

# **Ofcom Broadcast Bulletin**

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## Introduction

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

- a) Ofcom's Broadcasting Code ("the Code") which took effect on 16 December 2009 and covers all programmes broadcast on or after 16 December 2009. The Broadcasting Code can be found at <http://www.ofcom.org.uk/tv/ifi/codes/bcode/>.

Note: Programmes broadcast prior to 16 December 2009 are covered by the 2005 Code which came into effect on 25 July 2005 (with the exception of Rule 10.17 which came into effect on 1 July 2005). The 2005 Code can be found at [http://www.ofcom.org.uk/tv/ifi/codes/bcode\\_2005/](http://www.ofcom.org.uk/tv/ifi/codes/bcode_2005/).

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

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

It is Ofcom'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.

## Standards cases

### In Breach

#### Election 2010

*Bangla TV, 27 April 2010, 19:30*

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#### Introduction

Bangla TV is a television channel serving Bengali viewers in the UK. Ofcom received a complaint that the above programme included a discussion between representatives from the Labour and Conservative parties, who both expressed their opposition to a proposed mayoral referendum<sup>1</sup> taking place in the London Borough of Tower Hamlets. This discussion took place during the course of the recent General Election campaign. As a consequence, the Rules contained in Section Six of the Code, relating to Elections, applied. The complainant objected to the programme not having representatives of political parties that were in favour of the referendum.

Ofcom noted that this programme was a discussion programme that consisted of the Labour party Parliamentary candidate for the Poplar and Limehouse constituency<sup>2</sup>, Jim Fitzpatrick, and Peter Golds, leader of the Conservative Group on Tower Hamlets Borough Council, answering questions put by a studio presenter. During the programme, a range of subjects were discussed that focused on Tower Hamlets and the constituency of Poplar and Limehouse.

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

Rule 6.9: “If a candidate takes part in an item about his/her particular constituency, or electoral area, then candidates of each of the major parties must be offered the opportunity to take part. (However, if they refuse or are unable to participate, the item may nevertheless go ahead.)”

Rule 6.10: “In addition to Rule 6.9, broadcasters must offer the opportunity to take part in constituency or electoral area reports and discussions, to all candidates within the constituency or electoral area representing parties with previous significant electoral support or where there is evidence of significant current support. This also applies to independent candidates. (However, if a candidate refuses or is unable to participate, the item may nevertheless go ahead.)”

#### Response

Bangla TV said that this programme was one of 12 editions of *Election 2010* that had been broadcast during the 2010 General Election campaign. The broadcaster

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<sup>1</sup> This referendum took place on the same day as polling day in the General Election, 6 May 2010.

<sup>2</sup> Poplar and Limehouse is one of the two Parliamentary constituencies that make up the London Borough of Tower Hamlets.

confirmed that representatives of the major parties<sup>3</sup> and the Respect party, had taken part in this series of programmes.

With regard to the edition of *Election 2010* in this case (“the 27 April Broadcast”), Bangla TV said that, whilst it only included representatives of the Conservative and Labour parties, “it was mainly focused on [the] national election”. In addition, the broadcaster said that George Galloway, the Respect Parliamentary candidate for the Poplar and Limehouse constituency, had been shown on the channel expressing his view in favour of the Tower Hamlets mayoral referendum, “immediately before” the 27 April Broadcast.

## Decision

Ofcom’s guidance to Section Six (Elections and Referendums) of the Code<sup>4</sup> states that “There is no onus on broadcasters to do election coverage”. However, if broadcasters choose to cover election campaigns, they must ensure that they comply with Rules set out in Section Six of the Code, and in particular the constituency reporting Rules laid out in Rules 6.8 to 6.13 of the Code. These are specific Rules that apply when a broadcaster is broadcasting a particular “constituency report” during an election campaign. Ofcom guidance to Section Six<sup>5</sup> states that “Rule 6.9 requires that if a candidate takes part in an item about his/her constituency then the broadcaster must ensure that each of the major parties (as explained in the Broadcasting Code under Rule 6.2<sup>6</sup>) is offered an opportunity to take part, as well as those with evidence of significant previous or current electoral support (Rule 6.10)”. The guidance also states that a “constituency report” occurs “when the report or the candidate focuses on his/her constituency

In this case, we noted Bangla TV invited the Labour party parliamentary candidate for Poplar and Limehouse to take part in a discussion programme which dealt with a range of issues concerning that constituency such as local hospital and schools provision, and policy towards policing in the local area. We considered that this programme, by including a contribution from the Labour party candidate, giving his views about the constituency in which he was seeking election, was a “constituency report or discussion” as defined in the Code. The Code states that if a parliamentary candidate is given an opportunity to discuss matters relating to his constituency then other candidates from the major parties should also offered an opportunity to take part. This ensures due impartiality is strictly maintained at the time of elections with respect to specific constituencies.

We noted that the broadcaster, although it had invited a Conservative party local councillor to participate in the 27 April Broadcast, had not invited the Conservative party candidate for the Poplar and Limehouse constituency to take part in the programme. In addition, Bangla TV had not invited the Liberal Democrat party candidate for the Poplar and Limehouse constituency to take part in the programme.

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<sup>3</sup> See the meaning of “major party” set out in the Code immediately after Rule 6.2 which states that “At present in the UK major parties are the Conservative Party, the Labour Party and the Liberal Democrats”.

<sup>4</sup> See [http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/section6\\_2009.pdf](http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/section6_2009.pdf).

<sup>5</sup> See [http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/section6\\_2009.pdf](http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/section6_2009.pdf).

<sup>6</sup> In this case, the “major parties” were the Conservative party, the Labour party and the Liberal Democrat party.

Therefore, we considered that the programme was in breach of Rule 6.9 of the Code, since a constituency discussion concerning Poplar and Limehouse was broadcast but not all the candidates from the major parties were offered an opportunity to take part.

We also noted that the broadcaster had not invited George Galloway, the Respect party candidate for the Poplar and Limehouse constituency, to participate in the 27 April Broadcast. Rule 6.10 requires broadcasters to offer the opportunity to take part in a constituency report to candidates “with previous significant electoral support”. George Galloway had been, until the dissolution of Parliament on 12 April 2010, the sitting MP for the neighbouring constituency of Bethnal Green and Bow. We therefore considered that he was a candidate “with previous significant electoral support”. Therefore, given that George Galloway had not been invited to take part in the 27 April Broadcast, we considered that the programme was in breach of Rule 6.10 of the Code.

Ofcom acknowledges the steps that Bangla TV had taken to ensure that representatives of the major parties and the Respect party were included in its election programming. However, we remind all broadcasters of the care that needs to be taken when candidates appear in programmes during an election period. In particular, broadcasters must ensure that where a programme deals with matters relating to a specific constituency of a candidate appearing in the programme, then the broadcaster must ensure that each of the major parties is offered an opportunity to take part, as well as those with evidence of significant previous or current electoral support. In this regard, we refer broadcasters to the published Guidance to Section Six of the Code.<sup>7</sup> This states: “A useful test for broadcasters is to ask whether a report could be seen as promotional for a candidate within his/her constituency. If it is, then it requires input from, at least, the other main parties and potentially others depending on the constituency”.

### **Breach of Rule 6.9 and Rule 6.10**

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<sup>7</sup> See footnote 4.

## In Breach

### Local Election Output

*102.4 Radio Hartlepool, 27 April 2010, 13:00 and 29 April 2010, 13:00*

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#### Introduction

102.4 Radio Hartlepool (“Radio Hartlepool”) is a community radio station serving the town of Hartlepool. During the recent 2010 local elections campaign, Ofcom received a complaint that in a programme broadcast on 29 April 2010 (“the 29 April broadcast”), there had been a contribution from a Labour party local election candidate. The complainant stated that the programme had not included contributions from candidates from other political parties.

Before deciding whether to start an investigation into this matter, Ofcom wished to gain some information from the licensee. Radio Hartlepool confirmed the following to Ofcom. The 29 April Broadcast had only included a contribution from the Labour party local election candidate for the election as councillor for the Owton ward of Hartlepool Borough Council. This election was taking place on the same day as the General Election (6 May 2010). The broadcaster said it had invited the Conservative party and Liberal Democrat party local election candidates for Owton ward on to the same programme, but they had not responded to the broadcaster’s invitation. Therefore, the Labour party candidate was the only candidate to contribute to the 29 April Broadcast.

In addition, the broadcaster had invited all Hartlepool Borough Council local election candidates from the Conservative party, Labour party and Liberal Democrat party (collectively “the Major Parties”) to appear in various different programmes between 26 April 2010 and 5 May 2010. These candidates were invited to appear in time-slots dedicated to each of the 15 wards being contested in the Hartlepool Borough Council elections. Within each time-slot, each candidate who was present was given three minutes to set out why electors in their particular ward should vote for that candidate. In addition, Radio Hartlepool said that several independent candidates and candidates from the UK Independence party were invited to take part in the programmes about their respective wards.

