

# 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:

<http://www.bcap.org.uk/Advertising-Codes/Broadcast-HTML.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.

## Notice of Sanction

### E Entertainment UK Limited

*Girls of the Playboy Mansion, E! Entertainment, 27 December 2011, 10:00 to 13:00 and 16:00 to 21:00*

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#### Introduction

E! Entertainment is an American celebrity based entertainment service broadcast on cable and satellite platforms in the UK. The licence for the service is held by E Entertainment UK Limited ("E Entertainment") or ("the Licensee").

*Girls of the Playboy Mansion* is a reality television series, filmed in the USA home of Hugh Hefner, the American magazine publisher and founder of the adult entertainment company Playboy Enterprises. It features the day to day activities of a group of women who live with Hugh Hefner in his house, known as the Playboy Mansion. The series was broadcast on the cable and satellite television channel E! Entertainment. The content broadcast on this channel was compiled by E Entertainment at the time of the broadcast (as a result of a change of ownership NBC Universal has been responsible for compliance since February 2012).

During routine monitoring, Ofcom noted various episodes (each of about 30 minutes duration) of the *Girls of the Playboy Mansion* broadcast consecutively throughout the day and evening on E! Entertainment on 27 December 2011. The programmes featured material which was clearly unsuitable for children, such as male and female strippers, glamour models and numerous examples of bleeped and masked offensive and the most offensive language.

#### Summary of Decision

In Ofcom's Finding published on 23 April 2012 in issue 204 of the Broadcast Bulletin<sup>1</sup>, Ofcom found that the material breached the following rule:

Rule 1.3: "Children must also be protected by appropriate scheduling from material that is unsuitable for them."

After considering all the evidence and representations made to it by the Licensee, Ofcom decided that the Code breaches were sufficiently serious and repeated that a financial penalty should be imposed in accordance with Ofcom's Procedures for the consideration of statutory sanctions in breaches of broadcast licences<sup>2</sup>. Ofcom then also considered the level of the financial penalty to be imposed, in accordance with Ofcom's Penalty Guidelines<sup>3</sup>.

Having regard to: the serious and repeated nature of the breaches; the Licensee's representations; and Ofcom's Penalty Guidelines, Ofcom decided it was appropriate and proportionate in the circumstances to impose a financial penalty of £40,000 on

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb204/>

<sup>2</sup> Available at: <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/procedures-statutory-sanctions/>

<sup>3</sup> Available at: <http://www.ofcom.org.uk/about/policies-and-guidelines/penalty-guidelines/>

E Entertainment UK Ltd in respect of the Code breaches (payable to HM Paymaster General).

The full Adjudication is available at:

[http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/E\\_Entertainment\\_UK\\_Ltd.pdf](http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/E_Entertainment_UK_Ltd.pdf).

## Notice of Sanction

### Sunrise TV Limited

*Beauty Simplified, Sunrise TV on 13 June 2011, 13 and 14 July 2011, and 27 September 2011*

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#### Introduction

Sunrise TV is a general entertainment television channel for the UK Asian community. The licence for the channel is held by Sunrise TV Limited (“Sunrise” or “the Licensee”).

*Beauty Simplified* was a regular one-hour item, broadcast in Hindi and English, that offered viewers advice about beauty and well-being. Throughout the show a very prominent banner was displayed encouraging viewers to call using a premium rate telephone number. The presenter also regularly encouraged viewers to call. Calls were charged at £1.50 per minute.

This show was therefore considered by Ofcom to be teleshopping, rather than programming, in line with Ofcom’s policy on the use of premium rate numbers in programmes and teleshopping<sup>1</sup>. *Beauty Simplified* was therefore governed by the UK Code of Broadcast Advertising (“the BCAP Code”).

#### Summary of Decision

In Ofcom’s Finding published on 2 April 2012 in issue 203 of the Broadcast Bulletin<sup>2</sup>, Ofcom found that four editions of *Beauty Simplified* breached the following BCAP Code rules:

Rule 2.1: “Advertisements must be obviously distinguishable from editorial content, especially if they use a situation, performance or style reminiscent of editorial content, to prevent the audience being confused between the two. The audience should quickly recognise the message as an advertisement.”

Rule 11.2.3: [Teleshopping for these products or services is not acceptable:]  
“[M]edical treatments for humans or animals.”

Rule 11.13.1: “Advertisements must not contain offers to prescribe or treat remotely (including by phone, post, e-mail or fax). That does not preclude advertisements containing offers to distribute general information on health-related matters, such as leaflets or information packs.”

In addition, a breach of BCAP Rule 3.42 (no denigration) was recorded against the Licensee, though this did not form part of the subject of the sanction.

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<sup>1</sup> Ofcom published a Regulatory Statement in June 2010, *Participation TV: Regulatory Statement – Rules on the promotion of premium rate services*, that confirmed that PTV material would be considered as advertising and regulated accordingly.

<sup>2</sup> <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb203/>

After considering all the evidence and all the representations made to it by the Licensee, Ofcom decided that the BCAP Code breaches were sufficiently serious and repeated that a financial penalty should be imposed in accordance with Ofcom's Procedures for the consideration of statutory sanctions in breaches of broadcast licences<sup>3</sup>. Ofcom then also considered the level of the financial penalty to be imposed, in accordance with Ofcom's Penalty Guidelines<sup>4</sup>.

Having regard to: the serious and repeated nature of the breaches; the Licensee's representations; and Ofcom's Penalty Guidelines, Ofcom decided it was appropriate and proportionate in the circumstances to impose a financial penalty of **£20,000** on Sunrise TV Ltd in respect of the Code breaches (payable to HM Paymaster General).

The full Adjudication is available at:

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

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<sup>3</sup> Available at: <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/procedures-statutory-sanctions/>

<sup>4</sup> Available at: <http://www.ofcom.org.uk/about/policies-and-guidelines/penalty-guidelines/>

## Standards cases

### In Breach

#### POAF Complaints Cell<sup>1</sup>

*DM Digital, 19 and 22 December 2011, 21:00*

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#### Introduction

DM Digital is a television channel primarily aimed at an Asian audience in the UK, which features broadcasts in a number of languages including English, Punjabi, Urdu, Sindhi, Kashmiri and Hindi. The service is also received in the Middle East and parts of Asia. The licence for this channel is held by DM Digital Television Limited ("DM Digital" or "the Licensee").

The two programmes broadcast on 19 and 22 December 2011 at 21:00 were current affairs discussion programmes, which consisted of a panel answering questions, in Urdu, being put by members of the audience by telephone. The programme broadcast on 19 December 2011 lasted 40 minutes, and the programme broadcast on 22 December 2011 lasted 90 minutes.

In both programmes, a presenter introduced the programmes by discussing the work of the Pakistan Overseas Alliance Forum ("POAF")<sup>2</sup>, with regard to providing assistance to expatriate Pakistani nationals. In particular, the presenter referred to the issue of the policy of the Electoral Commission of Pakistan ("ECP")<sup>3</sup> concerning the entitlement of Pakistani citizens with dual nationality to contest, or vote in, Pakistani elections. In the programme broadcast on 19 December 2011, the panel consisted of: Mazhar Ali, POAF Director; and Mazhar Kazm, Chief Manager of Marketing for DM Digital. In the programme broadcast on 22 December 2011, the panel consisted of: Mazhar Ali, POAF Director; Shazia Anjum, POAF Complaints Cell Chief Manager; Faheem Ajmal, POAF Chief Membership Secretary; and Dr Liaqat Malik, Chief Executive and Chairman of DM Digital.

Ofcom was alerted to potential issues under the due impartiality requirements of the Code during routine monitoring of the channel's output, which related to potential commercial references within the programmes<sup>4</sup>. Ofcom commissioned transcripts of the programmes, translated from the original Urdu into English by an independent

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<sup>1</sup> This is the programme title identified by the translator.

<sup>2</sup> POAF describes itself as a "non political and non religious welfare organisation for overseas Pakistanis and dedicated to welfare of all overseas Pakistanis" (see <http://poafglobaltrust.com/>). It is registered with the Charity Commission for England and Wales (charity number 1125830).

