock hour, in excess of 18 minutes of advertising; and
- In the 22:00 clock hour, in excess of 12 minutes of advertising.

Ofcom considered that these incidents raised issues warranting investigation in relation to Rule 4 of COSTA. We therefore sought formal comments from Millennium Broadcast Limited (“the Licensee”) which operates and holds the broadcasting licence for Kanal 7 Avrupa, in relation to these incidents in relation to Rule 4 of COSTA.

#### Response

The Licensee did not provide an explanation for these incidents. It did however assure Ofcom of its compliance with COSTA in future.

The Licensee added it had recently set up an “internal regulation and monitoring system” and highlighted the need for “more meticulous discipline” to its Head of Advertising.

#### 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 EU Audiovisual Media Services (AVMS) Directive set out strict limits on the amount and scheduling of television advertising. Ofcom has

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

In this case, Ofcom found that the seven instances highlighted above were in breach of Rule 4 of COSTA.

Ofcom acknowledged the Licensee's assurance that it had taken steps to improve compliance with COSTA. However, we noted that the amount of advertising broadcast on Kanal 7 Arupa significantly exceeded the limit stipulated by Rule 4 of COSTA on no fewer than seven occasions on a single day. Further, we were concerned that the failure of the Licensee to provide any explanation for the frequency of these incidents in such a short space of time suggested a lack of awareness and understanding of the COSTA rules on the part of Millennium Broadcast Limited.

Ofcom is therefore continuing to monitor Kanal 7 Arupa's output carefully in the future and will consider further regulatory action should further breaches occur.

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

## In Breach

### Advertising scheduling

*MTV and VIVA, various dates and times*

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#### Introduction

Rule 16 of COSTA states that

“Restrictions apply when inserting advertising breaks during the following programmes;

- a) Films and news programmes may only include one advertising or teleshopping break for each scheduled period of at least 30 minutes.

Additionally, Rule 3 (f) of COSTA states that

“films’ means cinematographic works and films made for television.”

During monitoring of licensees’ compliance with COSTA, Ofcom noted that on four occasions, films broadcast on MTV and VIVA, the licences for which are held by MTV Networks Europe (“MTVNE” or “the Licensee”), appeared to contain more than the number of internal breaks permitted by Rule 16a as follows:

- MTV: 17 July 2011, 23:35 and 18 July 2011, 21:00; and
- VIVA: 23 July 2011, 21:00 and 24 July 2011, 19:01.

Ofcom considered these incidents raised issues warranting investigation in relation to Rule 16(a) of COSTA and therefore sought formal comments from the Licensee about these incidents in relation to this rule.

#### Response

MTVNE agreed these broadcasts contained too many internal advertising breaks and apologised for these errors. It said that on MTV, its systems currently schedule the end credits of films as a separate event running concurrently with the last part of the actual film content. On this occasion MTVNE said unfortunately a scheduler had mistakenly inserted a further internal break between the end of the film and the end credits.

On VIVA, the Licensee said a scheduler had reduced the scheduled slots for the films from the original plan without taking into account the implications for internal breaks.

MTVNE admitted that events were “clearly unsatisfactory” and said that additional checks are being put in place in its systems and further training to schedulers will be provided to prevent any such incident happening again in the future.

#### 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 EU Audiovisual Media Services (AVMS) Directive set out strict limits on the amount and scheduling of television advertising. Ofcom has transposed these requirements by means of rules in COSTA. Ofcom undertakes routine monitoring of all of its licensees’ compliance with COSTA.

In this case, Ofcom found that the additional breaks taken on four occasions on MTV and VIVA were in breach of Rule 16(a) of COSTA.

Ofcom welcomed the additional compliance measures put in place to prevent any future occurrence, but noted that it has already previously resolved two incidents when VIVA also broadcast films containing too many internal breaks, at odds with Rule 16(a)<sup>1</sup>. At the same time, Ofcom had resolved other incidents when too many internal breaks were taken on another of MTVNE’s channels, MTV Dance (in respect of COSTA Rule 17<sup>2</sup>). Assurances were given by MTVNE at the time that further compliance measures would be put in place to prevent any future occurrence and additional training introduced.

Ofcom does not expect a repeat of such incidents in the future.

#### **Breaches of Rule 16(a) of COSTA**

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb186/obb186.pdf>

<sup>2</sup> Which imposes limits on the number of internal breaks in other types of programming, see: <http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/tacode.pdf>

## In Breach

### Breach findings table

*Code on the Scheduling of Television Advertising compliance reports*

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

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

Channel	Transmission date and time	Code and rule / licence condition	Summary finding
Islam Channel	23 July 2011, 21:00	COSTA Rule 4	<p>During monitoring, Ofcom noted that the Islam Channel exceeded the permitted advertising allowance by 55 seconds.</p> <p>The broadcaster believed that certain promotions should not have been counted towards its advertising minutage. After Ofcom clarified these promotions met the definition of television advertising, the Islam Channel accepted it broadcast above the limits set by COSTA and has updated its procedures to ensure this does not happen again.</p> <p><b>Finding: Breach</b></p>

Rule 16 of COSTA states that

“Restrictions apply when inserting advertising breaks during the following programmes;

- a) Films and news programmes may only include one advertising or teleshopping break for each scheduled period of at least 30 minutes.

Additionally, Rule 3 f) of COSTA states that

“films’ means cinematographic works and films made for television.”

Rule 17 of COSTA stipulates the maximum number of internal breaks programmes (other than those exceptions in Rule 16) may contain:

Scheduled duration of programme (on non-PSB channels)	Number of breaks
< 26 minutes	One
26 – 45 minutes	Two
46 – 65 minutes	Three
66 – 85 minutes	Four
86 – 105 minutes	Five
106 – 125 minutes*	Six

\*for every additional 20 minutes of programming, a further break is permitted.

Channel	Transmission date and time	Code and rule / licence condition	Summary finding
GEM TV	4 April 2011, 20:30	COSTA Rule 17	Ofcom noted during monitoring, that the programme <i>Manuella</i> contained four internal breaks – one more than permitted by Rule 17 of COSTA.  <b>Finding: Breach</b>
Sky Atlantic	16 July 2011, 01:53	COSTA Rule 16(a)	Ofcom noted during monitoring that a one-off, feature length edition of the series 24 contained five breaks in a 112 minute programme – two more than permitted under Rule 16(a) of COSTA.  <b>Finding: Breach</b>
Sky Sports 4	25 July 2011, 00:59	COSTA Rule 17	Ofcom noted that, during monitoring, a programme was broadcast that contained seven internal breaks, one more than permitted by Rule 17 of COSTA.  <b>Finding: Breach</b>
WTF	26 July 2011, 05:00	COSTA Rule 17	Ofcom noted during monitoring that the programme <i>WTF – What Are You Up To?</i> contained five internal breaks in a 60 minute slot, one more than permitted by COSTA for a programme of this duration.  <b>Finding: Breach</b>

## Resolved

### Advertising minutage

*My Channel, 1 and 7 August 2011, 09:00 and 20:00*

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#### Introduction

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 My Channel broadcast 14 minutes and 20 seconds of advertising in one clock hour on 1 August 2011, and 13 minutes and 20 seconds of advertising in one clock hour on 7 August 2011.

Ofcom considered that these incidents raised issues warranting investigation in relation to Rule 4 of COSTA. We therefore sought formal comments from Enteraction TV Learning Ltd (“the Licensee”) which operates and holds the broadcasting licence for My Channel, in relation to these incidents and this rule.