Ofcom guidance to Section Six<sup>1</sup> states that “Rule 6.9 requires that if a candidate takes part in an item about his/her constituency then the broadcaster must ensure that each of the major parties (as explained in the Broadcasting Code under Rule 6.2<sup>2</sup>) is offered an opportunity to take part, as well as those with evidence of significant previous or current electoral support (Rule 6.10)”. The guidance also states that a “constituency report” occurs “when the report or the candidate focuses on his/her constituency.

When checking the background facts, we noted that according to the information provided by Radio Hartlepool, one sitting candidate, the independent councillor for the Fens ward, had not been invited to take part in the programme devoted to this ward, which was broadcast on 27 April 2010 (“the 27 April Broadcast”).

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<sup>1</sup> See [http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/section6\\_2009.pdf](http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/section6_2009.pdf).

<sup>2</sup> In this case, the “major parties” were the Conservative party, the Labour party and the Liberal Democrat party.

Ofcom asked for Radio Hartlepool's comments under Rule 6.10, which states:

"In addition to Rule 6.9, broadcasters must offer the opportunity to take part in constituency or electoral area reports and discussions, to all candidates within the constituency or electoral area representing parties with previous significant electoral support or where there is evidence of significant current support. This also applies to independent candidates. (However, if a candidate refuses or is unable to participate, the item may nevertheless go ahead.)"

## Response

Radio Hartlepool said that the 2010 local elections were the first such elections the broadcaster had covered since launching. It had sought to follow the provisions of Section 6 of the Code and the related guidance. The broadcaster said that whilst it believed it had been following "correct procedures", it was concerned that Rule 6.10 "may have been overlooked" because the independent candidate for the Fens ward, who had been the sitting councillor for that ward, had not been invited to take part in the 27 April Broadcast.

Radio Hartlepool explained that whilst preparing its local election coverage, it had concentrated on inviting candidates from the major political parties, and various other candidates standing in the local elections to Hartlepool Borough Council, to participate in different programmes concerning the various wards being contested in the local elections for Hartlepool Borough Council. However, the broadcaster said that it "did not focus on previously elected candidates". In addition, the broadcaster said that it allowed contributions on air from "those uninvited candidates who chose to contact us and request air time for their campaign". In conclusion, Radio Hartlepool said that it was now fully aware of Rule 6.10 of the Code, and would take this Rule into consideration in any future election coverage.

## Decision

Ofcom's guidance to Section Six (Elections and Referendums) of the Code<sup>3</sup> states that "There is no onus on broadcasters to do election coverage". However, if broadcasters choose to cover election campaigns, they must ensure that they comply with Rules set out in Section Six of the Code, and in particular the constituency reporting Rules laid out in Rules 6.8 to 6.13 of the Code. These are specific Rules that apply when a broadcaster is broadcasting a particular constituency report (or "electoral area"<sup>4</sup> report) during an election campaign. In particular, under Rule 6.10<sup>5</sup> of the Code, broadcasters must ensure that if they are dealing with issues relating to a particular local ward, during a local election campaign, they must ensure that candidates (including independent candidates) with previous significant electoral support or where there is evidence of significant current support must be offered the opportunity to take part.

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<sup>3</sup> See [http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/section6\\_2009.pdf](http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/section6_2009.pdf).

<sup>4</sup> The Code states that: "Electoral area (for example electoral division, borough ward or other area) is the local government equivalent to the Parliamentary term 'constituency'".

<sup>5</sup> Rule 6.9 states: "If a candidate takes part in an item about his/her particular constituency, or electoral area, then candidates of each of the major parties must be offered the opportunity to take part. (However, if they refuse or are unable to participate, the item may nevertheless go ahead.)"

In this case, we noted Radio Hartlepool invited a number of candidates standing in the local elections for Hartlepool Borough Council to take part in relevant reports about particular wards, including the 27 April Broadcast and the 29 April Broadcast. We considered that each of these programmes, by including contributions from different local election candidates, giving their views about the wards in which they were seeking election, was an “electoral area report or discussion” as defined in the Code.

We noted that the broadcaster had only invited the three candidates from the major parties, who were standing in the Fens ward, to contribute to the 27 April Broadcast<sup>6</sup>. However, Rule 6.10 requires that if a broadcaster is to broadcast a programme containing a report or discussion about a particular electoral area, the broadcaster must offer candidates from other parties (and independent candidates) with previous significant electoral support, an opportunity to take part in that programme. In this case, we note the broadcaster did not invite the sitting independent councillor for the Fens ward, who was standing for re-election to that ward, to contribute to the 27 April Broadcast. We considered that a sitting independent candidate clearly had “previous significant electoral support” and should have been invited to participate in the 27 April Broadcast.

Ofcom recognises the licensee’s wish to cover the local elections and serve its community. It is evident that the broadcaster made genuine attempts to comply with the Code and specifically the rules around elections by, for example, ensuring that at least the relevant candidates of the major parties were invited to participate in the programmes dealing with particular wards during the local election campaign for Hartlepool Borough Council. We also welcome the broadcaster’s acknowledgement that it had “overlooked” Rule 6.10, and its undertaking to comply with this Rule in future election coverage. However, by failing to invite a sitting councillor to take part in the relevant programme dealing with the Fens ward, there was a breach of Rule 6.10 in relation to the 27 April Broadcast.

### **Breach of Rule 6.10**

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<sup>6</sup> Radio Hartlepool confirmed that following its invitation to the candidates of the Major Parties to participate in the 27 April Broadcast: the Conservative party candidate participated in the 27 April Broadcast; the Labour party candidate did not respond to the broadcaster, and the Liberal Democrat party candidate declined the offer to participate.

## In Breach

### Community Affairs

*Spice FM 98.8, 28 April 2010, 22:00*

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#### Introduction

Spice FM 98.8 (“Spice FM”) is a community radio station serving south Asian listeners in the Tyneside region. During the 2010 local and Parliamentary elections campaign, Ofcom received a complaint that in this programme there had been contributions from two Labour party councillors, encouraging listeners to vote for the Labour party in the forthcoming elections, but no contributions from representatives of other political parties.

Ofcom reviewed the content, including a translation of relevant parts of the programme from the original Urdu into English. We noted that during the programme, there were contributions from two sitting Labour party councillors, who held seats in the Elswick and Wingrove wards of Newcastle City Council respectively. Neither of these contributors was seeking re-election in the local elections taking place on 6 May 2010. Therefore, we considered that the programme did not engage the constituency reporting Rules laid out in Rules 6.8 to 6.13 of the Code.

However we asked Spice FM for its comments under Rule 6.2, which states:

“Due weight must be given to the coverage of major parties during the election period. Broadcasters must also consider giving appropriate coverage to other parties and independent candidates with significant views and perspectives”.

#### Response

Spice FM said that it had invited representatives from each of the Conservative, Labour and Liberal Democrat parties (“the major parties”) to appear at different times during the election campaign. The broadcaster said that “equal amounts of time on air” were to be made available to each of the major parties. Apart from the two Labour party councillors appearing on 28 April 2010, the Conservative party and Liberal Democrat party candidates for the Parliamentary constituency of Newcastle-upon Tyne Central were invited to appear on the station on 2 May 2010. However, in the case of the Conservative party candidate, Spice FM said that this candidate had to pull out due to illness, just before he was due to appear on the station. The broadcaster said that “We tried to get other [conservative party] representatives on in the last few days before the election...but were not successful in doing so”.

In summary, the broadcaster considered that it had given due weight to the major parties by inviting all three of the major parties to appear on the station, and offering them equal amounts of time.

#### Decision

Ofcom recognises the importance to the right to freedom of expression. This encompasses the broadcasters’ right to transmit and the audience’s right to receive creative material, information and ideas without interference but subject to restrictions prescribed by law and necessary in a democratic society. This right is enshrined in the European Convention on Human Rights.

However, UK legislation requires broadcasters to preserve due impartiality on major matters of political controversy. This requirement is considered to be particularly important at the time of elections. This means that broadcasters in covering election issues must ensure that, during the election period, due weight is given to all the major parties (and other parties where appropriate).

On 28 April 2010, the station interviewed two sitting local Labour party councillors. In the programme, the interviewees were able to promote the Labour Party and set out its policies for the forthcoming local and General election. Under the Code, the licensee was under an obligation during the election period to ensure that due impartiality was preserved and other major parties were therefore given an opportunity to participate. How this is achieved is an editorial matter for the broadcaster; for example, impartiality can be achieved within a particular programme or over time through a series of programmes.

Spice FM confirmed that a Parliamentary candidate from the Liberal Democrat party had appeared on the station on 2 May 2010. The broadcaster had also arranged for a Parliamentary candidate from the Conservative party to appear on the same day. However, due to illness, the broadcaster informed us that the Conservative party representative was unable to participate in the programme.

We note the efforts the licensee made to comply with the Code. However, at the time of elections broadcasters must ensure due impartiality by giving due weight to major parties. In the case of general coverage of the election (as opposed to the specifics of a constituency report) the broadcaster was required to give coverage to the three major parties in the UK. The broadcaster's failure to cover the Conservative party's position, in any form during the election period, therefore resulted in a breach of the Code.