<sup>3</sup> On 19 December 2011, the ECP had declared Pakistani citizens "with dual nationalities ineligible to take part in elections [in Pakistan]" (see <http://www.ecp.gov.pk/ViewPressReleaseNotific.aspx?ID=1451&TypeID=0>). In its announcement, the ECP referred to Article 63(1)(c) of the Pakistani Constitution, which states: "A person shall be disqualified from being elected or chosen as, and from being, a member of the Majlis-e-Shoora (Parliament), if he ceases to be a citizen of Pakistan or acquires the citizenship of a foreign state."

<sup>4</sup> Please see finding on pp.19-21 of this Broadcast Bulletin.

translator. Having carefully reviewed the transcripts, we noted the following with regard to each programme, which raised potential issues under the due impartiality requirements of the Code, as laid out below:

The two programmes included a range of statements that could be characterised as being critical of the ECP and its policy concerning the entitlement of Pakistani citizens with dual nationality to contest, or vote in, Pakistani elections. For example:

19 December 2011 programme

Mazhar Ali: *"Today Pakistan Election Commission has created a very serious and profound problem for us."*

The Presenter: *"As regards dual nationality."*

Mazhar Ali: *"Pakistan Election Commission: they do not see those thieves who rob Pakistan, keep their wealth abroad, and still hold Pakistani nationality – just one nationality. I can name individuals but I will not."*

The Presenter: *"Let me speak to a caller first."*

Mazhar Ali: *"The Election Commission cannot see them – they have this habit."*

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Mazhar Ali: *"I want to elaborate upon the Pakistan Election Commission's announcement today that Pakistanis with dual nationality cannot take part in Pakistani elections. In Pakistan they blindly make a law. Those who have dual nationalities have done advance studies here; they have done their Masters and PhDs – high degrees, and they have received dual nationalities because they have been living here. They are serving their country. They did not bring much from the [home] country. They worked hard here [in the UK] and made everything for themselves. They now want to serve their country and you [the Pakistan Election Commission] are putting barriers in their way. What about the dual nationality of those who rob the wealth of Pakistan, bring it over here and keep it in the banks here [in the UK]. They obtain a second nationality based on that wealth, and then go back to be active in the field of [Pakistani] politics. This restriction [of not being allowed to take part in Pakistani elections] should have been imposed on these [latter kind of] people, and this must be done."*

The Presenter: *"Will you raise this voice on the platform of POAF?"*

Mazhar Ali: *"We surely will. We will protest against this and in the upcoming elections we will sponsor that [political] party which will change this law and keep the distinction. We do want Pakistan Election Commission to do the reforms but these must be done sensibly and rationally. People, who rob the wealth of Pakistan, bring it to foreign countries, obtain a second nationality, and then return to be active in the market of robbing and looting, those people with*

*dual nationalities must be absolutely barred from the [Pakistani] elections. But you must see that those who have obtained higher education here [in the UK] and gained higher skills, or worked hard and laboured in this country [the UK], or made their money through business, and want to return to take part in [Pakistani] politics, how can you stop them? This is injustice, gross injustice.”*

The Presenter: “*Mr Kazm, you want to say something.”*

Mazhar Kazm: “*You see, this is against the basic human rights. Right? We people were born in Pakistan. We are the citizens of Pakistan. How can you [the Pakistan Election Commission] put us into further trials and tribulations? As Mr Muzhar said, those [Pakistanis] who came here [to the UK] are brilliant people. They earn here [in the UK] and remit foreign currency to their [home] country. And you [the Pakistan Election Commission] are pushing those people in the background.”*

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Mazhar Ali: “*This new rule, which the Pakistan Election Commission has implemented today, that Pakistanis with dual nationality cannot take part in Pakistani elections, I think it is gross injustice against us and I will request the Pakistan Election Commission to review this decision. They should determine two categories of people. [In the first, they should place] those Pakistani politicians who rob wealth from the country [Pakistan because] they have served in Pakistani government, and then taken a second nationality abroad...I respect Brother Altaf Hussein who is sitting in London but you should stop his speeches. In principle, because this new law states that he cannot take part in Pakistani elections [because of his dual nationality] and hence in political activities [in Pakistan], then his live speeches, that are broadcast live in Karachi, should be banned – technically.”*

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Mazhar Kazm: “*The basic thing is that [the ECP's] new ruling is based on bad intentions. They should have disqualified anyone with a stigma of corruption – one who has embezzled even a penny – for his/her entire life.”*

## 22 December 2011 programme

Mazhar Ali: “*To those with dual nationality, the law that they cannot take part in Pakistani politics is gross injustice...It is such a cruelty to victimize us in the land where we were born, where our children were born or where they live [in Pakistan]. By not allowing us to participate in [Pakistani] politics, we have been turned into exiles. This is just the beginning. If this trend continued in this direction, I foresee that in the coming times, we will be barred from getting government employment [in Pakistan]. Overseas Pakistanis invest in Pakistan, they buy properties in Pakistan; in all these affairs, there is victimization whether sponsored by government or not but this*

*habit to victimize us, this trend, has been started and I think it will go very far. I request the government of Pakistan [Inaudible] I do not know about the government of Pakistan [because] the political climate in Pakistan is rapidly changing: Whichever government is going to take power – or the present government, I want them to review this decision. I do not think that the present government is ready to review this [decision] but I will request the government that takes power in future [recognizes] that overseas Pakistanis are the backbone of Pakistan's economy. They contribute more than 10 billion towards the economy in terms of foreign exchange, keeping that in mind please do not victimize overseas Pakistanis."*

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Mazhar Ali: *"If this series of injustices against overseas Pakistanis, who love and sympathize with their [home] country, is not stopped we will take practical measures. I request again to people in power and authority in the relevant institutions, whatever they be, or whoever people are in authority, I request again and again that they do not compel us to turn this organization [POAF] into a movement. We will not allow you [Pakistani politicians] to enter London. We will not let you enter Paris and if you did, you will face such a reception that you will not want to come again. Do not compel us to turn it [POAF] into a movement. We request again that the rights of overseas Pakistanis that are being taken away, the exploitation being done, please review it. If there is a change of government in Pakistan, I will request the incoming government to review this law... The injustices being committed against overseas Pakistanis, keeping in mind their contribution to the [home] country, this series [of injustices] should be stopped and overseas Pakistanis should be given the status that they deserve in Pakistan... The present government has a hand in what is being done to overseas Pakistanis."*

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Caller: *"I want to speak about the law, which the [Pakistani] parliament has passed in the last few days stating that persons with dual nationalities cannot contest in the [Pakistani] elections. The overseas Pakistanis most often belong to the middle class. When they earn some money, they remit it to their home country. Our rulers rob from our country and bring their wealth over here; in other words, they embezzle the money, which we remit from here, and bring it back over here. Is there no law for them? Even their [Pakistani leaders'] children do not live in Pakistan."*

Ofcom considered that the programmes raised issues warranting investigation under Rule 5.5 of the Code, which states:

*"Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved on the part of any person providing a service... This may be achieved within a programme or over a series of programmes taken as a whole."*

This is because both programmes in Ofcom's view dealt with matters of political controversy and matters relating to current public policy, namely the new and controversial policy of the ECP which according to comments made in the programme removed the entitlement of Pakistani citizens with dual nationality to contest, or vote in, Pakistani elections.

We therefore sought DM Digital's comments on how this material complied with Rule 5.5.

### **Response**

By way of general remarks, the Licensee stated that the ECP "is not a political body or an industrial controversy and they are a part of Pakistani Parliament and the issues raised in the debate was concerning the British Pakistani dual national's personal rights which affect the community at large".

#### 19 December 2011 programme

DM Digital said that this programme "was originally a seasonal greetings programme", but that "one of the callers on the programme raised the ECP issue concerning the entitlement of overseas Pakistani citizens with dual nationality to vote in Pakistani elections". The Licensee added that the programme "was directed at the [ECP] although previously [the ECP] was asked to take part in our programme on [the] issue of dual nationality but they refused to do so as interpretation is a matter...[for the] Pakistan Parliament and...[the] Supreme Court of Pakistan".

According to DM Digital: "Contrary to the law of the Constitution of the Pakistan, as a matter of practice, dual nationality holders do contest elections and hold public offices in Pakistan. However, recently the [ECP] has decided and announced that dual nationality holders would not be allowed to contest any elections or vote in Pakistan contrary to customs and conventions of [the] Pakistan Parliament."