#### Response

My Channel said that the incidents in question were the result of human error, coupled with the introduction of a new scheduling system recently acquired by the Licensee. A new member of staff had recently been employed to manage My Channel’s schedule, it said, and was still unfamiliar with the equally new scheduling system, Zeus.

My Channel explained the specific incidents: on the 1 August 2011 a last minute change affected the size of a slot in the 09:00 clock hour, which in turn impacted on the amount of commercial air time that aired within this clock hour; while on 7 August 2011, the first part of a three-part programme was not transmitted as initially scheduled, something that the scheduling system did not identify, which resulted in excess commercial air time for that clock hour.

My Channel said that the two incidents were mistakes stemming from the introduction of new software while new staff were still undergoing training. To ensure such incidents did not recur, the Licensee said it had given additional training to the scheduler and the development of a new function in the Zeus software to monitor commercial minutage to alert the scheduler of any over run in commercial air time.

#### 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 EU Audiovisual Media Services (AVMS) 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 of all of its licensees' compliance with COSTA.

In this case, Ofcom found that the amount of advertising exceeded that permitted by Rule 4 of COSTA.

However, Ofcom noted that the incidents had been the result of a combination of new staff and new software and welcomed the additional compliance measures put in place by the Licensee. In view of the steps taken, Ofcom considers the matter resolved, but reminds My Channel of the importance of ensuring robust systems to ensure full compliance with COSTA, and does not expect any such incidents in future on My Channel.

## **Resolved**



## Resolved

### Resolved findings table

#### *Code on the Scheduling of Television Advertising compliance reports*

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

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

Additionally, Rule 4(a) of COSTA states that:

"On public service channels, time devoted to television advertising and teleshopping spots must not exceed:

- i) an average of 7 minutes per hour for every hour of transmission time across the broadcasting day; and
- ii) subject to (i) above, an average of 8 minutes an hour between 6pm and 11 pm.”

Channel	Transmission date and time	Code and rule / licence condition	Summary finding
4Music	17 August 2011, 15:00	COSTA Rule 4	<p>Ofcom noted, during monitoring, that 4Music exceeded the permitted advertising allowance by 36 seconds in clock hour 15:00 on 17 August 2011.</p> <p>4Music said owing to a late delivery, a programme lasting approximately 11 minutes, was not loaded onto the broadcaster’s playout system correctly. Therefore, the live system automatically skipped to the next item in the schedule resulting in the broadcast of a commercial break intended for the subsequent clock hour. The broadcaster said that to avoid a recurrence, it will not transmit pre-recorded programming that is delivered less than 60 minutes before they are due to be aired.</p> <p><b>Finding: Resolved</b></p>

Good Food	18 July 2011, 15:00 and 16:00	COSTA Rule 4	<p>Ofcom noted, during monitoring, that Good Food exceeded the permitted advertising allowance by 49 seconds and 22 seconds respectively in two clock hours.</p> <p>Good Food explained these instances occurred as a result of human error following a system failure. Compliance staff tried to manually 're-build' the schedule but miscalculated the advertising minutage in the two clock hours. Good Food assured Ofcom that the overall advertising allowance for the day was unaffected by these incidents and that compliance staff receive training about the importance of keeping to COSTA rules.</p> <p><b>Finding: Resolved</b></p>
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Rule 16 of COSTA states that

“Restrictions apply when inserting advertising breaks during the following programmes;

- b) Films and news programmes may only include one advertising or teleshopping break for each scheduled period of at least 30 minutes.

Additionally, Rule 3 f) of COSTA states that

“films’ means cinematographic works and films made for television.”

Rule 17 of COSTA stipulates the maximum number of internal breaks programmes (other than those exceptions in Rule 16) may contain:

Scheduled duration of programme (on non-PSB channels)	Number of breaks
< 26 minutes	One
26 – 45 minutes	Two
46 – 65 minutes	Three
66 – 85 minutes	Four
86 – 105 minutes	Five
106 – 125 minutes*	Six

\*for every additional 20 minutes of programming, a further break is permitted.

<b>Channel</b>	<b>Transmission date and time</b>	<b>Code and rule / licence condition</b>	<b>Summary finding</b>
The Box	28 July 2011, 20:28:47	COSTA Rule 17	<p>Ofcom noted, during monitoring, that The Box transmitted 11 internal breaks during a programme lasting 205 minutes. The Box admitted the incident was caused by human error when the programme was re-scheduled to start. Ofcom noted the broadcaster said that compliance staff are being re-trained on the importance of keeping to COSTA regulations, and that The Box said no additional advertising minutes were transmitted during the period.</p> <p><b>Finding: Resolved</b></p>

## Fairness and Privacy Cases

### Not Upheld

#### Complaint by European Collar Manufacturers Association and Petsafe Limited

*The One Show, BBC1, 21 April 2011*

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**Summary:** Ofcom has not upheld this complaint of unfair treatment made by the European Collar Manufacturers Association (“ECMA”) and the company Petsafe.

BBC1 broadcast an edition of its weekday evening magazine programme *The One Show*. This edition of the programme included a section looking at electric shock collars for dogs, prompted by the first prosecution of a dog owner since the use of the collars had been made illegal in Wales.

The ECMA and Petsafe complained that they were treated unjustly or unfairly in the programme as broadcast.

In summary, Ofcom found the following:

- The programme did not give an unfair impression of electric shock collars for dogs.
- The programme makers took reasonable care to satisfy themselves that the programme did not present, disregard or omit material facts, with regard to electric shock collars for dogs.
- It was not incumbent upon the programme makers to offer the complainants an opportunity to respond.

#### Introduction

On 21 April 2011, BBC1 broadcast an edition of its weekday evening magazine programme *The One Show*. This edition of the programme included a report on electric shock collars for dogs. The report explained that the use of electric shock collars for dogs had recently been made illegal in Wales and set out the potential penalties for their use there. It also indicated that although their use remained legal in England, Scotland and Northern Ireland, the UK Government was “*investigating whether there should be a UK-wide ban*”.

Both the presenter of the report, Dom Littlewood, and a representative of the RSPCA were shown talking about welfare concerns raised by the use of the collars. The report also included a professional dog trainer, based in Wales, who supported the use of the collars as a tool to train dogs that chased livestock and who considered that using them was a better alternative than risking a dog in these circumstances being shot by a farmer.

After the report the studio presenters, Matt Baker and Alex Jones and the studio guest, actress Lynda Bellingham, discussed the use of the collars with *The One Show* vet Joe Inglis. During this discussion Mr Inglis stated that he was against the use of these collars and indicated that his view was:

*“...shared by the majority of vets and animal behaviourists...and also the big animal welfare charities...because they are clearly cruel...and they don’t work as well”.*

Mr Inglis also held a remote control operated electric dog collar with eight shock levels against his hand while the presenters delivered an electric shock through it, in response to which Mr Inglis jumped back against the sofa on which he was sitting. After this Mr Inglis said:

*“Blimey, that’s quite something and that was what three? [to which Mr Baker responded “yeah, yeah”] so you imagine that round the neck of an animal on eight”.*

Following the broadcast of the programme, Brabners Chaffe Street Solicitors (“BCS Solicitors”) complained to Ofcom that the European Collar Manufacturers Association (“ECMA”) and Petsafe Limited (“Petsafe”), a company that manufactures and sells the collars and which the ECMA represents, were treated unjustly or unfairly in the programme as broadcast.