## **Breach of Rule 6.2**

## In Breach

### Superscoreboard

Clyde 1, 6 May 2010, 18:00

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#### Introduction

Clyde 1 is a local commercial radio station broadcasting to Glasgow and parts of central Scotland, and *Superscoreboard* is a football programme broadcast on the station. Ofcom received four complaints that, on the day the vote in the General Election took place (6 May 2010) while the polls were open, one of the presenters of the programme, Peter Martin, actively endorsed support for the Labour party.

On reviewing the programme, Ofcom noted the following exchange between Peter Martin (PM), and his co-presenter, Graeme Spiers (GS):

GS: *“Peter, listen, never mind this, have you cast your vote?”*

PM: *“Well, I’m going to...I ’m going to...I’m going to now cast a vote within the next hour.”*

GS: *“Not one hour ago, I put a large cross beside the Kirkcaldy Minister’s son<sup>1</sup>.”*

PM: *“Yeah.”*

GS: *“Who you’re going to vote for?”*

PM: *“Is it...is it something...Labour! Is it something you keep quiet, or is it something...?”*

GS: *“Well, people think you do keep quiet about it, people get tetchy about it. Who do you think...who do you think Walter Smith<sup>2</sup> will vote for? Who do you think Lennon<sup>3</sup> will vote for?”*

PM: *“Let me tell you: Labour, both of them. Not a shadow of doubt. Walter Smith, his background. It’s an absolute stonewall certainty. We don’t even have to take calls”.*

Ofcom asked Bauer Radio (“Bauer”), who provides compliance for Clyde 1, for its comments under Rule 6.4 of the Code, which states:

*“Discussion...of election and referendum issues must finish when the poll opens. (This refers to the opening of actual polling stations. This rule does not apply to any poll conducted entirely by post.)”.*

#### Response

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<sup>1</sup> This was a reference to Gordon Brown, who was standing for election as the Labour party candidate in the constituency of Kirkcaldy.

<sup>2</sup> Manager of Glasgow Rangers Football Club.

<sup>3</sup> Acting manager of Celtic Football Club.

Bauer said that it had had in place in all its radio stations, including Clyde 1, “thorough procedures” concerning election coverage, and that initial guidelines were issued well ahead of the election, as well as repeated reminders in the run up to and on polling day itself.

Bauer said that although the presenters in the present case had been briefed about the guidelines covering election coverage, the “guidelines were not at the forefront of their minds when they meandered into a conversation speculating around how certain individuals may have voted”. Bauer added that the comments were not an attempt to canvass for any political party, but rather were “a lighthearted view to make the sports show more topical”. Bauer said that both presenters were aware of the seriousness of the matter and “deeply regret entering into a conversation about the election which they recognise showed a considerable lack of judgement and awareness on their part”.

In conclusion, Bauer said “We accept this was a breach of code 6.4”. In addition, Bauer said that it recognised that this was a serious matter and that the presenters concerned had been reprimanded and both taken off-air for a period of time.

## **Decision**

Ofcom recognises the importance to the right to freedom of expression. This encompasses the broadcasters’ right to transmit and the audience’s right to receive creative material, information and ideas without interference but subject to restrictions prescribed by law and necessary in a democratic society. This right is enshrined in the European Convention on Human Rights. However, Rule 6.4 of the Code requires that discussion of election issues must finish when the poll opens (at 07:00). This programme however was broadcast after the polls had opened and prior to the polls closing at 22:00.

In reaching its decision, Ofcom notes the broadcaster’s statement that the exchange between the presenters was intended to be “lighthearted”. However, we also note Bauer’s acceptance that there was a breach of the Code on this occasion. In this case, two radio presenters, whilst the polls were still open, discussed: firstly how they had voted, or intended to vote in the General Election taking place that day; and second, how other well-known personalities would be casting their votes.

Given the above, we considered this was a clear breach of Rule 6.4.

## **Breach of Rule 6.4**

## In Breach

### Chal Sitaroon Ki

DM Digital, 18 February 2010, 13:00

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#### Introduction

DM Digital is a free-to-air general entertainment channel, broadcasting mainly in Urdu to the UK Asian community. The programme *Chal Sitaroon Ki*, translated as 'Actions of Stars', is a daily phone-in programme. During the programme the presenter carries out horoscope readings for members of the public based on their name and date of birth. Viewers are invited to contact the presenter via a premium rate telephony service, which is displayed on screen throughout the programme. The holder of the DM Digital licence is DM Digital Television Limited ("DM Digital" or "the Licensee").

During one segment of the programme the presenter gave relationship advice to a caller who wanted to know whether she should marry a particular man whom she liked and who liked her. The presenter asked for the caller's details including her name and date of birth and the details of the man she was thinking about marrying. He then gave the following advice<sup>1</sup>:

Speaker: *"The stars are in a matching position. But there is another thing. This boy is cheating on you. He will not be loyal to you."*

Caller: *"Oh. He will not be loyal to me?"*

Speaker: *"Yes therefore it is better for you to withdraw from him. Otherwise, do you know what will happen? After marriage he will live with you for a maximum of seven months and then he will leave you alone. The difference between your temperaments is like that of between the sky and the earth and there will be quarrels three times a day between you. What is the use of such a marriage?"*

Caller: *"You are right, Sir."*

Speaker: *"It is better, my dear, to get his thought away from your mind."*

Caller: *"OK."*

Speaker: *"Anyway, there will come another good proposal for you from some place by the month of July which you should accept. It will be alright for you."*

Caller: *"So that will be good."*

Speaker: *"Yes, that will be good."*

Ofcom received a complaint from a viewer who was concerned that the programme contained life changing advice given by people who were not appropriately qualified. We therefore asked the Licensee for its comments with regard to Rule 2.8 of the Code, which states:

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<sup>1</sup> The programme was in Urdu and Ofcom commissioned an independent translation

"Demonstrations of exorcism, the occult, the paranormal, divination, or practices related to any of these (whether such demonstrations purport to be real or are for entertainment purposes) must not contain life-changing advice directed at individuals".

The meaning of life-changing advice set out in the Code includes direct advice for individuals upon which they could reasonably act or rely about health, finance, employment or relationships.

## **Response**

The Licensee said that it did "not accept that any harmful advice was provided". It said that *Chal Sitaroon Ki* is a "light entertainment programme" which includes a display that specifies that the programme does not give medical advice. It continued that "callers who spoke to the host were provided with light hearted information for entertainment purposes only" and therefore "no harmful advice [was] given as the callers were well aware that this was a programme for star reading integrated with religion".

## **Decision**

The purpose of Rule 2.8 is to protect individual viewers and listeners, who may interact with a programme and some of whom may be vulnerable, from life changing advice derived from practices such as horoscope readings. A demonstration of divination can result in individuals acting on information in a way that could be harmful to them. Ofcom must regulate potentially harmful or offensive material in the manner that best guarantees an appropriate level of freedom of expression<sup>2</sup>. In other words, in deciding whether or not potentially offensive broadcast material breaches the Code, Ofcom must have appropriate regard to the right of a broadcaster to impart information and ideas and the right of the audience to receive them. Ofcom must therefore seek an appropriate balance between its statutory duty to adequately protect members of the public from harmful or offensive material on the one hand, and the broadcaster's right to freedom of expression on the other.

Ofcom notes that the horoscope readings that took place in this broadcast were intended for entertainment purposes. However, Rule 2.8 clearly states that even in such circumstances any advice given must not be "life-changing".

The guidance to Rule 2.8 specifically refers to life-changing advice as including advice on "relationships". During this broadcast a caller was clearly advised not to marry a particular person that she said she liked because the man was being unfaithful to her. In addition, the caller was told that that if she did marry him then he would leave her after seven months. The caller was then advised not to pursue the relationship and instead accept a proposal from someone later in the year. Such advice was very specific to the caller and her current situation and clearly had the potential to change her life drastically, as it may have determined who she would marry.

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

In light of the above Ofcom considers that this demonstration of divination in this programme included life-changing advice directed at an individual that had the potential to cause her harm. The broadcast therefore breached Rule 2.8 of the Code.

**Breach of Rule 2.8**

## In Breach

### Law Show

Prime TV, 19 April 2010, 17:00

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#### Introduction

Prime TV is a family entertainment channel serving the Pakistani community throughout Europe. It is broadcast primarily in Urdu, with some programmes in other languages, such as Punjabi and Gujarati.

*Law Show* is an interactive legal advice programme in which viewers are invited to call the presenter with their concerns, using a standard (geographic landline) rate telephone service. The contact number is displayed on screen (in a banner) throughout the programme.

In this instance, during the 45 minute broadcast, the contact number was occasionally replaced with the message: “*For all your legal enquiries contact [the presenter] AZ Solicitor Tel: ... Mobile: ...*”

A viewer was concerned that the presenter was “doing direct sales and marketing for himself and for his company...”

We therefore sought Prime TV’s comments with regard the following Code Rules:

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

Rules 10.4 “No undue prominence may be given in any programme to a product or service”

Rule 10.5 “Product placement is prohibited.”