The Licensee added that the programme broadcast on 19 December 2011 included "analysis of the legal news of the week" including "interpretation of the existing law of the Constitution of Pakistan which disqualifies dual nationality holders to be the member of parliament and to hold any public office in...Pakistan". DM Digital stated its view that the various guests to the programme were "from all walks of life including parliamentarians from [the] UK who...[have] a close connection with the Pakistan government and there was no direct attack on the Pakistan Election Commission but only a clear interpretation of the Constitution of Pakistan". Therefore, the discussion in the programme concerning the voting rights of Pakistani expatriates focused "on the issues of law [and was] not directed on personals [sic] of the Election Commissions as they have no say in Parliament or in the Supreme Court". As a consequence, the Licensee said that "we strongly submit that there is no breach of the Code".

#### 22 December 2011 programme

The Licensee said that this programme was transmitted "due to the high volume of phone calls received from the programme on the 19<sup>th</sup> of December". DM Digital said that it "did contact the ECP to give an interview for the programme so that we could offer an alternative view and the reasons for the commission to impose such restrictions without any reference from the Parliament and Supreme Court". However, according to the Licensee, "the [ECP] refuses to give any comments as

part of their policy...[because] the right to vote is not a concern for the [ECP] but the Parliament".

Given the above, DM Digital said it included Dr Shaid Qureshi, whom it described as "an expert (Pakistan Election Commission /Advisor)" so as to "give the programme the needed balance and the views expressed by" the ECP. The Licensee said that it did not "accept that there has been a breach of Section 5 of the Ofcom Code as there was a representative from the [ECP] present in the programme". In addition, Faheem Ajmal "was also brought in to express and defend" the ECP. DM Digital said that "These two guest[s] were given an equal opportunity to express their view points and enter into a healthy debate". In particular, Faheem Ajmal "strongly expressed his view in favour of [the] Government of Pakistan in relation to the strict implementation of the Article 63(3)<sup>5</sup> of the Constitution of Pakistan".

## **Decision**

Under the Communications Act 2003 ("the Act") Ofcom has a statutory duty to set standards for the content of programmes as appear to it best calculated to secure the standards objectives, including that the special impartiality requirements set out in section 320 of the Act must be complied with.

This standard is contained in the Code. Broadcasters are required to comply with the rules in Section Five of the Code to ensure that the impartiality requirements of the Act are complied with, including that due impartiality is preserved on matters of political or industrial controversy and matters relating to current public policy.

When applying the requirement to preserve due impartiality, Ofcom must take into account the broadcaster's and audience's right to freedom of expression. This is set out in Article 10 of the European Convention on Human Rights. Article 10 provides for the right to freedom of expression, which encompasses the right to hold opinions and to receive and impart information and ideas without interference by public authority. The broadcaster's right to freedom of expression is therefore not absolute. In carrying out its duties, Ofcom must balance the right to freedom of expression on one hand, with the requirement in the Code to preserve "due impartiality" on matters relating to political or industrial controversy or matters relating to current public policy.

Ofcom recognises that Section Five of the Code, which sets out how due impartiality must be preserved, acts to limit, to some extent, freedom of expression. This is because its application necessarily requires broadcasters to ensure that neither side of a debate relating to matters of political or industrial controversy and matters relating to current public policy is unduly favoured. Therefore, while any Ofcom licensee should have the freedom to discuss any controversial subject or include particular points of view in its programming, in doing so broadcasters must always comply with the Code. Further, in reaching decisions concerning due impartiality, Ofcom underlines that the broadcast of highly critical comments concerning the policies and actions of any government or public body is not, in itself, a breach of due impartiality. Any broadcaster may do this provided it complies with the Code.

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<sup>5</sup> Article 63 of the Constitution of Pakistan lays out the criteria by which an individual would be disqualified from standing for election to the Pakistani Parliament. Article 63(3) states: "The Election Commission shall decide the question within ninety days from its receipt or deemed to have been received and if it is of the opinion that the member has become disqualified, he shall cease to be a member and his seat shall become vacant."

However, depending on the specific circumstances of any particular case, it may be necessary to reflect alternative viewpoints in an appropriate way in order to ensure that Section Five is complied with.

We considered each of the programmes in turn under Rule 5.5 of the Code, which states:

“Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved on the part of any person providing a service... This may be achieved within a programme or over a series of programmes taken as a whole.”

For each programme, we considered first whether the requirements of Section Five of the Code should be applied; that is, whether the programme concerned matters of political or industrial controversy or a matter relating to current public policy. We then went on to assess whether each programme preserved due impartiality, for example by containing sufficient alternative viewpoints.

We considered that both programmes included various statements relating to the new and controversial policy of the ECP which according to comments made in the programme removed the entitlement of Pakistani citizens with dual nationality to contest, or vote in, Pakistani elections. In the case of the programme broadcast on 19 December 2011, the new policy of the ECP was variously described: as having “*created a very serious and profound problem for us*”; and as “*putting barriers in the way*” and committing a “*gross injustice*” against Pakistani citizens with dual nationality. Further, the ECP’s stated new policy was described as being “*based on bad intentions*”. In the case of the programme broadcast on 22 December 2011, the ECP was described as: committing a “*gross injustice*”; “*victimiz[ing]*” Pakistani citizens with dual nationality; and committing “*injustices against overseas Pakistanis*”.

Ofcom therefore considered that the two programmes dealt with a matter of political controversy and a matter relating to current public policy. Rule 5.5 was therefore applicable.

In assessing whether due impartiality has been applied in this case, the term “due” is important. Under the Code, it means adequate or appropriate to the subject and nature of the programme. “Due impartiality” does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented. Due impartiality may be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures due impartiality is maintained.

In our view, taken overall both these programmes contained a range of statements that were highly critical of the ECP and its new policy limiting the democratic rights of Pakistanis with dual nationality to contest, or vote in, Pakistani elections, but did not include any views that could reasonably be said to reflect the viewpoint of the ECP as regards this policy.

The programmes when considered individually each gave the same one-sided view on this matter of political controversy. Further, Ofcom is not aware of any evidence of the views of the ECP on this issue being included in a series of programmes taken as a whole (i.e. more than one programme in the same service, editorially linked, dealing with the same or related issues within an appropriate period and aimed at a like audience).

In reaching our decision, we took account of DM Digital's various representations.

Firstly, we noted the Licensee's representation that the ECP "is not a political body or an industrial controversy and they are a part of [the] Pakistani Parliament and the issues raised in the debate was [sic] concerning the British Pakistani dual national's personal rights which affect the community at large". We disagreed with DM Digital's argument that because the ECP is a statutory body that has been vested with various functions<sup>6</sup> in relation to the administration of elections in Pakistan, Rule 5.5 was not engaged. The ECP is a statutory body whose policies and actions may be a matter of political controversy or matter relating to current public policy – especially when, as here, its policies or actions concern the basic democratic rights of Pakistani citizens to vote or take part in elections. The Code states that the meaning of "matters relating to current public policy" includes "policies under discussion or already decided by a local, regional or national government or by bodies mandated by those public bodies to make policy on their behalf, for example non-governmental organisations". In our view, therefore, this definition clearly includes a statutory body such as the ECP.

Second, DM Digital said that "previously [the ECP] was asked to take part in our programme on [the] issue of dual nationality but they refused to do so as interpretation is a matter...[for the] Pakistan Parliament and...[the] Supreme Court of Pakistan". Similarly, in relation to the programme broadcast on 22 December 2011, the Licensee said that it "did contact the ECP to give an interview for the programme so that we could offer an alternative view and the reasons for the commission to impose such restrictions without any reference from the Parliament and Supreme Court". However, according to DM Digital "the [ECP] refuses to give any comments as part of their policy...[because] the right to vote is not a concern for the [ECP] but the Parliament". We interpreted these statements to mean that DM Digital had had, at different times, invited the ECP to take part but the ECP refused to do so because the issue of the participation of Pakistani citizens with dual nationality in the Pakistani electoral process is a matter for the Pakistani Parliament and Pakistani Supreme Court.