### **The Complaint and the BBC’s response**

In summary, BCS Solicitors complained that the ECMA and Petsafe were treated unjustly or unfairly in the programme as broadcast in that:

- a) The programme gave an unfair impression to viewers of electric dog collars. The complainants cited six specific elements of the report and said that the relevant section of the programme included exaggeration, dubbing and other editing for dramatic effect which created an unfair impression of the effect of electric collars.

In reply, but before responding to the specific elements of this head of complaint, the BBC said that the report was prompted by the first prosecution of a pet owner since the ban on the use of electric shock collars for dogs was introduced in Wales in 2010. It said that the report was specifically about the use of electric shock collars by pet owners, not the manufacture or sale of such collars. The BBC said that the programme made it clear that the use of the collars had been banned in Wales (but currently remained legal in England, Northern Ireland and Scotland) and that the responsibility for their use rested with individual pet owners. It added that the programme: did not question the manufacture or sale of these collars; ensured an appropriate range of views regarding the use of the collars was represented; and, did not name either the ECMA or Petsafe.

The BBC also asked Ofcom to consider that the ECMA represented only one of a number of companies which manufacture and sell electric shock collars for dogs in the UK.

In particular, the complainants said that the programme gave an unfair impression of electric dog collars in that:

- i) At no point was it made clear that the welfare of the dog owned by the man convicted of using an electric dog collar (Mr Pook) was not compromised.

In response, the BBC said that it did not know on what basis the complainants stated that the welfare of Mr Pook’s dog was not compromised but that in any case the welfare of this particular dog was not material to this complaint of unfairness given that there was a clear consensus amongst animal welfare

organisations that the use of electric shock collars posed at least a potential danger to the welfare of dogs. The BBC supported its position on this matter by quoting comments made by the RSPCA, The British Veterinary Association, The Kennel Club, The Dogs Trust and The PDSA<sup>1</sup>. All of these organisations were concerned that the use of these devices could or did cause welfare problems for dogs and four of them considered that they should not be used in any circumstances.

- ii) Mr Littlewood's claim that the statutory penalty for the use of an electric dog collar in Wales was "a fine up to £20,000 or up to six months in prison" was untrue as the penalty was a fine of up to £5,000 and/or 51 weeks imprisonment.

On this point, the BBC said that the summary of the maximum fine or prison sentence in the programme was incorrect in that it overstated the maximum fine but understated the maximum prison sentence. However, the broadcaster argued that the inaccuracy was not material to the audience's understanding that the use of an electric shock collar on a dog in Wales was illegal and could lead to a significant fine or prison sentence.

- iii) The dog's cry on the BBC News footage of a dog chasing sheep (included within the report) was dubbed for dramatic effect.

In response, the BBC said that the programme makers had assured it that that no sound effects were dubbed onto the archive footage used by *The One Show* and there was no indication or reason to assume that any such sound effects were dubbed onto the original material when it was first broadcast.

- iv) There was no robust evidence to support the RSPCA representative's position or that of Mr Inglis, which was why the English government and the Scottish Parliament had delayed any decision on the regulation of electric collars until the results of DEFRA experiment AW1402 were available.

On this sub-head of complaint, the broadcaster said that a number of scientific studies had been carried out and provided evidence both for and against the acceptability of electric shock collars. However, it also said there was a significant volume of scientific research to support the views expressed in the programme by the RSPCA and Mr Inglis.

The BBC supported its position on this matter by quoting from two academic studies on the use of electric shock collars on dogs and a 2006 review of the literature on this subject by the University of Bristol's Department of Clinical Veterinary Science. The first of the two studies concluded that: "shocks received during training are not only unpleasant but also painful and frightening", and the second study found that "the general use of electronic shock collars is not consistent with animal welfare".

The broadcaster observed that the ECMA had challenged a ban on the use of electric shock collars imposed by the Welsh Assembly Government ("the WAG") in the High Court in 2010, but that the court had found that the ban was reasonable. It also noted that the judge had cited the Chief Veterinary Officer for Wales' view that:

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<sup>1</sup> The People's Dispensary for Sick Animals (PDSA) is the UK's leading pet charity.

“The balance of [the] scientific evidence indicated that electronic collars had the potential to have adverse consequences for animals”.

The BBC also noted that the Code of Practice for the Welfare of Dogs published by DEFRA in 2008 said:

“All dogs should be trained to behave well, ideally from a very young age. Only use positive reward based training. Avoid harsh, potentially painful or frightening training methods”.

- v) The testing of an electric collar on Mr Inglis was presented unfairly in that while Mr Baker corroborated Mr Inglis’ understanding that the shock had been set to level three it was actually set at level four.

In response, the broadcaster said that viewers would have been aware that Mr Inglis received a noticeable shock, regardless of whether the collar was set at level three or four and that the shock was no more than half the maximum possible. It also said that a similar video, produced by the Kennel Club for Crufts 2009, in which Andrew Rosindell MP volunteered to receive a shock from an electronic collar, appeared to confirm that such collars do deliver a perceptible electric shock.

- vi) During the testing of the electric collar on Mr Inglis an audible tone could be heard – this was the reward tone, which was designed to deliver a positive association that is equivalent to clicker training. The facility of the electric collar to deliver positive tone was not mentioned in the programme.

On this issue, the BBC said that clicker training was a method of training animals that relied on marking desirable behaviour (normally with a distinct click sound) and combining this with positive reinforcement or reward and was commonly referred to as “reward training”. It said that electric shock collars were a form of aversion training, as was made clear on the ECMA’s own website. .

The broadcaster argued that, although the complainants said that the audible tone delivered by electric shock collars was a “positive association”, the reality was that electric shock collars provided an aversive stimulus not a reward.

- b) While the programme included no direct allegation against the complainants, the implication of the programme was to the serious detriment of those organisations which manufactured and distributed electric collars (including the ECMA and Petsafe) and therefore the ECMA and Petsafe should have been given an opportunity to respond. The complainants added that although they were not given such an opportunity they submitted a statement to the programme makers which was ignored.

In response on this head of complaint, the BBC said that, given that:

- the programme looked at the issues raised for pet owners by use of electric shock collars;
- no reference was made to the complainants; and
- no allegation was made about them,

there was no obligation on the programme makers to include a statement from them.

It said that there was an obligation to ensure that the arguments put forward on both sides regarding the use of electric shock collars were presented in an accurate and fair manner.

The BBC noted the inclusion of the views of Mr Charles Wall, a professional dog trainer based in Wales who now travels to England in order to use electric shock collars when training dogs, in the report. It argued that given his inclusion, viewers would have been aware that some people supported the use of electric shock collars and believed they could play a positive role in training pets and would have understood the arguments put forward for the use of the collars, notably that there were specific benefits to their use.

The BBC said that the programme makers initially requested an interview with the complainants on 13 April 2011, but the complainants were unable to provide an appropriate spokesperson due to prior commitments. The complainants were subsequently asked to respond to a number of questions put to them by the programme makers but were then told that an alternative contributor, Mr Wall, had been found to explain the positive uses of electric shock collars. Contemporaneous emails sent internally by the programme makers confirmed that Mr Rob Steele, International Marketing Assistant for Petsafe, acknowledged this but said the ECMA had started work on a statement and would therefore forward it and it was for the programme makers to decide whether or not to use it.