#### Response

With regard to Rule 10.5 of the Code, Prime TV said the material under consideration by Ofcom was not broadcast in return for payment or other valuable consideration.

Nevertheless, the broadcaster acknowledged that it had breached Rules 10.3 and 10.4 of the Code, for which it apologised. Prime TV said that it had “thoroughly investigated this incident”, adding that, in this particular programme, a new ‘master control room’ operator had mistakenly replaced the permanent on-screen message with a promotional message for the presenter and his firm of solicitors. However, the broadcaster said that it had viewed previous broadcasts of *Law Show*, and had found no similar incidents.

To ensure that this lapse in compliance was not repeated, Prime TV said it had issued a written warning to the relevant member of staff and arranged training sessions for all new staff members concerning the importance of compliance with the Code, with regard to both live and recorded material. The broadcaster said that it took Code compliance seriously and detailed examples of the type of imported material (for broadcast) that it had to comply. Prime TV added that it could not recall any previous significant Code compliance issue raised by Ofcom since the channel’s inception in 2000.

## **Decision**

Ofcom noted Prime TV's assurances that the presenter's contact details were not broadcast in return for payment or other valuable consideration. On the basis of this and in the absence of any evidence to the contrary, we found no breach of Rule 10.5 of the Code, which prohibits product placement.

Ofcom also noted that, while the presenter's contact details were promoted on screen, he did not personally solicit contact from callers or viewers, even though he suggested several times on air that individual callers should seek personal advice from a solicitor. However, in response to callers who asked how they could contact him off-air, the presenter did occasionally say that his details would be screened at some point in the programme.

The on-screen broadcast of both the presenter's mobile phone number and his company's (AZ Solicitors') telephone number promoted the presenter's personal legal service and commercial legal practice in *Law Show*, in breach of Rule 10.3 of the Code, which prohibits the promotion of products and services in programmes.

Further, Rule 10.4 of the Code requires that products and services are not given undue prominence in programmes. There appeared to be no editorial justification for the repeated references to personal and company contact details, as they served no other purpose than to promote personal legal services and AZ Solicitors. The programme was therefore in breach of Rule 10.4 of the Code.

Ofcom noted Prime TV's exemplary Code compliance history and welcomed both its apology and the action it had taken to ensure future Code compliance.

### **Breaches of Rules 10.3 and 10.4**

## Resolved

### Appeals for funds

*The Sikh Channel, 29 July 2009 10:00 to 15:00 and 18 August 2009, 18:00 to 21:00*

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#### Summary of Ofcom's investigation

*In July 2009, Ofcom received six complaints from viewers about appeals for funds broadcast on the Sikh Channel. In summary, the complainants were concerned that: the money raised during the appeals was not being used for the purpose described, and that the on-air description of the broadcaster as a 'not-for-profit' company was inaccurate and could mislead viewers who were making donations to the channel.*

*Ofcom conducted a detailed assessment of the documentary evidence it requested from the licensee. It also took into account submissions made by a firm of chartered accountants employed by the licensee. Ofcom did not find any specific evidence that the funds raised by the appeals were used for any purpose other than to fund the running of the channel. This conclusion was supported by the chartered accountants whose review did not identify any misuse of funds and also indicated that expenditure on the channel was in excess of that raised by donations. Ofcom did not therefore find a breach of the Code in respect of this area of its investigation.*

*However, Ofcom was concerned about the disorganised presentation of the accounting information provided by the licensee, which did not assist the investigation. The licensee has since demonstrated to Ofcom that it has taken steps to improve its record-keeping, and consequently Ofcom considers this issue to be resolved.*

*Separately, Ofcom considered that on balance, the description of the broadcaster as a 'not-for-profit' company was not in breach of the Code.*

#### Introduction

The Sikh Channel is in the religious section of the Sky Electronic Programme Guide (EPG). The channel is aimed at the Sikh community in the UK. It broadcasts regular appeals for donations to fund its programming.

In July 2009, Ofcom received six complaints from viewers about these appeals. In summary, the complainants were concerned that: the money raised during the appeals was not being used for the purpose described, and that the on-air description of the broadcaster as a 'not-for-profit' company was inaccurate and could mislead viewers who were making donations to the channel.

Rule 10.15 of the Code states that:

“Broadcasters may broadcast appeals for donations to make programmes or fund their service. The audience must be told of the purpose of the donation and how much has been raised as a result of the appeal. All donations must be separately accounted for and used for the purpose for which they were donated.”

Ofcom noted that during an appeal for funds broadcast on 29 July 2009, a scroll bar at the bottom of the screen contained the text:

*“The Sikh Channel the world’s first 24 hour National TV Broadcast dedicated to the Sikh Faith. Support: Participate: Contribute. The Sikh Channel intends with your support to remain a free service with no subscription charges. The Sikh Channel is a not for profit broadcast with all monies provided by you being used for production and broadcast costs.”*

A freephone telephone number appeared to the left of the scroll bar.

Ofcom also monitored the channel on 18 August 2009 and saw the following appeal for funds running continuously in a scroll bar across the bottom of the screen:

*“We have until 31<sup>st</sup> August to keep Sikh Channel improving and ensure it will continue beyond doubt. Thank you from Sikh Channel to the Sikhs who have supported the Sikh Channel with Direct Debits. We need to reach the target of 10,000 and require 3,800 Sikhs in UK with a commitment of just £1 a week to go online or call [freephone number]. Sikh Channel is now closer to ending continuous appeals for support with grace of Waheguru. We need a further 3,800 Sikhs in UK to step forward, all those who can commit £1 a week. Starting Today: Daily improved Sikh Channel News. Made possible by support of the Sangant”*

At the top of the screen, a horizontal strap displayed the number of viewers who had signed up to pay £4 a month to the channel by direct debit. Above this strap was the text *“Not even halfway! £1 a week, is it not worth it?”*

Ofcom asked the licensee, TV Legal Ltd (“TV Legal” or “the licensee”) for the following:

- documentary evidence regarding its income and expenditure, as well as its comments with regards to Rule 10.15 of the Code;
- documentary evidence that the licensee had not-for-profit status<sup>1</sup> at the time of the broadcasts about which some of the complainants had said that it had referred to itself as such; and
- a recording of the broadcast appeal during which viewers had indicated they had seen the on-air message referring to the broadcaster as a not-for-profit company.

During the course of the investigation, Ofcom had to make several further requests to the licensee for its comments and information, which are detailed below in chronological order.

## **Response**

### Documentary evidence regarding income and expenditure

#### *Request 1*

Ofcom requested:

- the licensee’s comments with regards to Rule 10.15 of the Code, with specific reference to how it had separately accounted for viewer donations; and

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<sup>1</sup> While there is no legal definition of a not-for-profit organisation, it is generally expected that the organisation will use its profits for community benefit rather than distributing its profits to its shareholders. There are various structures for not-for-profit organisations, which include, but are not restricted to a Community Interest Company (see footnote 2) or a charity.

- documentary evidence to demonstrate how much money had been raised as a result of viewer donations and how this money had been spent.

*Response 1*

TV Legal explained that:

- The Sikh Channel “can only continue with the financial support of the thousands of Sikhs watching on a daily basis.”
- “The viewers were asked to contribute towards broadcast and programming costs and all monies raised from this appeal have been used for the benefit of the Sikh Channel.”
- “All income from donations, on screen campaigns for support or appeals are applied for the benefit of the broadcast and utilised in meeting running costs and improving the TV offering.”
- The licensee also provided summary statements of its income and expenditure.

*Request 2*

Ofcom informed the licensee that summary statements of income and expenditure were insufficient to demonstrate the amount TV Legal had received from viewer donations and how it had spent this money. We requested authenticated documentary evidence such as bank statements and invoices to substantiate the figures provided in the summary statements.

*Response 2*

TV Legal provided Ofcom with numerous bank statements and invoices as documentary evidence of the donations received and how they were spent. Many of these documents had been annotated by hand. The licensee reiterated that all monies raised from donations could be accounted for against all Sikh Channel expenditure.

TV Legal told Ofcom that the Sikh Channel commenced broadcast in April 2009 and the contributions and appeal for funding began in May 2009. It added that “the broadcast was not planned in any great detail and the channel came to life within weeks of a decision being made” which contributed to the accounts, records and documentation not being clear. The licensee continued that once the channel was established it had formed the Sikh Channel Community Interest Company<sup>2</sup> and “distinct separate bank accounts for Sikh Channel donations and expenses.”

*Request 3*

Having assessed the numerous bank statements and invoices provided by the licensee, Ofcom requested:

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<sup>2</sup> “Community Interest Companies (CICs) are limited companies, with special additional features, created for the use of people who want to conduct a business or other activity for community benefit, and not purely for private advantage. This is achieved by a “community interest test” and “asset lock”, which ensure that the CIC is established for community purposes and the assets and profits are dedicated to these purposes. Registration of a company as a CIC has to be approved by the Regulator who also has a continuing monitoring and enforcement role.” (<http://www.cicregulator.gov.uk/>)

- clarification on how the amounts detailed on several invoices which were paid from the licensee's bank account, related to payment for products and/or services used for the provision of the Sikh Channel; and
- clarification on how several payments made from the Sikh Channel bank account related to payment for products and/or services used for the provision of the Sikh Channel.