The fact that a particular body refuses to participate in a programme, does not discharge the broadcaster from its obligations under Section Five of the Code. In such circumstances, if a broadcaster cannot obtain, for example, an interview or statement laying out a particular viewpoint on a matter of political or industrial controversy and a matter of current public policy, then the broadcaster must find other methods of ensuring that due impartiality is maintained. It is an editorial matter for the broadcaster as to how it maintains due impartiality, but where alternative views are not readily available, broadcasters might consider employing one or more of the following editorial techniques: interviewers could challenge more critically alternative viewpoints being expressed, for example, by programme guests; or if alternative viewpoints cannot be obtained from particular institutions, governments or individuals, broadcasters could refer to public statements by such institutions, governments or individuals or such viewpoints could be expressed, for example, through presenters' questions to interviewees. In this case the Licensee could also have contacted the Pakistani Parliament or Pakistani Supreme Court for comment, set out in some form the views of Pakistani politicians who supported the new policy of the ECP, or at least explained to viewers that the producers of the programmes had contacted the ECP for comment but it had refused.

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<sup>6</sup> See <http://www.ecp.gov.pk/Aboutus.aspx>.

Third, the Licensee added that the programme broadcast on 19 December 2011 included participants “from all walks of life including parliamentarians from [the] UK who...[have] a close connection with the Pakistan government and there was no direct attack on the Pakistan Election Commission but only a clear interpretation of the Constitution of Pakistan”. In addition, DM Digital said that the programme focused “on the issues of law [and was] not directed on personals [sic] of the Election Commissions as they have no say in Parliament or in the Supreme Court”. In reaching our decision under Section Five, Ofcom was not concerned whether or not particular employees and members of the ECP were criticised. Further, and as mentioned above, just because the ECP may “have no say in Parliament or in the Supreme Court” does not mean that the provisions of Section Five did not apply in this case. Rather, as mentioned above, we noted that in the programmes: there were a number of statements that could be described as critical of the stated policy of the ECP; and alternative viewpoints were not reflected as appropriate.

Fourth, we noted the Licensee’s representation, in relation to the 22 December 2011 programme, that it included Dr Shaid Qureshi, whom it described as “an expert (Pakistan Election Commission /Advisor)” so as to “give the programme the needed balance and the views expressed by” the ECP. In addition, DM Digital said that Faheem Ajmal “was also brought in to express and defend” the ECP, and this participant “strongly expressed his view in favour of [the] Government of Pakistan in relation to the strict implementation of the Article 63(3)<sup>7</sup> of the Constitution of Pakistan”. However, we noted that the Licensee did not provide any specific evidence of how Dr Shaid Qureshi and Faheem Ajmal reflected the viewpoint of the ECP as regards its policy in relation to Pakistani citizens with dual nationality contesting, or voting in, Pakistani elections<sup>8</sup>. Nor did DM Digital set out the evidence for, or relevance of Faheem Ajmal “strongly express[ing] his view in favour of [the] Government of Pakistan in relation to the strict implementation of the Article 63(3)<sup>9</sup> of the Constitution of Pakistan” to the preservation of due impartiality in this case.

Given the above, Ofcom therefore considered the programmes to be in breach of Rule 5.5 of the Code.

As referred to above, the broadcasting of highly critical comments concerning the policies and actions of any government or public body is not, in itself, a breach of due impartiality. It is essential that current affairs programmes are able to explore and examine controversial issues and contributors are able to take a robust and highly critical position. However, depending on the specific circumstances of any particular case, it may be necessary to reflect alternative viewpoints in an appropriate way in order to ensure due impartiality is preserved.

The right to broadcast comes with responsibilities. It is important that broadcasters maintain due impartiality on matters of major political controversy and major matters relating to current public policy. Ofcom therefore views the breaches of Rule 5.5 in this case as particularly serious. Ofcom has recently recorded serious breaches of the Code against DM Digital, which Ofcom is already considering for the imposition of

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<sup>7</sup> See footnote 5.

<sup>8</sup> In this regard, Ofcom, on the basis of the independent translation that we obtained of this programme, could not identify Dr Shaid Qureshi appearing in the programme at all.

<sup>9</sup> See footnote 5.

a statutory sanction<sup>10</sup>. In view of the seriousness of the present breaches, and the fact they are repeated, Ofcom is gravely concerned about the effectiveness of the compliance arrangements of DM Digital.

**DM Digital is put on notice that the contraventions of Rule 5.5 of the Code recorded in the current Finding will be considered by Ofcom for the imposition of a statutory sanction.**

**Breach of Rule 5**

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<sup>10</sup> See <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb205/obb205.pdf>.

## In Breach

### **POAF Complaints Cell<sup>1</sup>**

*DM Digital, 19 December 2011, 19:00, and 22 December 2011, 21:30*

### **Understanding the Qur'an**

*DM Digital, 22 December 2011, 10:30*

### **DM News Review**

*DM Digital, 22 December 2011, 11:10*

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### **Introduction**

DM Digital is a television channel primarily aimed at an Asian audience in the UK, which features broadcasts in a number of languages including English, Punjabi, Urdu, Sindhi, Kashmiri and Hindi. The service is also received in the Middle East and parts of Asia. The licence for this channel is held by DM Digital Television Limited ("DM Digital" or "the Licensee").

During routine monitoring of the channel's output, Ofcom noted that, in four programmes, the following message was scrolled in a banner across the bottom of the screen:

*"WATCH AND JOIN POAF<sup>2</sup> CHRISTMAS PARTY WITH MUSICAL EVENING & DINNER, 8:00PM SATURDAY 24<sup>TH</sup> DECEMBER 2011 AT RASAM BANQUETING HALL CHEETHAM HILL ROAD, MANCHESTER, FOR TICKETS CONTACT [name]: [telephone number]."*

This material was scrolled on screen for approximately:

- 35 minutes during *POAF Complaints Cell* (a phone-in discussion programme), on 19 December 2011;
- 25 minutes during *POAF Complaints Cell*, on 22 December 2011;
- 21 minutes during *Understanding the Qur'an* (a documentary), on 22 December 2011; and
- 15 minutes during *DM News Review*, on 22 December 2011.

Further, during each of the above broadcasts of *POAF Complaints Cell*, a studio guest similarly referred to the Christmas event that was featured in the scrolled message, inviting viewers to attend, at a cost of £5 for members and £25 for others.

DM Digital confirmed that none of the references to POAF's Christmas event were broadcast as advertisements or as part of a product placement arrangement. Ofcom therefore considered that the material raised issues warranting investigation under the following Code rules:

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<sup>1</sup> This is the programme title identified by the translator.

<sup>2</sup> POAF describes itself as a "non political and non religious welfare organisation for overseas Pakistanis and dedicated to welfare of all overseas Pakistanis" (see <http://poafglobaltrust.com/>). It is registered with the Charity Commission for England and Wales (charity number 1125830).

- Rule 9.4: “Products, services and trade marks must not be promoted in programming”; and
- Rule 9.5: “No undue prominence may be given in programming to a product, service or trade mark. Undue prominence may result from:
- the presence of, or reference to, a product, service or trade mark in programming where there is no editorial justification; or
  - the manner in which a product, service or trade mark appears or is referred to in programming.”

We therefore sought the Licensee’s comments as to how the material complied with these Rules.

### **Response**

DM Digital noted that POAF Global Trust was “a non political and non religious welfare organization dedicated for the awareness, welfare and development of the overseas Pakistanis”, adding that the broadcast material under investigation was “organised to celebrate Christmas and the birthday of Quaid-e-Azam Muhammad Ali Jinnah, the founder of Pakistan”.

The Licensee considered that the information concerning POAF’s Christmas event, which it said was given on behalf of POAF, did not fall “within the definition of [Rule] 9.4 as POAF is a global charity and does not promote any product, services or trademark”.

DM Digital described the information it broadcast concerning the event as “for the local viewer” and “an exercise...merely to broadcast a Christmas party and to inform...viewers that an event was being organized by POAF where they could attend”. It added that: “[T]he entry to this event was free of charge for the local people and families as well as the friends of DM Digital and POAF. It was fundamentally an awareness programme.” However, the Licensee also said the information scrolled on screen was “for overseas Pakistanis to encourage them to attend and celebrate the Christmas Party with POAF and DM Digital”.

### **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 specific standards objectives, one of which is “that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”.