- c) The omission of material facts (which were included in the statement provided to the programme makers by the ECMA and Petsafe) and/or other material contributions resulted in the programme presenting an entirely partial anti-electric collar viewpoint and depriving viewers of an alternative (and scientifically corroborated) viewpoint.

On this issue, the BBC said that this aspect of complaint appeared to raise an issue of due impartiality rather than an issue of fairness and therefore would appear to fall outside Ofcom's remit in relation to programmes broadcast by the BBC. To the extent to that Ofcom may view it as involving issues of fairness, the BBC said that the issues had been addressed in the responses to the previous heads of complaint.

However, it added that if Ofcom considered that the omission of a particular viewpoint could lead to unfairness to the complainants, it would make the following points:

- the programme adequately reflected the view of those who supported the use of electric shock collars and who believed there were positive benefits from such use.
- the programme did not refer to any scientific evidence which supported or opposed the use of electric shock collars and therefore there was no unfairness to the complainants in omitting the reference in their emailed statement to one scientific paper, particularly bearing in mind their apparent recognition that there was a lack of sufficiently robust scientific evidence to either support or repudiate a ban.

## **Decision**

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public



and all other persons from unfair treatment and unwarranted infringement of privacy in, or in the making of, programmes included in such services.

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

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript of the relevant section and both parties' written submissions.

When considering complaints of unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of Ofcom's Broadcasting Code ("the Code"). Ofcom had regard to this Rule when reaching its decisions on the individual heads of complaint detailed below.

- a) Ofcom first considered the complaint that the programme gave an unfair impression of electric dog collars.

In considering this part of the complaint, Ofcom had regard to Practice 7.9 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, and that anyone whose omission could be unfair to an individual or organisation has been offered an opportunity to contribute.

Ofcom has considered each element of the programme that the complainants said gave an unfair impression of electric dog collars.

- i) As regards the complaint that at no point was it made clear that the welfare of the dog owned by the man convicted of using an electric dog collar (Mr Pook) was not compromised, Ofcom noted that Mr Littlewood's report was introduced with some footage of a border collie lying in the grass outside a building and a man walking out of the building alongside the following commentary:

*"This dog is at the centre of a ground breaking legal case. The border collie's owner, Philip Pook, has pleaded guilty to using an illegal electric shock collar on his dog in the first prosecution of its kind in the UK".*

Mr Littlewood explained that the use of electric shock collars for dogs had been made illegal in Wales. He then talked about the invention of electric shock collars as a training aid in the 1950s and noted that they had *"been criticised by animal welfare charities"*. He also explained that, while the use of the collars had not been banned in England, Scotland and Northern Ireland, the UK Government had asked DEFRA to assess their effect on animal welfare. Ofcom noted that the report reflected British Veterinary Association's position and included extracts from an interview with an RSPCA representative. Both organisations opposed the use of the collars. The report also included extracts of an interview with Mr Wall, a dog trainer from Wales, who supported the use of the collars. After the report the studio presenters, Matt Baker and Alex Jones and the studio guest, actress Lynda Bellingham, discussed the use of the collars with *The One Show* vet Mr Inglis.

In Ofcom's opinion viewers would have understood that the report was looking at the use of electric shock collars for dogs generally rather than Mr Pook's use of one on his dog specifically and that Mr Pook and his dog were featured in the report solely because he was the first person to have been convicted for using one of these collars since the WAG had banned their use in Wales.

The programme included only factual information regarding Mr Pook and his dog, and although a discussion on the effect the use of electric shock collars has on the welfare of dogs in general was also included no comments were made about the welfare of Mr Pook's dog in particular.

In light of these factors Ofcom did not consider that this aspect of the report gave an unfair impression of electric shock collars for dogs.

- ii) As regards Mr Littlewood's claim that the statutory penalty for the use of an electric dog collar in Wales was "a fine up to £20,000 or up to six months in prison", Ofcom noted the BBC's acknowledgment that the summary in the programme of the maximum penalty for using an electric shock collar on a dog in Wales was incorrect, in that the maximum fine was lower and the maximum prison sentence was higher than stated.

In Ofcom's opinion this inaccuracy would not have had a material impact on viewers' understanding given that the programme reflected the fact that conviction for the use of an electric shock on a dog in Wales could result in a significant fine and/or a prison sentence. In addition, Ofcom again observed that neither the ECMA nor Petsafe were mentioned in the programme.

In light of these factors Ofcom did not consider that the reference to the potential penalties for using the collars in Wales in the report gave an unfair impression of electric shock collars for dogs.

- iii) As regards the complaint that the dog's cry on the BBC News footage of a dog chasing sheep (included within the report) was dubbed for dramatic effect, Ofcom noted that during Mr Littlewood's explanation of the invention and use of electric shock collars for dogs the report included some BBC news footage of a dog running across a field towards some sheep with the following commentary:

*"This news footage shows a shock collar being used by remote control to discourage a dog from worrying sheep. When shocked, the dog moves away from the flock".*

As the dog approached the sheep and a shock was administered, it could be heard making a yelping bark.

In light of the BBC's assurance that no sound effects were dubbed onto the archive footage used by *The One Show* and there was no indication that any such sound effects were dubbed onto the original material when it was first broadcast, and in the absence of any evidence from the complainants that the sound of the dog yelping was dubbed onto the footage, Ofcom did not consider that the use of this footage in the programme gave an unfair impression of electric shock collars for dogs.

- iv) Ofcom then considered the complaint that there was no robust evidence to support the RSPCA representative's position or that of Mr Inglis, and that this

was why the English government and the Scottish Parliament had delayed any decision on the regulation of electric collars until the results of the DEFRA experiment AW1402 were available.

As noted above, the report included extracts from an interview with an RSPCA representative, who said:

*“The application of an electronic shock can induce a stress response in animals and they also show behaviours associated with fear, pain and stress ... The RSPCA would really like to see shock collars banned. Research clearly shows that electronic shock collars can cause welfare problems, there just isn’t any place for these devices in modern animal training”.*

Ofcom also noted that Mr Wall, the professional dog trainer who supported the use of electric shock collars was shown saying:

*“I was very sad when I saw them get banned in Wales because I thought they were banned without really any thought being given to the positive sides of what they can do, i.e. stopping dogs getting shot by framers when the dogs are chasing sheep”.*

When Mr Littlewood asked him if he thought that the use of the collars to teach dogs what to do and what not to do was not *“just out and out cruel(ly)”*, Mr Wall said:

*“I don’t teach the dogs what to do and what not to do with the exception of when they are chasing stock and things like that. To use something that I often say to people, if you were a dog and you had the choice of having a momentary shock to be taught not to chase sheep or the choice of being shot by a farmer which would you prefer? I think that used correctly they are a great tool, used by people who don’t know what they are doing they are probably an instrument of torture...If it’s left that just anybody can go into a shop and just buy one and stick it on their dog and think well I’m going to train my dog using this electric collar I’m all in favour of them being banned. I do think that they should be licensed and that the use of them should be monitored”.*

During the studio discussion that followed the report Mr Inglis said:

*“I personally think that they are horrible devices that have got no place in animal training whatsoever and that’s a view shared by the majority of vets and animal behaviourists... ..and also the big animal welfare charities as well. And the reasons are because they are clearly cruel, I mean you could see in that film the reaction of the dog when it got shocked, and they don’t work as well”.*

In response to a question from Ms Bellingham, Mr Inglis said:

*“Training should be about positive rewards like clicker training which is all about rewarding your dog when it does something good rather than, you know doing the equivalent of giving them a good kick when they do something bad”.*

In response to Mr Wall’s position that it was better to use electric shock collars to train a dog not to chase sheep than for it to be shot by a farmer, Mr Inglis said:

*"I don't think that's a real comparison because there is always another way. For example, if you've got a dog that worries sheep then just don't go near sheep or keep them on a lead. And I think it would be much better for that dog to have the choice of being shot, shocked or just walking somewhere else, they would take that option. There is always another way and all the behaviourists I've spoken to have agreed that there is never a need for these devices. We've trained dogs for thousands of years without them so we don't need them".*

Having assessed the programme, Ofcom considered that viewers would have been aware that there was an ongoing debate about the acceptability of electric shock collars. It also considered that it would have been clear to viewers that the RSPCA representative's comments reflected the RSPCA's position and that Mr Inglis' comments reflected his own opinion. Ofcom also considered that Mr Wall's comments amounted to a substantive reflection of the views of people who supported the use of electric shock collars to train dogs. In Ofcom's opinion having heard these differing opinions viewers would have been able to draw their own conclusions on the use of the collars.

Ofcom noted that, in its response to the complaint, the BBC acknowledged that scientific studies had provided evidence both for and against the acceptability of electric shock collars. It also noted that the BBC had cited two studies that had found that the use of the collars was detrimental to the welfare of dogs. In addition, Ofcom observed that the RSPCA is a recognised authority on animal welfare and that Mr Inglis practises as a vet and had sought the views of a number of animal welfare charities on this matter prior to contributing to this programme.

Taking into account all of these factors, Ofcom considered that the programme makers took reasonable care to satisfy themselves that the programme did not present, disregard or omit material facts with regard the use of electric shock collars for dogs.

- v) As regards the complaint that the testing of an electric collar on Mr Inglis was presented unfairly in that while Mr Baker corroborated Mr Inglis' understanding that the shock had been set to level three it was actually set at level four, Ofcom noted that during the studio discussion Mr Inglis held a remote control operated electric shock collar, which he said had eight levels, against his hand while the presenters delivered an electric shock through it. Before the shock was delivered one of the presenters, Matt Baker, said to his co-presenter, Alex Jones: *"Put it on four right, we'll go half way"*. In response to the shock Mr Inglis jumped back against the sofa on which he was sitting and said: *"Blimey, that's quite something and that was what three?"*. Mr Baker responded *"yeah, yeah"* and Mr Inglis then said: *"so you imagine that round the neck of an animal on eight"*.

In Ofcom's opinion some viewers of the programme might have understood that the shock level delivered to Mr Inglis was level three rather than level four. However, Ofcom considered that this discrepancy was unlikely to have materially affected viewers' understanding of the level of shock that could be delivered by an electric shock collar set on or near its mid point.

In light of this Ofcom did not consider that this aspect of the programme gave an unfair impression of electric shock collars for dogs.

- vi) Ofcom then considered the complaint that during the testing of the electric collar on Mr Inglis an audible tone could be heard, which was the reward tone designed to deliver a positive association that is equivalent to clicker training. The facility of the electric collar to deliver positive tone was not mentioned in the programme.

Ofcom observed that the shock collar was tested by Mr Inglis twice, as it failed to deliver a shock on the first occasion, and that during the first test a quiet beeping sound was audible. No reference to this sound was made in the programme.

It is important to note that while broadcasters must ensure that a programme as broadcast does not result in unfairness to an individual or organisation the inclusion or omission of specific content is an editorial matter. In Ofcom's view the focus of this section of the programme was to illustrate the level of shock that can be delivered by an electric collar. In view of this and given that, as the ECMA's website makes clear, the primary function of an electric collar for dogs is to train them not to exhibit particular behaviours (for example approaching sheep or going outside a designated area) by means of delivering an electric shock when they do so, Ofcom did not consider that the omission of any reference to the audible tone delivered by the particular collar used during the programme gave an unfair impression of electric shock collars for dogs.

Taking into account all the factors referred to above, Ofcom concluded that none of the elements of the programme about which the ECMA and Petsafe complained gave an unfair impression of electric shock collars for dogs. In addition, Ofcom observed that neither the ECMA nor Petsafe were mentioned in the programme, and therefore concluded that neither organisation was in any way linked to the presentation of electric shock collars for dogs in the programme. Ofcom therefore found no unfairness to the complainants in respect of the complaint that the programme gave an unfair impression to viewers of electric dog collars.

- b) Ofcom then considered the complaint that while the programme included no direct allegation against the complainants, the implication of the programme was to the serious detriment of those organisations which manufactured and distributed electric collars (including the ECMA and Petsafe) and therefore the ECMA and Petsafe should have been given an opportunity to respond. The complainants added that although they were not given such an opportunity they submitted a statement to the programme makers which was ignored.

In considering this head of complaint Ofcom had regard to Practice 7.11 which states that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

Ofcom recognised that the complainants had an interest in the relevant section of the programme given that it looked at the use of electric shock collars for dogs. However, given that:

- this section of the programme looked at the use rather than the manufacture and distribution of electric shock collars for dogs;
- as the complainants acknowledged, the programme included no allegations of wrongdoing or incompetence on the part of either ECMA or Petsafe; and
- they were in no way linked to any of the comments made about electric shock collars for dogs in the programme,

Ofcom did not consider that it was incumbent upon the programme makers to offer the complainants an opportunity to respond.

It therefore found no unfairness to the complainants in this respect.

- c) Ofcom considered the complaint that the omission of material facts, which were included in the statement provided to the programme makers by the ECMA and Petsafe, and/or other material contributions resulted in the programme presenting an entirely partial anti-electric collar viewpoint and depriving viewers of an alternative (and scientifically corroborated) viewpoint.

Ofcom noted the BBC's position that this head of complaint appeared to raise an issue of due impartiality<sup>2</sup> and only considered it with regard to whether or not the omission of any material facts from the programme resulted in unfairness to the complaints (as set out in Practice 7.9 of Code - see decision at head a) above).

Ofcom recognised that following an initial contact by the programme makers the complainants provided a statement about the use of electric shock collars for dogs which was not subsequently used in the programme. However, Ofcom also noted its earlier conclusions that the inclusion of Mr Wall's comments in the programme (see decision at head a) iv) above) amounted to a substantive reflection of the views of people who supported the use of electric shock collars to train dogs and that, having heard his opinion on the use of electric shock collars for dogs as well as that of the other contributors to the programme, viewers would have been able to make up their own minds in relation to this matter.

In light of these factors, Ofcom considered that the programme makers took reasonable care to satisfy themselves that the programme did not present, disregard or omit material facts, with regard to the use of electric shock collars for dogs in a way that resulted in unfairness to the ECMA or Petsafe. It therefore found no unfairness to the complainants in this respect.

**Accordingly, Ofcom has not upheld the complaint from ECMA and Petsafe of unfair treatment the broadcast of the programme.**

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<sup>2</sup> Complaints about due impartiality in programmes broadcast on BBC services fall outside Ofcom's remit.

## Other Programmes Not in Breach

Up to 17 October 2011

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>
The Palestine Papers	Al Jazeera	23/01/2011	Due impartiality/bias

## Complaints Assessed, not Investigated

Between 4 and 17 October 2011

This is a list of complaints that, after careful assessment, Ofcom has decided not to pursue because they did not raise issues warranting investigation.