#### *Response 3*

TV Legal provided documentary evidence and income and expenditure statements for an additional period to those already provided.

TV Legal did not provide the clarification Ofcom had requested regarding:

- how the amounts detailed on several invoices which were paid from the licensee's bank account related to payment for products and/or services used for the provision of the Sikh Channel;
- how several payments made from the Sikh Channel bank account related to payment for products and/or services used for the provision of the Sikh Channel;

The licensee explained that on its website, it had now placed accounts and details of income received from the viewing public from the previous month for a period of 14 days and directed all to this information via a broadcast message on the Sikh Channel. It stated that it would continue to do this for subsequent months.

TV Legal informed Ofcom that the Sikh Channel Broadcasting Community Interest Company has an account solely set up for the receipt of donations to help keep accounts "clearly distinct and readily identifiable". The licensee reiterated that the "the broadcast was not planned in any great detail and the channel came to life within two weeks of a decision being made. Thus at the outset accounts records and documentation was not as clear as [the licensee] would have liked and a process of evolution took place."

#### *Request 4*

In view of the seriousness of the allegations, Ofcom gave the licensee a further opportunity to provide the information it had requested, namely:

- clarification on how several invoices related to payment for products and/or services used for the provision of the Sikh Channel (together with similar clarification on some invoices provided in response 3); and
- clarification on how several payments made from the Sikh Channel bank account related to payment for products and/or services used for the provision of the Sikh Channel (together with similar clarification on some bank statements provided in response 3).

#### *Response 4*

TV Legal provided clarification on some, but not all, of the transactions detailed in the accounts it had previously supplied, which Ofcom had asked for in its third request for information from the licensee.

TV Legal explained that some of the invoices it had provided to Ofcom were included in its response due to an “accounting error”.<sup>3</sup>

TV Legal reiterated that it was “ill-prepared” when it began broadcasting and that these matters had subsequently been addressed with “the formation of the Community Interest Company, new bank accounts and better procedures for accounting.”

#### *Request 5*

Ofcom queried why the income and expenditure totals calculated from the bank statements provided by the licensee, differed from those on its summary income and expenditure statements.

Ofcom also requested further information and further evidence regarding several transactions where it was still not clear from the information provided how they related to the operation of the Sikh Channel.

#### *Response 5*

TV Legal provided the outstanding information, which Ofcom had asked for in its third and fourth requests for information from the licensee.

TV Legal explained that the discrepancies in the expenditure totals calculated from the bank statements it had provided “is due to the information being taken on the basis of payments and omission of cheque payments made by [TV Legal] for the salaries to [its] staff and freelancers and payments to [its] suppliers.” It further explained that its “expenditures include expenses which are incurred as in being invoiced by the supplier but are not paid for yet. Full details and a complete explanation can only be provided in person by reference to bank statements, invoices etc.”

The licensee provided the requested clarification on various transactions.

TV Legal reiterated that the channel was “initiated with no planning no strategy and no thought given to accounting systems” as the project was a “spur of the moment decision and came into being suddenly.” TV Legal added that systems had been improved and will in future be “in a much clearer format.”

#### Not-for-profit status

Ofcom requested documentary evidence that the licensee had not-for-profit status<sup>4</sup> at the time of the broadcasts about which some of the complainants had said that it had referred to itself as such.

TV Legal explained that since commencing broadcast of the channel and appeals for funds, a decision had made “not to perceive or operate the company as a commercial enterprise and no profits will be drawn as dividends. All income and any residual will be applied for the benefit of the broadcast and the development of programming. The TV company will operate as a not for profit enterprise and this has been recorded in our company minutes.”

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<sup>3</sup> The licensee later explained that the phrase ‘accounting error’ “is lay man language used ... to ascertain that [the licensee is] in the procession of getting things organised.”

<sup>4</sup> See footnote 1

The licensee explained that it had subsequently established the Sikh Channel Broadcasting Community Company. Ofcom therefore asked TV Legal to explain the purpose of the Community Interest Company in relation to the operation of the Sikh Channel.

TV Legal said that the recent formation of the Community Interest Company and the “retrospective application of funds both from donations sources and other sources...were made in pursuant of the assertion made that the Sikh Channel is a Not for Profit Company. We did not and do not distribute any surplus funds or profit to owners or shareholders or draw any dividends, but instead used them to help pursue its goal and objectives. This position is further consolidated by the Community Interest Company.”

With regard to the description during appeals that the channel was “not-for-profit”, TV Legal stated that “this was decided upon by our executive team in a meeting and a firm decision made to run the company for the benefit of the community and not for any profit”. The licensee added that “it was premature in terms of the formation of the [Community Interest Company] but did give explicit description of the manner in which the TV station was and is being run i.e. not for profit with all monies applied for the broadcast. This decision made by our senior team, implemented and subsequently formalised by the CIC has not caused any offence, loss or damage or misinformation to any viewers.”

TV Legal later explained that The Sikh Channel Broadcasting Community Interest Company had applied to become a registered charity.<sup>5</sup>

## **Decision**

Broadcasters are permitted to appeal for funds for the purpose of funding their services or programmes. However, the Code requires that licensees must be able to demonstrate to Ofcom that any funds raised can be accounted for and are used solely for the purpose for which they were raised. Further, audiences must be told the purpose of the donations, and how much has been raised as a result of the appeal.

Consumer protection in such cases is of paramount importance and it is therefore imperative that broadcasters ensure that any information they give to their audiences about appeals for funds does not have the potential to mislead viewers.

It is also essential that broadcasters have processes in place to ensure that donations are separately accounted for, as required by the Code. This ensures that broadcasters are able to demonstrate that any donations have been used solely for the purpose for which they were raised. It is for the broadcaster to determine the most appropriate way to keep its accounts. However, methods of ensuring that audience donations are separately accounted for may include (but are not limited to) setting up a dedicated bank account for the purpose of collecting and spending viewer donations or providing Ofcom with audited accounts on request.

### Not-for-profit status

In this case, the Sikh Channel broadcast a message on screen during an appeal. It said: “*The Sikh Channel is a not for profit broadcast with all monies provided by you being used for production and broadcast costs.*” Ofcom noted that this message did not state specifically that the licensee was a not-for-profit company. However, at the

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<sup>5</sup> Sikh Channel Community Broadcasting Company Limited became a registered charity on 2 June 2010.

time of the broadcast, TV Legal had not yet set up the Community Interest Company. Therefore, in Ofcom's view, it would have been preferable for the broadcaster not to use the term "not-for-profit". However, on balance, and in view of the subsequent forming of the Community Interest Company, Ofcom considered that the message made clear that TV Legal's intentions were to use donations for production and broadcasting costs. Ofcom therefore did not find a breach of the Code in relation to this element of the complaints.

### Accounts

It was a matter of serious concern to Ofcom that the licensee admitted that the channel was "initiated with no planning no strategy and no thought given to accounting systems". This lack of planning was demonstrated by accounts which, in Ofcom's opinion, were presented to it in a disorganised manner. This resulted in Ofcom having to make several requests for further information and clarifications on the documentary evidence the licensee had provided. The way in which the licensee had recorded and provided the information, did not assist Ofcom in its ability to assess the documentation.

In the case of a number of invoices provided by the licensee, the licensee later admitted that the information it had provided to Ofcom was incorrect due to an "accounting error"<sup>6</sup>. There were also a number of areas of confusion in the accounts which resulted in Ofcom having to make repeated requests for clarification on several transactions which appeared on the licensee's bank statements. Ofcom was also extremely concerned that the licensee considered that a "complete explanation [could] only be provided in person by reference to bank statements, invoices etc." It therefore appeared to Ofcom that the licensee had demonstrated a lack of due care in keeping its accounts.

Having completed a careful assessment of the documentary evidence provided as far as was possible, given what Ofcom considered to be, its partial and often unclear nature, Ofcom was unable to find any specific evidence that the funds raised by the appeals were used for any purpose other than to fund the running of the channel. Therefore Ofcom found that the appeals were **not in breach of the part of Rule 10.15 which requires that donations must be used for the purpose for which they were donated.**

However, as detailed above, Ofcom noted that TV Legal was receiving significant amounts of money from viewers who wished to make donations to fund the channel's service, yet the licensee did not appear able to provide a clear account of how these donations had been spent. In addition the licensee appeared to operate one bank account for all the channel's income and expenditure. To indicate which of the entries on the statements were viewer donations, the licensee had had to mark them each by hand. Ofcom therefore had concerns that the donations were not being separately accounted for, as also required by Rule 10.15 of the Code.

The licensee subsequently provided Ofcom with two submissions from a firm of chartered accountants. The first submission stated that the chartered accountants had carried out a review of the company's accounts and could "see no evidence that the company is carrying out any activity other than the operation of the Sikh Channel", confirming Ofcom's findings as detailed above.