Article 19 of the EU Audiovisual Media Services (AVMS) Directive requires, among other things, that:

“Television advertising...shall be readily recognisable and distinguishable from editorial content...and...shall be kept quite distinct from other parts of the programme by optical and/or acoustic and/or spatial means.”

The purpose of this distinction is to prevent programmes becoming vehicles for advertising and to protect viewers from surreptitious advertising. The above requirement is therefore reflected in, among other Code rules, Rules 9.4 and 9.5,

which prohibit both the promotion and undue prominence of products, services or trade marks in programming.

Contrary to DM Digital's assertion, charities are not exempt from the requirements of these rules. Such organisations are products, services and/or trade marks in their own right and may feature in programmes, subject to Code requirements, including Rules 9.4 and 9.5.

Ofcom recognises that significant editorial justification may arise for references made to charitable organisations during charity appeals broadcast on their behalf. However, in this case, the references to POAF during the four programmes in question were not made as part of any such appeal, but merely to promote the charity's "*Christmas Party with Musical Evening and Dinner*".

Ofcom acknowledged that some viewers may have been eligible to attend POAF's Christmas event free of charge. Nevertheless, as the studio guest had made clear, tickets could be purchased, at a cost of £5 for members and £25 for others, and POAF's Christmas event was clearly promoted in programmes in breach of Rule 9.4 of the Code. Further, as there appeared to be no editorial justification for repeated and lengthy references to the event during the four programmes under consideration, such references were unduly prominent, in breach of Rule 9.5 of the Code.

### **Breaches of Rules 9.4 and 9.5**

## In Breach

### Dare to Ask

*Peace TV, 8 March 2012, 09:00*

### Dial Dr Zakir

*Peace TV, 9 March 2012, 13:30*

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### Introduction

Peace TV is an international satellite television channel, which broadcasts religious and other programming from an Islamic perspective. The licence for the channel is held by Lord Production Incorporated Limited ("Lord Production" or "the Licensee"). Lord Production is owned by Universal Broadcasting Corporation Limited ("UBCL") of which Dr Zakir Naik is the Chairman. Both Lord Production and UBCL are not-for-profit organisations and receive funding for programme production and broadcasting costs from the Islamic Research Foundation International ("IRFI"). The IRFI is a UK registered charity of which Dr Naik is also a trustee and Chairman. Dr Naik is of Indian origin and is an international speaker on Islam and comparative religion.

Following routine monitoring of Peace TV, Ofcom reviewed a number of programmes on Peace TV and noted, in particular, the following content requiring further consideration.

#### Item 1: Dare to Ask, 8 March 2012, 09:00

This programme consisted of a speaker, Dr Zakir Naik, answering questions on Islamic theology in front of an audience. In response to a question as to whether or not apostates should be put to death, as part of his response, Dr Naik said the following:

*"One group of scholars, they say that if a Muslim, if he becomes a non-Muslim [inaudible] he should be put to death. There is another group of scholars who say that if a Muslim becomes a non-Muslim and propagates his new faith against Islam then he should be put to death...I tend to agree more with the second group of scholars, who say that a Muslim, if he becomes a non-Muslim and propagates his new faith against Islam, that is the time this penalty is applied."*

and

*"Most of the countries in the world, they have their own rules and regulations – own law – and there are many countries which if you do treason, if you sell the secrets of that country to the enemy under this circumstance the countries give that penalty or life imprisonment, the laws differ...Western counties...have given that penalty when a citizen has given secret information [to] that country's enemy."*

#### Item 2: Dial Dr Zakir, 9 March 2012, 13:30

At approximately six minutes into the programme, Dr Naik answered a question about individuals who criticise Islam. As part of his response, Dr Naik said the following:

*"As to those who wage a war against Allah...As to those who create mischief in the land you either execute them, you either crucify them, or chop off the opposite limbs (that's right hand and left leg, or left hand and right leg), or you can put them in exile...This is the Islamic philosophy that everyone who wages a war against Allah...this is the consequence."*

and

*"Today in the modern world, if suppose someone commits treason against the country...If...suppose the army general of the country sells the blueprint, the secrets of the army to the enemy. What punishment will the government give but naturally the government will severely punish that person. Some governments give [the] death penalty, some life imprisonment, some may rarely give a heavy fine. For treason there is a heavy penalty. Same way this is nothing but treason...That is the reason that Allah has given this option."*

Ofcom considered two preliminary points as to whether this material raised potential issues under Rule 3.1 of the Code (broadcast content must not be likely to encourage or incite crime or to lead to disorder) and Rule 4.1 of the Code (broadcasters must exercise the proper degree of responsibility with respect to religious programmes).

Ofcom concluded that it did not raise issues under Rule 3.1. This is because, in its opinion, the material was not likely to encourage crime or disorder. The material was in the context of an exposition of Islamic religious teaching and did not contain any direct or indirect calls to action. Further, Ofcom concluded that as the material raised issues primarily relating to the way in which Dr Naik's statements were contextualised, rather than the general compliance approach taken by the Licensee in complying religious material, Section Four did not apply and therefore Rule 4.1 was not considered relevant.

However, in Ofcom's view this content did raise issues warranting investigation under Rule 2.3 of the Code, which states:

*"In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context. Such material may include, but is not limited to...humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of...religion, beliefs and sexual orientation)."*

We therefore sought Lord Production's comments on how this material complied with this rule.

## **Response**

### Item 1: Dare to Ask, 8 March 2012, 09:00

The Licensee stated that Dr Naik was explaining a Sharia ruling concerning apostates (that they should be put to death) and whether, logically, non-Muslim countries should take a similar attitude to Muslims in their own countries, where such individuals sought to convert non-Muslims. Within the context of Dr Naik's full answer, he makes the case as to why one scholastic interpretation of Islamic texts has more merit compared to another. Dr Naik explains that he favours the second interpretation presented, that is, that the penalty provided for in the texts is only available for a Muslim who becomes a non-Muslim where he "actively propagates his

new faith against Islam as opposed to simply abandoning the Muslim faith for another".

The Licensee has explained that:

"Dr Naik is not saying that his interpretation of the texts is to be acted upon in the modern world...Viewed in context he is clearly stating that a body with a proper authority would take decisions in relation to apostasy; hence the analogy which he draws with state penalties for treason. He does not suggest that it is open to members of the public to apply the penalties set out in the texts. This is not a decision to be made by anyone or a punishment to be carried out by individuals. It is only to be carried out in accordance to the laws of the country and after a committee of judges has questioned the alleged apostate and studied the case. The final decision lies with the head of [S]tate."

and

"The attitude to apostates is expressed in robust terms in mainstream Islamic thought, but it is worth noting that the Muslim faith is not alone in seeking to take steps to discourage people from leaving the faith. Deuteronomy Chapter 13, verses 6-11, calls for the death penalty for apostates."

In addition, the Licensee stated that: "A 'committed Muslim' would know from the standard teaching that the penalties against apostates can only be imposed after judicial process and by the state."

Item 2: Dial Dr Zakir, 9 March 2012, 13:30

The Licensee explained that:

"Dr Naik is asked what the position of Islam is concerning those who malign against Islam. Dr Naik starts with a direct quotation from the Qur'an – Surah Al Ma'idah Chapter 5, Verse 33. Those who wage war against Allah and his messenger and those who create mischief in the land shall be killed or crucified or their hands and feet will be cut off from opposite sides, or be exiled from the land.

Dr Naik notes that other holy scriptures provide for similar punishments for blasphemy. The book of Leviticus in the Bible says that blasphemers should be stoned to death, even by strangers (Leviticus 24:16).

Again Dr Naik makes it clear, by analogy with what might happen to someone found guilty of treason (e.g. an army general selling a blueprint to the army) that in reality the punishment must be decided by the proper authorities."

Again, the Licensee further states that: "[A] committed Muslim will know from the standard teaching that penalties against those who preach against Islam can only be imposed by judicial process and by the State."

In conclusion, the Licensee stated that: "[W]e would be happy to ensure that in future broadcasts it is made absolutely clear to viewers that the teachings of Islam in respect of apostates and those who attack Islam are for states and not individuals to decide upon and implement."

## Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that: “[G]enerally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material.” This duty is reflected in Section Two of the Code.