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
A League of Their Own	Sky1	07/10/2011	Outside of remit / other	1
A League of Their Own	Sky1	14/10/2011	Animal welfare	2
Adult Channels	Various	n/a	Scheduling/Sexual Material	1
Advertisement	ITV1	15/10/2011	Advertising content	1
Advertising Content	Comedy Central HD	05/10/2011	Advertising content	1
Al Murray	Channel 4	30/09/2011	Generally accepted standards	1
Alan Brazil Sports Breakfast	Talksport	27/09/2011	Race discrimination/offence	1
Alan Titchmarsh Show	ITV1	07/10/2011	Due accuracy	1
Aviva's sponsorship of Downton Abbey	ITV1	18/09/2011	Generally accepted standards	52
Aviva's sponsorship of Downton Abbey	ITV1	25/09/2011	Generally accepted standards	2
Babestation Blue	Get Lucky TV	06/08/2011	Participation TV - Offence	1
Babestation Blue	Get Lucky TV	13/08/2011	Participation TV - Offence	1
Babestation Blue	Get Lucky TV	07/09/2011	Participation TV - Offence	1
Babestation Extra	Lucky Star	05/08/2011	Participation TV - Offence	1
Babestation Extra	Lucky Star	10/08/2011	Participation TV - Offence	1
Babestation Extra	Lucky Star	17/08/2011	Participation TV - Offence	1
Babestation Live	Babestation	27/07/2011	Participation TV - Offence	1
Babestation Live	Babestation	05/08/2011	Participation TV - Offence	1
Babestation Live	Babestation	11/08/2011	Participation TV - Offence	1
Babestation Live	Babestation	14/08/2011	Participation TV - Offence	1
Babestation Live	Babestation	07/09/2011	Participation TV - Offence	1
Babestation Live	Babestation	09/09/2011	Participation TV - Offence	1
Babestation Live	Babestation	09/09/2011	Participation TV - Offence	1
Baby Beauty Queens	BBC 3	11/10/2011	Generally accepted standards	1
Baby Tales	Discovery Home and Health	04/10/2011	Generally accepted standards	1
Bang Goes the Theory	BBC	n/a	Outside of remit / other	1



Bathstore's sponsorship of Modern Family	Sky 1	23/09/2011	Nudity	1
Bathstore's sponsorship of The Simpsons	Sky 1	30/09/2011	Nudity	1
BBC News	BBC News	03/10/2011	Outside of remit / other	1
BBC News	BBC News 24	06/10/2011	Outside of remit / other	1
BBC News	BBC News 24	06/10/2011	Outside of remit / other	1
BBC News	BBC News 24	14/10/2011	Outside of remit / other	1
BBC News	BBC News 24	15/10/2011	Generally accepted standards	1
BBC News at Ten	BBC 1	03/10/2011	Generally accepted standards	1
BBC News at Ten	BBC 1	11/10/2011	Generally accepted standards	1
Big Brother	Channel 5	29/09/2011	Outside of remit / other	1
Big Brother	Channel 5	02/10/2011	Generally accepted standards	1
Big Brother	Channel 5	03/10/2011	Race discrimination/offence	2
Big Brother	Channel 5	07/10/2011	Generally accepted standards	1
Big Brother	Channel 5	09/10/2011	Generally accepted standards	1
Big Brother	Channel 5	09/10/2011	Premium rate services	1
Big Brother	Channel 5	10/10/2011	Generally accepted standards	1
Big Brother	Channel 5	12/10/2011	Generally accepted standards	2
Big Brother	Channel 5	13/10/2011	Materially misleading	1
Big Brother	Channel 5	15/10/2011	Harm	1
Big Brother's Bit on the Side	5*	27/09/2011	Sexual orientation discrimination/offence	1
Big Brother's Bit on the Side	5*	04/10/2011	Generally accepted standards	1
Big Brother's Bit on the Side	Channel 5	07/10/2011	Generally accepted standards	1
Big Brother's Bit on the Side	Channel 5	08/10/2011	Generally accepted standards	1
Big Brother's Bit on the Side	Channel 5	13/10/2011	Participation TV - Harm	1
Bluebird 40+	Northern Birds	27/07/2011	Participation TV - Offence	1
Bluebird 40+	Northern Birds	07/09/2011	Participation TV - Offence	1
Bluebird Live	Sportxxxgirls	14/07/2011	Participation TV - Offence	1
Bluebird Live	Babeworld.TV	20/07/2011	Participation TV - Offence	1
Bluebird Live	Essex Babes	03/08/2011	Participation TV - Offence	1
Bluebird Live	Sportxxxgirls	05/08/2011	Participation TV - Offence	1
Bluebird Live	The Other Side	18/08/2011	Participation TV - Offence	1
Bluebird Live	Babeworld.TV	19/08/2011	Participation TV - Offence	1

Bluebird Live	The Other Side	25/08/2011	Participation TV - Offence	1
Bluebird Live	Babeworld.TV	26/08/2011	Participation TV - Offence	1
Bluebird Live	Sportxxxgirls	28/08/2011	Participation TV - Offence	1
Bluebird Live	Sportxxxgirls	29/08/2011	Participation TV - Offence	1
Bluebird Live	Babeworld.TV	02/09/2011	Participation TV - Offence	1
Bluebird Live	Babeworld.TV	09/09/2011	Participation TV - Offence	1
Bluebird Live	Sportxxxgirls	12/09/2011	Participation TV - Offence	1
Boulton and Co	Sky News	04/10/2011	Offensive language	1
Breakfast	BBC 1	29/09/2011	Outside of remit / other	1
Capital News	Capital FM	27/09/2011	Commercial communications on radio	1
Celebrity MasterChef	BBC 1	03/10/2011	Generally accepted standards	1
CFM Radio - Pete Moss show	CFM Radio	22/09/2011	Competitions	1
Come Dine With Me	More4	11/10/2011	Race discrimination/offence	1
Coronation Street	ITV1	06/10/2011	Undue prominence	1
Coronation Street	ITV1	07/10/2011	Generally accepted standards	4
Coronation Street Omnibus	ITV1	01/10/2011	Disability discrimination/offence	1
Country House Rescue	Channel 4	13/10/2011	Outside of remit / other	1
Countryfile	BBC 1	09/10/2011	Violence and dangerous behaviour	1
Coverage of Manchester Pride	Various	n/a	Generally accepted standards	1
Daybreak	ITV1	05/10/2011	Materially misleading	1
Daybreak	ITV1	10/10/2011	Outside of remit / other	1
Daybreak	ITV1	12/10/2011	Generally accepted standards	1
DCI Banks	ITV1	20/09/2011	Violence and dangerous behaviour	1
DCI Banks	ITV1	30/09/2011	Violence and dangerous behaviour	1
DCI Banks	ITV1	04/10/2011	Violence and dangerous behaviour	1
Dickinson's Real Deal	ITV1	05/10/2011	Competitions	1
Dickinson's Real Deal	ITV1	14/10/2011	Competitions	1
Dirty Tricks of the Tradesmen	BBC 1	06/10/2011	Due impartiality/bias	1
Dirty Tricks of the Tradesmen	BBC 1	06/10/2011	Materially misleading	1
Dispatches	Channel 4	03/10/2011	Generally accepted standards	1
Doc Martin	ITV1	03/10/2011	Drugs, smoking, solvents or alcohol	1
Downton Abbey	ITV1	02/10/2011	Advertising scheduling	2