The chartered accountants also confirmed that the channel's expenditure exceeded the amount it had raised through viewer donations. It also stated that the licensee

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<sup>6</sup> See footnote 3.

had employed a new internal accountant on 9 March 2010 and that “the accounting records are now in a much improved condition with further work still ongoing.”

The second submission from the chartered accountants reiterated that its review of the company’s records did not uncover any misuse of the donated funds, and that its review “indicated expenditure on the channel in excess of that raised by donations”.

Separately, the Sikh Channel’s new internal accountant informed Ofcom that his predecessor “had no relevant experience to present and prepare the financial information” and that he had found that “the information kept in the bookkeeping software was not adequate and the filing system in place was not good. There was no proper cash book being kept, and all these information required to be collated and sorted before establishing the true affairs of the company”. The accountant confirmed that following his work to organise the accounting information that “at present the state of the affairs of the Sikh Channel reflect better position compared to before [he] joined [the company]”. This confirmed Ofcom’s findings that the licensee had demonstrated a lack of due care in keeping its accounts, as detailed above.

It remained a matter of concern to Ofcom that the licensee did not appear to have had “adequate” systems in place at the time that it began to appeal for funds to ensure the relevant accounting records were kept clearly and in an organised way. Nevertheless, in view of the measures the licensee has now taken to improve its accounting records and account-keeping, (such as employing a new internal accountant who has begun to organise the accounts with further work ongoing), Ofcom considers **its concerns under Rule 10.15 about the donations being separately accounted for to have been resolved.**

**Resolved: Rule 10.15 (“...All donations must be separately accounted for...”).**

**Not in breach: Rule 10.15 (“All donations must be...used for the purpose for which they were donated”).**

## Advertising Scheduling Cases

### In Breach

#### Advertising minutage

*LFC TV, 20 April 2010, 16:00*

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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”. This rule implements the requirements of European legislation, the Audiovisual Media Services (AVMS) Directive.

Liverpool Football Club & Athletic Grounds Limited, the licence holder for LFC TV, notified Ofcom that LFC TV had transmitted a total of 12 minutes and 30 seconds of advertising on 20 April 2010, during the 16:00 clock hour. This was 30 seconds more than permitted.

Ofcom wrote to the broadcaster asking it to provide comments relating to the incident under Rule 4 of COSTA.

#### Response

The broadcaster acknowledged that this latest overrun followed a series of overruns on LFC TV earlier this year. As a result of these earlier overruns, the broadcaster said it had introduced stringent staff training and a more robust method of tracking and reporting advertising minutage. The broadcaster explained that the latest overrun resulted from teething problems with the new system and staff adjusting to new procedures. However, it was confident that no further overruns on LFC TV would occur.

The broadcaster said it took its responsibility to comply with COSTA very seriously. In recognition of the overrun, LFC TV voluntarily dropped 30 seconds of advertising on 9 June 2010, during the clock hour beginning at 16:00.

#### Decision

Ofcom notes the recent steps the broadcaster has taken to improve LFC TV’s compliance with COSTA.

Ofcom further notes that these breaches were accidental and welcomes LFC TV’s prompt action in bringing the matter to Ofcom’s attention, as well as the compensating reduction it made to advertising minutage at a corresponding time on a subsequent day.

However, this failure followed a series of earlier overruns on LFC TV. Following these earlier incidents, LFC TV assured Ofcom that its internal procedures had been enhanced to prevent further overruns from occurring. Ofcom is therefore concerned that LFC TV’s procedures were still not adequate to prevent the latest overrun from occurring. Accordingly, we are recording a breach of Rule 4 of COSTA.

Ofcom may consider further regulatory action if this problem recurs.

**Breach of Rule 4 of COSTA**

## Fairness and Privacy Cases

### Not Upheld

#### Complaint by Mr Ross Webber

*Who Can You Trust?, BBC1 Scotland, 29 October 2009*

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**Summary:** Ofcom has not upheld this complaint of unfair treatment made by Mr Ross Webber.

BBC1 Scotland broadcast a documentary that looked at the investigation into what was the largest paedophile ring in Scotland. The programme showed how the ring was uncovered and reported that two men were convicted and sentenced to life imprisonment and that six other men were convicted of offences in connection with *“the biggest paedophile network in Scotland”*. One of those was Mr Ross Webber, who the reporter said *“fantasised about underage boys”*.

Mr Webber complained to Ofcom that he was treated unfairly in the programme as broadcast.

In summary Ofcom found the following:

- There was no unfairness to Mr Webber as a result of the programme not giving precise details of the offences for which he was convicted.
- The programme did not suggest that Mr Webber was involved in the abuse of the children referred to in the programme.
- There was no unfairness to Mr Webber as a result of one of the parents in the programme giving his recollection of the demeanour of the accused in court.

#### Introduction

On 29 October 2009, BBC1 Scotland broadcast a documentary that looked at the investigation into the largest paedophile ring in Scotland and reported on how those involved were brought to justice. The programme included footage of interviews with police officers, parents and experts involved in the case. The programme reported that two men were convicted and sentenced to life imprisonment and referred to the six other men who appeared in court at the time and were convicted of offences in connection with *“the biggest paedophile network in Scotland”*. One of the six other men was Mr Ross Webber, who was described in the programme as a 26 year old who worked in a bank and lived with his parents. The reporter said that Mr Webber *“fantasised about underage boys”*. Footage was shown of Mr Webber and the other accused men arriving at the court and the reporter said that, together, the eight men were charged with 54 offences.

Mr Webber complained to Ofcom that he was treated unfairly in the programme as broadcast.

## **The Complaint**

### **Mr Webber's case**

In summary, Mr Webber complained that he was treated unfairly in the broadcast in that:

- a) He was portrayed unfairly as a result of inaccuracies in the programme. In particular he complained that:
  - i) The programme failed to make clear what offences he was charged with and, as a result, failed to distinguish between the offences committed by him and those of his co-accused and gave the false impression that the co-accused were all working together.
  - ii) The programme wrongly suggested that Mr Webber had images of the children identified in the programme as having been abused, but he was not involved in those activities, nor was he charged with offences in relation to the victims identified in the programme.
  - iii) The parent of one of the victims was reported to have described the accused in court as "*bored, staring down*". This was not Mr Webber's experience of being in court.

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

By way of background, the BBC said that Mr Webber was found guilty in May 2009 of five charges relating to the sexual abuse of children, namely conspiring to sexually abuse children, taking and possessing indecent images of children and possessing indecent images of children with intent to distribute. He was sentenced to eight years and nine months in prison.

In summary, the BBC responded to the complaint as follows:

- a) The BBC responded to the complaint that Mr Webber was portrayed unfairly as a result of inaccuracies in the programme as set out below.
  - i) The BBC responded first to the complaint that the programme failed to make clear what offences Mr Webber was charged with and, as a result, failed to distinguish between the offences committed by him and those of his co-accused and gave the false impression that the co-accused were all working together.

The BBC said that the programme focused primarily on crimes committed by the two ringleaders of a paedophile network uncovered by Lothian and Borders Police, James Rennie and Neil Strachan. In particular, the programme featured Mr Rennie's long-term sexual abuse of a four year-old boy, referred to in court as Child F (and whose parents were referred to in the programme as the Allens), and the attempted rape of an 18 month-old boy by Mr Strachan. The parents of both children were interviewed at length and described the devastating effect the discovery of the crimes had on their families.

The BBC said that the programme made it clear that Mr Rennie and Mr Strachan, who were both given life sentences for their crimes, were the ring-

leaders of the network and were guilty of the most serious crimes. The programme focused almost exclusively on their activities and gave details of only their sentences. In view of this the BBC said that viewers were likely to have correctly assumed that the six other accused, who were mentioned only briefly, were found guilty of lesser crimes related to the sexual abuse of children.

The BBC said that Mr Webber's complaint that the programme was unfair to him because it failed to distinguish between him and the other accused did not appear to be consistent with the evidence which was presented at his trial and which led to his conviction. Mr Webber was found guilty of five counts, including conspiracy to sexually abuse children and possessing and distributing indecent images of children. The judge who imposed sentence described his offences as "being of the most serious nature" and said photographs found in Mr Webber's possession involved "children being sexually abused, often in the most appalling ways".

The BBC said that computer exchanges between Mr Webber and Mr Rennie, which were found by the police on Mr Webber's computer and used in evidence, demonstrated that the two men arranged to meet in order to view and share images of children being sexually abused, and also exchanged such images between each other. The court was also shown similar exchanges between Mr Webber and others using a variety of hotmail accounts. The BBC said that whether or not Mr Webber conspired with those found guilty at the trial did not appear to change the nature of his crimes and so it could not lead to any unfairness to him.

- ii) The BBC next responded to the complaint that the programme wrongly suggested that Mr Webber had images of the children identified in the programme as having been abused, but that he was not involved in those activities, nor was he charged with offences in relation to the victims identified in the programme.