In reaching a preliminary view in this case, Ofcom has taken careful account of the broadcaster’s and audience’s right to freedom of expression. This is set out in Article 10 of the European Convention on Human Rights (“the ECHR”). Article 10 provides for the right of freedom of expression, and the right to receive and impart information and ideas without unnecessary interference by public authority.

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

Rule 2.3 of the Code requires that:

“In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context. Such material may include, but is not limited to...humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of... religion, beliefs and sexual orientation).”

Ofcom considered first whether the content was potentially offensive; and if so, whether the offence was justified by the context. Context includes for example: the editorial content of the programme; the service on which it is broadcast; the time of broadcast; the likely size and composition of the potential audience; and the likely expectation of the audience.

Ofcom acknowledges that programming that derives from a particular religious or spiritual viewpoint may include advice to followers of particular faiths which may nevertheless cause offence to the audience. However, broadcasters are permitted to deal with religious interpretations of various matters so long as the material complies with the requirements of the Code, including that generally accepted standards are applied. Broadcasters are not prohibited from transmitting material which may cause offence as long as it is justified by the context. Ofcom recognises that it would be an unacceptable restriction of a broadcaster’s and audience’s freedom of expression and freedom of thought, conscience and religion to curtail the transmission of certain views just because they might cause offence to others who do not share the same views.

Ofcom also noted the religious and cultural context of the programme and the likely expectations of the audience. The programme was broadcast on a channel aimed at a Muslim audience, and issues on how to apply Islamic teaching in a modern society were discussed with a Muslim audience. Ofcom fully acknowledges that Peace TV has the right to broadcast programmes that discuss Islamic principles and that its audience expects such discussion. Ofcom also acknowledges that it did not receive complaints from any member of the public in relation to the material broadcast and

notes that Peace TV also did not receive any complaints. Nonetheless, channels broadcasting programming that derives from a particular religious or spiritual viewpoint must take account of the fact that viewers who do not share that viewpoint are likely to view their output and therefore they must apply generally accepted standards at all times.

The Licensee has chosen to be licensed by Ofcom, and therefore must apply the rules of Ofcom's Broadcasting Code. These include Rule 2.3, which requires all broadcasters licensed in the UK to apply generally accepted standards to protect all members of the public from the inclusion of harmful and/or offensive material.

In Item 1, a scholar on Islam, Dr Naik, expressed his views on two interpretations of Qur'anic texts on how apostates from Islam should be treated. He set out both views and said he tended to "*agree more*" with the interpretation of Qur'anic texts which states that a Muslim who converts to another religion and who then propagates that religion "*should be put to death*", as opposed to being put to death simply for becoming a non-Muslim. In Ofcom's view, it is potentially offensive for any service to broadcast comments suggesting that it is acceptable to apply a "*penalty*" and kill any individual for renouncing their faith.

In Item 2, Dr Naik answered a question about individuals who criticise Islam. As part of his reply Dr Naik stated that, according to the Qur'an, the appropriate response against those who "*wage war against Islam*" is to execute them, chop off their limbs, or exile them. Dr Naik did not specify how he defined waging war against Islam. Ofcom noted that his reply was given in response to a question about individuals who criticise Islam. Ofcom considered that for an individual to state on air that it was acceptable to execute, chop off limbs or exile anyone who waged "*war against Islam*", where it was not specified what this phrase actually meant in practice, was potentially offensive.

Ofcom went on to consider whether these remarks were justified by the context. We first took account of the programmes' editorial context. We noted they were broadcast on a religious service aimed at the Muslim community and therefore the likely audience would have been familiar with the Qur'an and the Islamic faith, Dr Naik's views, and to some extent with the issues on which Dr Naik sought to give guidance. Nonetheless, in Ofcom's opinion the comments quoted above had the potential to cause offence to viewers, including Muslims, particularly those who do not live in a country governed by Sharia Law and who do not share Dr Naik's views on various Islamic issues – and in particular with his statements that Muslims who renounce their religion should be killed, or that those who "*wage war against Islam*" should be executed.

Ofcom noted that in presenting his own theological views on these points, Dr Naik did not include any reference to alternative interpretations by Muslim scholars of the views he presented nor seek to mitigate the potential offence by providing sufficient context for his remarks. It is not for Ofcom to state how the broadcaster should make such editorial decisions to provide appropriate context, however in this case it might include, for example: Dr Naik stating that he discouraged violent action being taken against apostates or that it was not for the individual to apply these teachings themselves.

Ofcom considers that although any viewers of the Peace TV service who live in a country governed by Sharia Law, and share Dr Naik's beliefs, may not have been offended by his comments, the likely expectations of some Muslim viewers and of members of the public who came across this material unawares would have been

exceeded by this content. Ofcom also paid regard to the broadcaster's right to freedom of religion and to the broadcaster's and audience's right to freedom of expression under Articles 9 and 10 respectively of the ECHR. Neither right is however unlimited. In reaching a decision in this case, Ofcom has carefully balanced these rights against its statutory duty to provide adequate protection for members of the public against harmful and/or offensive material.

Ofcom acknowledges that the broadcaster stated in its representations to Ofcom that it would ensure that future broadcasts made it "absolutely clear" to viewers that the teachings of Islam are not for individuals to decide upon and implement themselves. However, taking all the relevant factors into account in this case, Ofcom concluded that the potential offence was not justified by the context and the broadcaster did not apply generally accepted standards. Rule 2.3 was therefore breached.

### **Breach of Rule 2.3**

## In Breach

### Storm Night

*Storm, 29 September 2012, 22:00*

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#### Introduction

Storm Night is a segment of interactive ‘adult chat’ advertising content broadcast on the service Storm (Sky Channel 966). The service is freely available without mandatory restricted access and is situated in the ‘adult’ section of the Sky electronic programme guide (“Sky EPG”). Viewers are invited to contact on-screen presenters via premium rate telephony services (“PRS”). The female presenters dress and behave in a sexually provocative way while encouraging viewers to contact the PRS numbers. The licence for Storm is owned and operated by Live Television Limited (“Live Television” or “the Licensee”).

A viewer alerted Ofcom to a presenter shouting obscenities and swearing, which they considered was inappropriate.

Ofcom requested a recording of the programme from the Licensee in order to assess the complaint.

The Licensee explained that a technical malfunction had affected audio on its recording systems for 29 September, and that while the issue had been rectified, and it was able to provide video for the date complained of, it was unable to provide a recording with audio.

Ofcom considered the matter raised issues warranting investigation under Licence Condition 11(2) (Retention and production of recordings) of the Licensee’s Television Licensable Content Service (TLCS) licence, which requires it to:

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

Ofcom therefore asked the Licensee for its formal comments with regard to Licence Condition 11(2).

#### Response

The Licensee confirmed that as soon as the error in audio recording was discovered it was rectified, and procedures had been put in place to ensure that compliance recordings are checked on a daily basis.

#### Decision

Licence Condition 11(2) (Retention and production of recordings) of TLCS licences issued by Ofcom requires the Licensee to: (a) “make and retain or arrange for the retention of a recording in sound and vision of every programme included in the Licensed Service”; and (b) “at the request of Ofcom forthwith produce to Ofcom any such recording for examination or reproduction”.

Ofcom noted that the broadcaster failed to make or provide the recording with audio required by Ofcom to assess the complaint it had received.

We also noted the explanation of technical malfunction given by the Licensee and its assurances that the issue had been rectified. Nevertheless, the failure by the Licensee to meet this requirement is a significant breach of Licence Condition 11(2)(a) and (b) of its licence, and should there be any similar contraventions, Ofcom will consider further regulatory action.

**Breaches of Licence Condition 11(2)(a) and (b)**

## In Breach

### The Alan Brazil Sports Breakfast

Talksport, 17 August 2012, 09:55

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#### Introduction

During the handover between two programmes on Talksport, *The Alan Brazil Sports Breakfast* and *Keys and Gray*, presenter Richard Keys asked fellow presenter Andy Gray to choose the better partnership of football strikers: Alan Brazil and his Ipswich Town teammate Paul Mariner, or Andy Gray and his Everton teammate Graeme Sharp. Mr Gray responded by saying “*Fucking hell!*”.

A listener alerted Ofcom to this use of offensive language. We considered the material raised issues warranting investigation under the following rules of the Code:

Rule 1.14: “The most offensive language must not be broadcast...when children are particularly likely to be listening (in the case of radio).”