EastEnders	BBC 1	22/09/2011	Generally accepted standards	1
EastEnders	BBC 1	26/09/2011	Religious/Beliefs discrimination/offence	1
EastEnders	BBC 1	26/09/2011	Scheduling	1
EastEnders	BBC 1	06/10/2011	Violence and dangerous behaviour	1
EastEnders	BBC 1	07/10/2011	Sexual orientation discrimination/offence	1
EastEnders	BBC 1	10/10/2011	Generally accepted standards	1
EastEnders	BBC 1	11/10/2011	Religious/Beliefs discrimination/offence	1
Eastenders	BBC 1	n/a	Scheduling	1
Emmerdale	ITV1	05/10/2011	Generally accepted standards	1
Emmerdale	ITV1	12/10/2011	Generally accepted standards	1
Emmerdale	ITV1	n/a	Suicide and self harm	1
Extraordinary People	Channel 5	06/10/2011	Nudity	1
F1: Grand Prix	BBC 1	09/10/2011	Race discrimination/offence	1
Family Guy	BBC 3	06/10/2011	Generally accepted standards	1
Fat Families: Second Helping	Sky Living	25/09/2010	Materially misleading	1
Father Ted	Rock Radio 96.3FM	25/09/2011	Offensive language	1
Fighting on the Frontline	Channel 4	09/10/2011	Race discrimination/offence	1
Fresh Meat	Channel 4	05/10/2011	Offensive language	1
Fry's Planet Word	BBC 2	09/10/2011	Offensive language	1
Gok's Clothes Roadshow	Channel 4	04/10/2011	Offensive language	2
Gok's Fashion Fix	E4	08/10/2011	Offensive language	1
Grand Designs	Channel 4	09/10/2011	Offensive language	2
Harry Hill's TV Burp Trailer	ITV1	10/10/2011	Generally accepted standards	1
Heart Breakfast	Heart (Bristol)	15/09/2011	Commercial communications on radio	1
Hidden	BBC 1	06/10/2011	Generally accepted standards	1
Holby City	BBC 1	11/10/2011	Generally accepted standards	1
Hollyoaks (trailer)	Channel 4	10/10/2011	Scheduling	1
Hollyoaks (Trailer)	Channel 4	13/10/2011	Generally accepted standards	1
How the World Got Mixed Up	BBC 2	08/10/2011	Due impartiality/bias	1
Ikhlas	Ikhlas	16/09/2011	Religious/Beliefs discrimination/offence	1
ITV News and Weather	ITV1	12/10/2011	Generally accepted standards	1
James O'Brien	LBC	29/09/2011	Religious/Beliefs discrimination/offence	1

Jez Welham	Kiss 100	10/10/2011	Scheduling	1
Jim Hawkins in the Morning	BBC Radio Shropshire	13/09/2010	Disability discrimination/offence	1
Jo Brand's Big Splash (trailer)	Watch	01/10/2011	Offensive language	1
Jo Brand's Big Splash (trailer)	Dave	04/10/2011	Offensive language	1
Ken Bruce	BBC Radio 2	05/10/2011	Generally accepted standards	1
Kerrang Radio	Kerrang Radio	18/09/2011	Due impartiality/bias	1
Kidulthood	BBC 2	03/10/2011	Violence and dangerous behaviour	1
Kill it, Cook it, Eat it	Really	08/10/2011	Generally accepted standards	1
Lee Nelson's Well Good Show	BBC 1	n/a	Outside of remit / other	1
Loose Women	ITV	04/10/2011	Due accuracy	1
Manchester School of Fashion	DM Digital	12/10/2011	Materially misleading	1
Martha Kearney	BBC 4	03/10/2011	Outside of remit / other	1
Michael Graham	TalkSPORT	n/a	Generally accepted standards	1
Midsomer Murders	ITV1	n/a	Generally accepted standards	1
Milk	BBC 2	09/10/2011	Generally accepted standards	1
Milkshake	Channel 5	n/a	Advertising/editorial distinction	1
Minute to Win it	ITV2	02/10/2011	Generally accepted standards	1
Never Been Kissed	Film4	11/10/2011	Offensive language	1
New You've Been Framed!	ITV2	05/10/2011	Religious/Beliefs discrimination/offence	3
News	Manx Radio	03/10/2011	Due impartiality/bias	1
News	BBC Radio 1	06/10/2011	Generally accepted standards	1
News programmes	ITV1 and Channel 4	n/a	Generally accepted standards	1
News programmes	BBC 1 and ITV1	n/a	Violence and dangerous behaviour	1
Only Fools and Horses	Gold TV	25/09/2011	Sexual orientation discrimination/offence	1
Outnumbered	BBC 1	07/10/2011	Religious/Beliefs discrimination/offence	1
Party Political Broadcast by the Conservative Party	ITV1	05/10/2011	Political advertising	1
Phones 4 U advertisement	n/a	06/10/2011	Outside of remit / other	1
Phones 4U's sponsorship of Harry Hill's TV Burp	ITV1	08/10/2011	Scheduling	5
Pushy and Proud	Sky Living HD	19/09/2011	Under 18s in programmes	1
Question Time	BBC 1	15/09/2011	Generally accepted standards	1
Redlight Central	Redlight 2	03/08/2011	Participation TV -	1

			Offence	
Redlight Central	Redlight 3	13/08/2011	Participation TV - Offence	1
Redlight Central	Redlight 1	02/09/2011	Participation TV - Offence	1
Redlight Central	Redlight 2	02/09/2011	Participation TV - Offence	1
Redlight Lounge	Redlight 2	12/08/2011	Participation TV - Offence	1
Redlight Lounge	Redlight 2	23/08/2011	Participation TV - Offence	1
Redlight Lounge	Extreme	26/09/2011	Participation TV - Offence	1
Restoration Man	Channel 4	11/10/2011	Offensive language	1
Richard Hammond's Blast Lab	CBBC	19/09/2011		1
River Cottage	Channel 4	16/10/2011	Materially misleading	1
Rude Tube	Channel 4		Religious/Beliefs discrimination/offence	1
Rugby World Cup 2011	ITV1	28/09/2011	Race discrimination/offence	3
School for Stars	CBBC	26/09/2011	Offensive language	1
Secrets of an Undercover Wife	5 USA	23/09/2011	Violence and dangerous behaviour	1
Sitaroon Se Agae	DM Digital	26/09/2011	Premium rate services	1
Sky News	Sky News	n/a	Materially misleading	1
Songs Of Praise	BBC 1	25/09/2011	Generally accepted standards	1
Star Trek	Channel 4	02/10/2011	Generally accepted standards	1
Star Trek	Channel 4	02/10/2011	Offensive language	1
Star Trek	Channel 4	08/10/2011	Offensive language	1
Strictly Come Dancing	BBC 1	01/10/2011	Generally accepted standards	1
Strictly Come Dancing	BBC 1	08/10/2011	Generally accepted standards	2
Strictly Come Dancing	BBC 1	08/10/2011	Sexual orientation discrimination/offence	1
Strictly Come Dancing	BBC 1	09/10/2011	Scheduling	1
Strictly Come Dancing	BBC 1	15/10/2011	Generally accepted standards	1
Superior Interiors with Kelly Hoppen	Channel 5	04/10/2011	Outside of remit / other	1
Svenska Hollywood Fruar	TV3	26/09/2011	Under 18s in programmes	5
Tetley Bitter's sponsorship of Live International Football	ITV4	07/10/2011	Religious/Beliefs discrimination/offence	1
The Breakfast Programme	Capital Radio	01/09/2011	Scheduling	1
The Chase	ITV1	13/10/2011	Materially misleading	1
The Chris Moyles Show	BBC Radio 1	22/09/2011	Generally accepted standards	1
The Hotel Inspector	Channel 5	03/10/2011	Product placement	1
The Hotel Inspector	Channel 5	10/10/2011	Offensive language	1