The BBC said that the programme did not specifically link Mr Webber with any case of actual sexual abuse and so it could not have given the impression that he was involved in the cases of abuse referred to in the programme. The BBC said that Mr Webber was mentioned only once by name in the programme, when the narrator said he was one of the suspects who had been in touch with Mr Rennie, that he "*fantasised about under-age boys*" and that he was one of the eight men charged with offences in "*the trial of the biggest paedophile network in Scotland*".

The BBC said that this commentary would not have given the impression that Mr Webber was involved in the two specific cases mentioned, and the information that he "*fantasised about under-age boys*" suggested the contrary, as it implied that his activities were not in the nature of active abuse. The BBC said that if viewers were given the impression that Mr Webber was involved in the two cases in some way, this would not have been unfair to him, since the fact was that he was found guilty of conspiring to sexually abuse young children. The images found in Mr Webber's possession by the police included some at Level 5 on the Copine Scale, the highest in the system used to categorise the severity of pornographic pictures of children. Mr Webber's activities in connection with the ring, though at the level of fantasy, were entirely dependent on, and derivative from, sexual abuse of

children, of no less serious a nature than the abuse perpetrated by Mr Rennie and Mr Strachan.

- iii) The BBC responded to the complaint that a parent of one of the victims was reported to have described the accused in court as *“bored, staring down”* and that this was not Mr Webber’s experience of being in court.

The BBC said that the programme included extensive interviews with three parents who described the impact of the crimes on their families. They spoke about the ordeal of sitting through the trial and gave their recollections of Mr Strachan’s demeanour. Mr Allen then referred to Mr Rennie and Mr Strachan’s six co-accused as looking *“slightly bored, slightly embarrassed and slightly guilty”*.

The BBC said that it was clear that Mr Allen was giving his genuine recollection of the start of the trial, based on his observation of the demeanour of the men. He was talking in general terms rather than offering a specific comment on any of the men individually. The audience would have understood that Mr Allen was giving his impression, rather than making a statement of fact.

## **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 considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript and both parties written submissions.

- a) Ofcom considered Mr Webber’s complaint that he was portrayed unfairly as a result of inaccuracies in the programme.

In considering this complaint Ofcom took account of Rule 7.1 of the Code, which provides that broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes. Ofcom also considered 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.

- i) Ofcom first considered the complaint that the programme failed to make clear what offences Mr Webber was charged with and, as a result, failed to distinguish between the offences committed by him and those of his co-accused and gave the false impression that the co-accused were all working together.

Ofcom noted that Mr Webber was mentioned only once by name in the programme, when the narrator said:

*“As the families were taking in the news (that Strachan was HIV positive), police were identifying other suspects who’d been in touch with Rennie. A network of paedophiles quickly unravelled. 26 year old Ross Webber from North Berwick worked at the bank and lived at home with his parents. He fantasised about under-age boys”.*

The narrator referred to Mr Webber again, indirectly, saying:

*“On 2nd March 2009 the trial of the biggest paedophile network in Scotland began. The eight men were charged with 54 offences”.*

Ofcom noted that the programme’s first reference to Mr Webber was in relation to the uncovering of a paedophile ring and the appearance in court of those involved. Prior to this, the programme had focused almost entirely on Mr Rennie and Mr Strachan, their crimes and the efforts of the police to locate them and bring them to justice, together with interviews with the families. In Ofcom’s view it would therefore have been entirely clear to viewers that the ringleaders were Mr Rennie and Mr Strachan. The programme explained that Mr Rennie and Mr Strachan were both given life sentences and, although the programme did not specify the offences for which Mr Webber was convicted or the sentences he was given, it was clear that he was not given a life sentence and viewers would therefore have understood that his crimes and his sentence were of a lesser order than those of Mr Rennie and Mr Strachan. In Ofcom’s view this was sufficient to distinguish Mr Webber’s crimes from those of Mr Rennie and Mr Strachan. Given that Mr Webber was convicted for serious offences relating to the sexual abuse of children and in view of the judge’s comments about the severity of those offences, Ofcom did not consider that Mr Webber was treated unfairly as a result of the programme not giving the precise details of his offences.

As regards Mr Webber’s complaint that the programme gave the false impression that the co-accused were all working together, Ofcom note that he was convicted of offences of conspiracy to sexually abuse children. In view of this, taken together with the description of him as *“fantasising about under age boys”*, Ofcom considered that it would have been reasonable for viewers to understand from the programme that Mr Webber’s involvement, while it did not amount to abuse of the same order as that of Mr Rennie and Mr Strachan, was connected with that of his co-accused.

Ofcom therefore found no unfairness in this respect.

- ii) Ofcom then considered the complaint that the programme wrongly suggested that Mr Webber had images of the children identified in the programme as having been abused, but he was not involved in those activities, nor was he charged with offences in relation to the victims identified in the programme.

Ofcom noted that the programme focused primarily on Mr Strachan and Mr Rennie and their abuse of the particular children referred to in the programme. The programme referred to the abuse perpetrated by Mr Rennie and Mr Strachan in some detail and included interviews with the families of the abused children. The programme then referred to the uncovering of a paedophile ring and the appearance in court of those involved. Mr Webber

was named in this context, as one of the other men arrested for involvement in the paedophile ring, and the narrator stated that Mr Webber “*fantasised about under-age boys*” but, in Ofcom’s view, nothing in the programme suggested that Mr Webber was involved in any actual abuse of the children who were referred to in the programme as having been abused by Mr Rennie and Mr Strachan or that he had in his possession images of those children.

Ofcom therefore found no unfairness in this respect.

- iii) Ofcom considered the complaint that the parent of one of the victims was reported to have described the accused in court as “*bored, staring down*”. This was not Mr Webber’s experience of being in court.

Ofcom noted that, having given his opinion of Mr Strachan’s demeanour in court, Mr Allen said:

*“And the other, the remaining six are just looking ahead or just looking down at their shoes, they’re just, they actually almost look kind of ... slightly bored, slightly embarrassed and slightly guilty”.*

Ofcom noted that Mr Allen did not refer specifically to Mr Webber. Ofcom considered, in any event, that it would have been clear to viewers that Mr Allen was giving his personal recollection of what would have been an extremely disturbing trial to attend. Viewers would have understood that Mr Allen was not making a statement of fact and that Mr Webber’s recollection of his own demeanour in court may have been different. Further, Ofcom was not satisfied that Mr Allen’s personal recollection of the demeanour of the accused men was likely to materially alter viewers’ perception of Mr Webber in a way that was unfair.

Ofcom found no unfairness in this respect.

**Accordingly Ofcom has not upheld Mr Webber’s complaint of unfair treatment in the programme.**

## Other Programmes Not in Breach

Up to 27 June 2010

Programme	Transmission Date	Broadcaster	Categories	Number of complaints
100 Greatest World Cup Moments of All Time	13/06/2010	Channel 4	Race discrimination/offence	9
Adult Freeviews	11/05/2010	Ch 470 Virgin Media	Sexual material	1
BBC News	21/06/2010	BBC 1	Race discrimination/offence	1
BBC News	02/06/2010	BBC News Channel	Generally accepted standards	1
BBC News	02/06/2010	BBC News Channel	Generally accepted standards	1
Bear Grylls: Born Survivor	10/05/2010	Discovery	Crime	26
Bewitched	13/06/2010	Five	Offensive language	1
Big Brother 11	02/07/2009	Channel 4	Generally accepted standards	1
Big Brother 11	11/06/2010	Channel 4	Generally accepted standards	8
Big Brother 11	12/06/2010	Channel 4	Offensive language	1
Big Brother 11	14/06/2010	Channel 4	Due impartiality/bias	1
Big Brother 11	14/06/2010	Channel 4	Generally accepted standards	3
Big Brother 11	15/06/2010	Channel 4	Sexual orientation discrimination/offence	1
Big Brother 11	16/06/2010	Channel 4	Generally accepted standards	3
Big Brother 11	16/06/2010	Channel 4	Race discrimination/offence	1
Big Brother 11	17/06/2010	Channel 4	Generally accepted standards	7
Big Brother 11	18/06/2010	Channel 4	Generally accepted standards	1
Big Brother 11	18/06/2010	Channel 4	Premium rate services	1
Big Brother 11	20/06/2010	Channel 4	Disability discrimination/offence	1
Big Brother 11	21/06/2010	Channel 4	Race discrimination/offence	1
Big Brother 11	21/06/2010	Channel 4	Generally accepted standards	1
Big Brother 11	22/06/2010	Channel 4	Generally accepted standards	6
Big Brother 11	27/06/2010	Channel 4	Generally accepted standards	2
Big Brother 11	11/06/2010	Channel 4	Offensive language	1
Big Brother Live	14/06/2010	Channel 4	Generally accepted standards	1
Big Brother Live	15/06/2010	Channel 4	Generally accepted standards	1
Big Brother Live	21/06/2010	Channel 4	Offensive language	1
Big Brother Live	17/06/2010	Channel 4	Generally accepted standards	1
Big Brother Live	18/06/2010	Channel 4	COSTA	1