Rule 2.3: “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context.”

We therefore wrote to UTV Media (“Talksport” or “the Licensee”) for its formal comments on how the broadcast complied with these rules.

#### Response

Talksport said: “At the outset we fully accept and deeply regret the language used by Andy Gray was a Breach of Rules 1.14 and 2.3.”

The Licensee said the handover between the programmes “takes the form of an unscripted, free-form banter between the presenters...[N]o pre-planning takes place on what subjects will be raised during the chat.” Talksport also said that because four presenters are in a single studio, rather than only two, “the chance of presenters talking over each other drowning someone else’s words are higher than normal”.

The Licensee explained that, on this occasion, Richard Keys asked Andy Gray about striking partnerships involving him and fellow presenter Alan Brazil. The Licensee said: “[S]omeone breathed loudly into the mic as Gray muttered under his breath “err...fucking hell...err”...and then answered the question.”

Talksport said that the producer of the programme did not hear the phrase and would have used its time delay to ‘dump’ the language if it had been audible. The Licensee said Andy Gray thought he was not speaking directly into the microphone at the time and the other presenters thought he said ‘flippin’ hell’, so the language was not noticed. In addition, the Licensee said during a handover period there can be up to seven production staff from both programmes in a control room at one time discussing programme issues and this heightened activity could lead to such matters in a live programme not being picked up.

Talksport said the producer only became aware of the language used after a colleague informally made him aware of the situation hours after the incident and as

such no apology was broadcast during the programme. It said if anyone had been aware that such language was broadcast, an on-air apology would have been made.

The Licensee said it also missed two emails which complained about the language being used and said that this was missed among the “hundreds of emails, texts and tweets” received during the programme.

After being made aware of the issue by Ofcom, the Licensee said its Programme Director spoke to all presenters and staff to “stress the importance of strict adherence” to the Code and “for everyone in the studio and control room to concentrate on listening to live output at all times, particularly during hectic peaks such as handovers”.

Talksport also noted the Programme Director “has made clear that production staff working on the next programme should not enter the control room and begin to take over until pre-recorded material is being played out”.

## **Decision**

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

### Rule 1.14

Rule 1.14 states that the most offensive language must not be broadcast on radio when children are particularly likely to be listening. Ofcom’s research on offensive language<sup>1</sup> clearly notes that the word “fuck” and its derivatives are considered by audiences to be amongst the most offensive language.

The Code states that the phrase “when children are particularly likely to be listening” particularly refers to “the school run and breakfast time, but might include other times”. Ofcom guidance on offensive language in radio published in December 2011<sup>2</sup> underlines that, for the purpose of determining when children are particularly likely to be listening, broadcasters should have particular regard to broadcasting content between 06:00 and 19:00 from Monday to Friday during school holidays. Ofcom noted this use of the most offensive language occurred on a Friday during the summer school holiday at approximately 09:55. We therefore considered that it was broadcast at a time when children were particularly likely to be listening. As a result there was a breach of Rule 1.14.

### Rule 2.3

Ofcom next considered first whether the use of offensive language in this exchange was potentially offensive; and, if so, whether the offence was justified by the context. Context includes for example: the editorial content of the programme; the service on

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

<sup>2</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/offensive-language.pdf>

which it is broadcast; the time of broadcast; the likely size and composition of the potential audience; and the likely expectation of the audience.

Based on Ofcom's research on offensive language, the use of the phrase "*fuckng hell*" had the clear potential to cause offence.

As regards context, Ofcom noted first that Talksport is a 24 hour speech-based station focusing on sports output and has a broad audience base. We do not consider that listeners to this service would expect the most offensive language to be used during an exchange between experienced presenters in the morning.

Ofcom noted that the Licensee had cited a combination of factors which led to it not realising that this language had been broadcast. Clearly, live output should be monitored effectively to ensure incidents of this nature are quickly addressed. As the offensive language was not picked up by any of the production staff, Talksport did not offer its listeners any apology for the use of this language. We noted, however, that even after the offensive language had been brought to Talksport staff's attention subsequently both by a colleague and two emails from listeners, no apology was broadcast. Ofcom's guidance on offensive language on radio specifically notes that "[d]uring daytime, broadcasters should ensure that presenters...in all types of live radio programming are mindful of their language at all times" (see paragraph 40). Ofcom considers that an error of this nature made by a presenter would require an apology at the earliest opportunity to mitigate any offence caused.

Ofcom welcomes the measures put in place by the Licensee to ensure production staff working on live programming are not interrupted until pre-recorded material is aired.

Ofcom does not consider that the potential offence was justified by the context, and we are recording a breach of Rule 2.3.

### **Breaches of Rules 1.14 and 2.3**

## In Breach

### Styled to Rock

Sky Living, 3 September 2012, 20:00

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#### Introduction

Sky Living is owned and operated by British Sky Broadcasting (“Sky” or “the Licensee”).

*Styled to Rock* is a fashion-based reality series which aims to uncover a new British fashion designer from a range of potential candidates. A complainant alerted Ofcom to the use of the word “fuck” by participants when they were asked to complete a particular task.

Ofcom considered the material raised issues warranting investigation under Rule 1.14 of the Code, which states that:

“The most offensive language must not be broadcast before the watershed (in the case of television)[.]”

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

#### Response

The Licensee said it apologised to Sky Living viewers for this “uncharacteristic mistake”. The Licensee said as soon as it was made aware of the problem after being contacted by Ofcom, it ensured this episode was not broadcast again before it had been checked and the offensive language removed.

Sky said it investigated how this situation arose. In this instance, the Licensee said one of the compliance team had reviewed this episode and identified a number of instances where language needed to be ‘bleeped’ but due to human error had missed this particular phrase. As a result of its investigation, the Licensee said the compliance team has been reminded of the importance of thoroughly checking daytime content for such material. In addition, Sky said all other episodes of this series have been viewed again to ensure they are suitable for a pre-watershed transmission.

#### Decision

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

Rule 1.14 states that the most offensive language must not be broadcast before the watershed. Ofcom research on offensive language<sup>1</sup> clearly notes that the word “fuck” and its derivatives are considered by audiences to be among the most offensive

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

language. Such language is unacceptable before the watershed, whatever the audience profile of the channel.

In this case the use of the word “fuck” was clearly audible at 20:06 in this programme when broadcast. Ofcom notes the action taken by Sky after it became aware of the transmission of the most offensive language in this broadcast. However, Rule 1.14 of the Code states unequivocally that “the most offensive language must not be broadcast before the watershed”. There was therefore a breach of Rule 1.14.

**Breach of Rule 1.14**

## In Breach

### Big Brother

Channel 5, 16 July to 2 August 2012

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#### Introduction

During the 2012 series of *Big Brother*, viewers were invited to pay to vote via the social networking website Facebook<sup>1</sup>.

Viewers wishing to vote using this method were required to purchase votes with Facebook ‘credits’. Votes cost between 28 and 33 pence each depending on the number of credits and votes purchased in one transaction and the exchange rate of the US dollar (the currency used by Facebook at that time).

Viewers were told on air and when buying Facebook credits to purchase votes that they had to use those votes by the time voting closed in the Live Final broadcast on 13 August 2012.

Viewers could also vote by dialling a premium rate telephone number or a mobile voice shortcode.

On several occasions during the series, presenter Brian Dowling invited viewers to vote and gave details of all three methods.

On 2 August 2012, Channel 5 Broadcasting Limited (“Channel 5” or “the Licensee”) notified Ofcom that following a series of server outages that affected access to the Facebook application, it had taken the decision to suspend voting via Facebook for the remainder of the series. Therefore, viewers were unable to place any unused votes that they had purchased before the suspension.

Ofcom considered that the case raised issues warranting investigation under Rule 2.14 of the Code which states:

“Broadcasters must ensure that viewer and listeners are not materially misled about any broadcast competition or voting.”

We therefore sought comments from Channel 5 as to how the vote complied with this rule.

#### Response

Channel 5 said a similar Facebook application was used for its second *Celebrity Big Brother* series (“CBB 2012”) broadcast in January 2012. However, editorial content for CBB 2012 was split between Channel 5’s website and the Facebook application whereas all such content for the 2012 series of *Big Brother* was located on the Facebook application itself and made available through both Facebook and channel5.com.