The Jeremy Kyle Show	ITV1	29/09/2011	Offensive language	1
The Jeremy Kyle Show	ITV2	07/10/2011	Age discrimination/offence	1
The Jeremy Kyle Show	ITV1	17/10/2011	Generally accepted standards	1
The Jonathan Ross Show	ITV1	08/10/2011	Animal welfare	1
The Jonathan Ross Show	ITV1	08/10/2011	Sexual orientation discrimination/offence	1
The Keiser Report	Russia Today	14/09/2011	Due impartiality/bias	1
The Million Pound Drop Live	Channel 4	30/09/2011	Materially misleading	1
The Million Pound Drop Live	Channel 4	07/10/2011	Sexual material	1
The Museum of Curiosity	BBC Radio 4	03/10/2011	Generally accepted standards	1
The Museum of Curiosity	BBC Radio 4	03/10/2011	Religious/Beliefs discrimination/offence	2
The Official Chart Update	BBC Radio 1	05/10/2011	Outside of remit / other	1
The Only Way is Essex (trailer)	ITV2	03/10/2011	Generally accepted standards	1
The Phantom of the Bay competition	The Bay 96.9FM	n/a	Competitions	2
The Simpsons	Channel 4	10/10/2011	Violence and dangerous behaviour	2
The Wright Stuff	Channel 5	30/09/2011	Crime	4
The Wright Stuff	Channel 5	30/09/2011	Generally accepted standards	1
The Wright Stuff	Channel 5	04/10/2011	Generally accepted standards	23
The Wright Stuff	Channel 5	06/10/2011	Generally accepted standards	1
The Wright Stuff	Channel 5	07/10/2011	Drugs, smoking, solvents or alcohol	1
The X Factor	ITV1	17/09/2011	Competitions	2
The X Factor	ITV1	01/10/2011	Advertising scheduling	1
The X Factor	ITV2	01/10/2011	Nudity	1
The X Factor	TV3	02/10/2011	Product placement	1
The X Factor	ITV 1 HD	08/10/2011	Advertising scheduling	1
The X Factor	ITV 1	08/10/2011	Advertising scheduling	1
The X Factor	ITV1	08/10/2011	Disability discrimination/offence	2
The X Factor	itv	08/10/2011	Fairness	1
The X Factor	ITV1	08/10/2011	Generally accepted standards	1
The X Factor	ITV1	08/10/2011	Nudity	1
The X Factor	ITV	08/10/2011	Outside of remit/ other	1
The X Factor	ITV1	08/10/2011	Promotion of products/services	1
The X Factor	ITV1	08/10/2011	Sexual material	2
The X Factor	ITV1	09/10/2011	Fairness	1
The X Factor	ITV1	15/10/2011	Advertising scheduling	1
The X Factor	ITV1	15/10/2011	Fairness	1

The X Factor	ITV1	15/10/2011	Outside of remit / other	1
The X Factor	ITV1	16/10/2011	Generally accepted standards	1
The X Factor	ITV1	16/10/2011	Materially misleading	1
The X Factor	ITV1	16/10/2011	Nudity	1
The X Factor	ITV1	n/a	Outside of remit / other	1
The X Factor Results Show	ITV1	09/10/2011	Generally accepted standards	3
The X Factor Results Show	ITV1	09/10/2011	Offensive language	3
The X Factor Results Show	ITV1	09/10/2011	Under 18s in programmes	1
This Morning	ITV1	10/10/2011	Generally accepted standards	1
This Morning	ITV1	12/10/2011	Outside of remit / other	1
This Morning	ITV1	13/10/2011	Generally accepted standards	2
This Morning	ITV1	n/a	Competitions	1
Trailers (various)	Food Network	11/10/2011	Outside of remit / other	1
Urban Mix with Lady K	107.8 Inspiration FM	27/09/2011	Commercial communications on radio	1
Vantage Point	Channel 5	11/09/2011	Advertising scheduling	1
Various	LBC Radio	n/a	Competitions	1
Various	Various	n/a	Generally accepted standards	1
Various	BBC General	n/a	Outside of remit / other	1
Various	Various	n/a	Scheduling	1
Vibe FM 97.08	Vibe FM 97.08	16/09/2011	Outside of remit / other	1
Vodafone Big Top 40	Real Radio	09/10/2011	Outside of remit / other	1
Waterloo Road	BBC 1	05/10/2011	Generally accepted standards	1
WATTS	Eurosport HD	10/10/2011	Outside of Remit/Scheduling	1
Weather	Channel 5	n/a	Sexual material	1
Website content	n/a	n/a	Outside of remit / other	1
What the Papers Say	BBC Radio 4	02/10/2011	Religious/Beliefs discrimination/offence	1
What's New Scooby Doo	Boomerang +	10/10/2011	Scheduling	1
xxxxBabes	Redlight 2	07/08/2011	Participation TV - Offence	1
xxxxBabes	Redlight 2	13/08/2011	Participation TV - Offence	1
xxxxbabes	Redlight 1	03/09/2011	Participation TV - Offence	1
xxxxbabes	Redlight 2	12/09/2011	Participation TV - Offence	1

## Investigations List

If Ofcom considers that a broadcast may have breached its codes, it will start an investigation.

Here is an alphabetical list of new investigations launched between 20 October and 2 November 2011.

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission date</b>
5 News	Channel 5	21/10/2011
Advertising Minutage	Star Gold/Plus	Various
ARY News	ARY News	02/08/2011
Crimewriters' Guild viewer vote	ITV3	08/10/2011
Debate Night	Ummah Channel	03/09/2011
Dispatches: Landlords from Hell	Channel 4	04/07/2011
Eyewitness	Ahlulbayt	27/09/2011
Geo TV	Geo TV	02/08/2011
International Arena: Cardiff	BoxNation	10/10/2011
Jatiya Party Advertisement	Channel S	18/08/2011
Morning programming	New Style Radio	17/08/2011
News	Geo News	02/08/2011
Nokia's sponsorship of Channel 5	Channel 5	27/10/2011
Pethe	S4C	11 and 22 May 2011
Rehmatul Lil Alameen	DM Digital	09/10/2011
Rob Birnie	Planet Rock	25/10/2011
Sky News	Sky News	21/10/2011
Superior Interiors with Kelly Hoppen	Channel 5	01/11/2011



Tennent's sponsorship of Batman	ITV4	17/10/2011
The Secret Millionaire	Channel 4	16/10/2011
The X Factor	ITV1	22/10/2011
The X Factor	ITV1	22/10/2011
The X Factor (Results Show)	ITV1	23/10/2011

**It is important to note that an investigation by Ofcom does not necessarily mean the broadcaster has done anything wrong. Not all investigations result in breaches of the Codes being recorded.**

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

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

For fairness and privacy complaints go to:

<http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/fairness/>.