Big Brother Live	18/06/2010	Channel 4	Generally accepted standards	1
Big Brother Live	27/06/2010	Channel 4	Offensive language	2
Big Brother's Big Mouth	09/06/2010	E4	Generally accepted standards	7
Big Brother's Big Mouth	18/06/2010	E4	Generally accepted standards	1
Big Brother's Little Brother	20/06/2010	Channel 4	Generally accepted standards	1
Birds Eye's sponsorship of ITV3 Evenings	31/05/2010	ITV3	Violence and dangerous behaviour	1
Britain's Got Talent - The Final	05/06/2010	ITV1	Premium rate services	1
Celebrity Hens and Stags	13/06/2010	Wedding TV	Generally accepted standards	1
Chasing the Cumbrian Killer	21/06/2010	Channel 4	Sexual orientation discrimination/offence	1
Continuity announcement	19/03/2010	Comedy Central	GAS	1
Cook Yourself Thin	24/06/2010	Channel 4	Violence and dangerous behaviour	1
Coronation Street	24/06/2010	ITV1	Offensive language	4
Cowboy Builders	24/06/2010	Fiver	Materially misleading	1
Cumbria - Life After Death: Tonight	09/06/2010	ITV1	Generally accepted standards	2
Dispatches	14/06/2010	Channel 4	Due accuracy	1
Dispatches	21/06/2010	Channel 4	Due impartiality/bias	1
Doctor Who	01/05/2010	BBC 1	Generally accepted standards	6
Doctor Who	12/06/2010	BBC 1	Violence and dangerous behaviour	1
Dominos' sponsorship of Britain's Got Talent		ITV1	Sponsorship	1
Drivetime	08/06/2010	Romney Marsh FM	Scheduling	1
Dune	19/06/2010	Five	Violence and dangerous behaviour	1
EastEnders	21/06/2010	BBC 1	Sexual material	1
EastEnders	25/06/2010	BBC 1	Undue prominence	1
EastEnders	25/06/2010	BBC 1	Generally accepted standards	1
Emmerdale	17/06/2010	ITV1	Generally accepted standards	2
Emmerdale	23/06/2010	ITV1	Sexual material	1
Extreme Fishing with Robson Green	24/06/2010	Five	Generally accepted standards	1
Farmlife	23/06/2010	Sky Documentaries	Violence and dangerous behaviour	1
Gleeful: The Real Show Choirs of America	07/06/2010	E4	Generally accepted standards	1
Gleeful: The Real Show Choirs of America	07/06/2010	E4	Sexual orientation discrimination/offence	1
GMTV	16/06/2010	ITV1	Materially misleading	1
Hollyoaks	14/06/2010	Channel 4	Generally accepted standards	1
Hostel II	17/06/2010	Fiver	Generally accepted standards	1

iCarly	08/06/2010	Nickelodeon	Harm	1
Inside Nature's Giants	15/06/2010	Channel 4	Animal welfare	1
Inside Nature's Giants (trailer)	13/06/2010	More4	Generally accepted standards	1
Islamer Alokya	04/06/2010	Bangla TV	Crime	1
Isle of Wight Festival 2010	n/a	ITV2	Sponsorship credits	1
ITV News and Weather	09/06/2010	ITV1	Generally accepted standards	2
ITV News and Weather	17/06/2010	ITV1	Due accuracy	1
ITV World Cup Brazil V Democratic Peoples Republic of Korea	15/06/2010	ITV1	Generally accepted standards	1
James Corden's World Cup Live	25/06/2010	ITV1	Race discrimination/offence	4
James Corden's World Cup Live	18/06/2010	ITV1	Generally accepted standards	1
James O'Brien	15/06/2010	LBC 97.3FM	Due accuracy	1
Ken Livingstone	05/06/2010	LBC 97.3FM	Due impartiality/bias	1
Les and Jilly at Breakfast	03/06/2010	Radio Hartlepool	Competitions	1
Lewis	20/06/2010	ITV1	Offensive language	1
Live from Studio Five	14/06/2010	Five	Race discrimination/offence	1
Look Away Now	17/06/2010	BBC Radio 4	Religious/Beliefs discrimination/offence	1
Loose Women	18/06/2010	ITV1	Nudity	1
Maltesers' sponsorship of Loose Women		ITV1	Generally accepted standards	1
Match of the Day	15/06/2010	BBC 2	Race discrimination/offence	1
Match of the Day	17/06/2010	BBC 2	Race discrimination/offence	1
Match of the Day Live	16/06/2010	BBC 1	Race discrimination/offence	2
Match of the Day Live	23/06/2010	BBC 1	Generally accepted standards	2
Match of the Day Live	17/06/2010	BBC 1	Sexual orientation discrimination/offence	1
Match of the Day Live	17/06/2010	BBC 1	Race discrimination/offence	1
Match of the Day Live	23/06/2010	BBC 1	Generally accepted standards	2
Match of the Day Live	24/06/2010	BBC 1	Race discrimination/offence	1
Midsomer Murders	13/06/2010	ITV1	Sexual material	1
Midsomer Murders	25/06/2010	ITV1	Offensive language	2
Nick Ferrari	07/06/2010	LBC 97.3FM	Generally accepted standards	1
Oops TV	08/06/2010	Sky1	Animal welfare	1
Oops TV	18/06/2010	Sky2	Generally accepted standards	1
Party	24/03/2010	BBC Radio 4	Religious/Beliefs discrimination/offence	1
PM	18/06/2010	BBC Radio 4	Offensive language	1
Police Interceptors	14/06/2010	Five	Due accuracy	1

Promotions for U105.8	n/a	UTV	Cross/self promotions	1
Sky News	23/06/2010	Sky News	Offensive language	1
Sky News	27/06/2010	Sky News	Race discrimination/offence	1
Spartacus: Blood and Sand	08/06/2010	Bravo	Generally accepted standards	1
SpongeBob SquarePants	26/06/2010	ITV1	Disability discrimination/offence	3
Stand Up for the Week	25/06/2010	Channel 4	Generally accepted standards	1
Steve Allen	21/05/2010	LBC 97.3FM	Sexual orientation discrimination/offence	1
Sunrise	14/06/2010	Sky News	Due impartiality/bias	1
Takbeer TV	19/03/2010	Takbeer TV	Crime (incite/encourage)	1
Takbeer TV	09/03/2010	Takbeer TV	GAS	1
The 5 O'Clock Show	23/06/2010	Channel 4	Offensive language	2
The Alan Brazil Sports Breakfast	11/06/2010	Talksport	Race discrimination/offence	4
The Chase	11/06/2010	ITV1	Generally accepted standards	1
The Chase	21/06/2010	ITV1	Competitions	1
The Land Girls	26/06/2010	Channel 4	Sexual material	1
The Man Show	30/04/2010	TV6	Generally accepted standards	1
The Naked Office	26/06/2010	Virgin 1	Nudity	1
The Slammer	10/06/2010	CBBC	Nudity	1
The Weakest Link	15/06/2010	BBC 1	Sexual orientation discrimination/offence	1
The Weakest Link	16/06/2010	BBC 1	Generally accepted standards	1
The World in Widescreen competition	01/06/2010	Heart 96.1 FM (Colchester)	Competitions	1
This Morning	21/06/2010	ITV1	Nudity	1
Top Gear	28/06/2010	Dave Ja Vu	Offensive language	2
UK Border Force	05/06/2010	Sky 3	Generally accepted standards	1
UK Top 40	06/06/2010	Heart 97.6 FM	Crime	1
UTV Live	15/06/2010	UTV	Generally accepted standards	1
Vaisakhi Radio	12/04/2010	Vaisakhi Radio	Violence and dangerous behaviour	1
Wimbledon	23/06/2010	BBCi	Generally accepted standards	1
World Cup Live	n/a	ITV1	COSTA	2
World Cup Live	n/a	ITV1	Flashing images/risk to viewers who have PSE	1
World Cup Live: Argentina v South Korea	17/06/2010	ITV1	Religious/Beliefs discrimination/offence	1
World Cup Live: England v Algeria	18/06/2010	ITV1	Offensive language	2
World Cup Live: England v Algeria	18/06/2010	ITV1	COSTA	1
World Cup Live: England v Algeria	18/06/2010	ITV1	Due impartiality/bias	3

World Cup Live: England v USA	12/06/2010	ITV1	Race discrimination/offence	1
World Cup Live: Ghana v Germany	23/06/2010	ITV1	Race discrimination/offence	8
World Cup Live: Ghana v Germany	23/06/2010	ITV1	Generally accepted standards	2
World Cup Live: Greece v Nigeria	17/06/2010	BBC1	Offensive language	1
World Cup Live: Slovakia v Italy	24/06/2010	ITV1	Generally accepted standards	2
World Cup Opening Ceremony	11/06/2010	ITV1	COSTA	3
World Wrestling Entertainment Superstars	11/06/2010	Sky1	Violence and dangerous behaviour	1
WWE Raw	10/06/2010	Sky Sports 2	Generally accepted standards	1