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<sup>1</sup> In Issue 188 of Ofcom’s Broadcast Bulletin (available to view at: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb188/>), Ofcom announced the launch of a year long trial allowing broadcasters to offer paid-for viewer participation for audience voting and competition schemes using web-based applications. The trial has been extended until 19 August 2013.

Channel 5 explained that it experienced a load-related failure of its Facebook application in the last 10 minutes of the 2011 series of *Big Brother* and that as a result it had increased capacity sevenfold for the subsequent *Celebrity Big Brother* series. Channel 5 said that following rigorous testing for *Big Brother 2012*, it had increased performance capability by a further six times.

The Licensee said that it calculated the appropriate number of servers dedicated to the Facebook application by analysing data which indicated that the highest traffic peaks from CBB 2012 (which also included non-Big Brother traffic to Channel 5's website) were 110 page requests per second. Believing that levels were unlikely to be higher for this particular series, it was confident that 23 dedicated servers were sufficient to handle all of the anticipated traffic. Testing of the system, performed by its third party provider before the series began, was based on this expectation and did not identify any performance issues.

Channel 5 said statistics from the opening night of the series showed that traffic was considerably higher than anticipated, but nevertheless, aside from a brief and minor issue, showed that the application was able to withstand the current demand.

Channel 5 said that, for the next six weeks, the application dealt with this higher than anticipated demand. The six vote windows in that period ran according to plan with no outages or incidents that gave cause for concern and allowed users to vote via Facebook in the usual way.

However, the Licensee said that on 16 July 2012, the day that voting was scheduled to open for the seventh time, and while the programme was off air, the application experienced an unprecedented spike of 900 requests per second causing servers to fail. Channel 5 therefore postponed the opening of Facebook voting for the seventh vote window until the following day and increased the number of dedicated servers for the application from 23 to 50. Vote window seven closed as planned on 20 July 2012 without incident. As the level of traffic typically hovered around 100-200 requests per second when the programme was on air, Channel 5 considered that the 900 request spike may have been the result of some kind of co-ordinated attack, but found no evidence to support this.

Channel 5 explained that on 23 July 2012 a monitoring check identified sporadic server outages at a time when requests per second were peaking at approximately 200. The Licensee added that this would have only affected a few users who may have experienced some latency in page loading or have been required to refresh an error page. Nevertheless, it said that given the incident occurred despite the increase in the number of servers, it became concerned about the capacity of the Facebook application to provide access to both editorial content and the voting application.

The Licensee said that upon further investigation, it was noted that whilst the servers were capable of handling a constant stream of approximately 360 requests per second, its third party provider could not guarantee that further outages would not occur in the event of spikes in demand. The Licensee said it considered several changes to the structure of the application to handle sudden spikes in demand, but in each case concluded that it could not sufficiently test the effectiveness of a new system (and put it into practice) in the remaining time available or whilst the current Facebook application was still active. It therefore decided, as a precautionary measure, to suspend Facebook voting until further tests could be completed.

Channel 5 said that the application also experienced a further but brief (four minute) outage of individual servers on 30 July 2012 which coincided with a sudden spike in demand.

Channel 5 said that further tests indicated that voting represented a very small proportion of traffic to the application and as such, had comparatively little impact on the overall server load. It said the main demand came from content-related traffic, i.e. viewers reading articles and leaving comments. Channel 5 concluded that in the previous *Celebrity Big Brother* series the Facebook application performed without failure because editorial content had also been delivered through the Channel 5 website, which was more efficient. It also acknowledged that the introduction of 27 additional servers did not completely remove the risk of server failure as it seemed to be not just the level of load, but the rate of increase that was responsible for the server outages and that this matter needed to be addressed in more detail.

Channel 5 said that taking these factors into account and faced with the possibility of users being prevented from casting their votes in a future voting window, it took the decision to permanently withdraw Facebook voting for the remainder of the series.

Following this decision, the Licensee posted a message on the Big Brother Facebook page and its own website advising that voting was suspended and explaining that, wherever possible, users eligible for a refund would be contacted via email about the matter. It also advised that an online form to claim refunds would be available to viewers. Channel 5 said that an announcement to this effect was also broadcast on *Big Brother's Bit on the Side* and the following day's live eviction show.

Channel 5 calculated that 10,056 votes owned by 1,363 viewers were unused at the time of the suspension of the Facebook voting application. It said that it was able to contact all but 45 viewers to offer a refund and added that monies from unclaimed refunds were donated to charity. At the time of responding, Channel 5 said it had issued refunds for 2,128 votes.

The Licensee said that this method of voting is in its infancy and its implementation, management and compliance is technologically complex. Channel 5 argued that, despite its robust efforts, it encountered an unprecedented issue that added an element of risk to whether viewers would at all times be able to use their purchased Facebook votes. It also pointed out that despite the outages, it found no evidence that users were prevented from casting votes during times that Facebook voting was open.

Therefore, the Licensee did not consider viewers were materially misled on this occasion and maintained that seeking to limit and address the situation quickly by suspending the vote was the most appropriate, transparent and responsible course of action.

## **Decision**

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

These objectives are reflected in, among other rules, Rule 2.14, which serves to prevent broadcast competitions and voting from misleading the audience in such a way as to cause material harm, such as financial loss.

Ofcom noted that this method of voting is a relatively new concept and acknowledged that there may be elements of uncertainty about its operation and the likely demand for the service. In Broadcast Bulletin 201<sup>2</sup>, Ofcom published a Finding about the failure of the Facebook application in the Live Final of the 2011 series of *Big Brother*. On this occasion, user demand for voting on the Facebook application overwhelmed the servers and caused the application to fail in the final ten minutes of voting. Following the incident, Channel 5 said that it had increased server capacity sevenfold to reduce the risk of a similar occurrence in future series. Ofcom resolved the matter but said that it did not expect a recurrence, and reminded Channel 5 of its obligations under its licence in relation to its communications with viewers.

In the case of the 2012 series of *Big Brother*, we recognised that the rate of 900 requests per second for the Facebook application was an unprecedented spike and well beyond Channel 5's expectations of 110 requests per second, based on the 2011 series of *Big Brother* and the 2012 series of *Celebrity Big Brother*. However we also noted that Channel 5 had taken the decision to combine both editorial content and voting on the Facebook application in the 2012 series of *Big Brother* (whereas in *Celebrity Big Brother* 2012, it had been split between Channel 5's own website and the Facebook application). While we accept that Channel 5 and its service provider took steps to predict the likely demand for the application based on combined traffic across Channel 5's website and the Facebook application and conducted testing of the application at those levels, it appears that these calculations did not provide for sufficient contingency in the event of higher than expected spikes in demand. As such, the system failed on two occasions to cope with spikes that occurred well below the unprecedented rate of 900 requests per second. Under the terms of its Ofcom licence, Channel 5 is responsible for ensuring that all of its audience voting systems are robust. Ofcom was therefore concerned that, despite Channel 5 increasing the number of servers available, the peaks in demand for the Facebook application were not significantly higher than had been calculated (for example, a rate of 200 requests per second on 23 July 2012) but nevertheless caused further outages.

Ofcom accepted that Channel 5 did not deliberately intend to mislead viewers about the Facebook voting process. We noted the Licensee's suspension of voting was a precautionary measure rather than the result of a complete technical breakdown during a voting window. However, given that viewers had paid for their votes on the basis that they could use them until voting closed in the Live Final, and voting via the Facebook application closed prematurely, Ofcom considered those 1,363 viewers were misled that they would be able to place the votes they had bought, albeit unintentionally.

We noted that Channel 5 took a number of steps to try and rectify the problem when it came to light and that a technical solution to the vulnerability was introduced for the remainder of the series. We also took into account the measures it put in place to notify viewers of the incident and its provision of refunds wherever possible.

We acknowledge that the previous case in 2011 involved different technical issues. Nevertheless, following the 2011 series, it is a serious concern to Ofcom that the Big Brother Facebook application again experienced technical difficulties. Channel 5 viewers were again unable to use votes that they had purchased. Consequently, Ofcom is recording a breach of Rule 2.14 of the Code.

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<sup>2</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb2001/obb201.pdf>

Ofcom takes this opportunity to remind Channel 5 again of its obligations under the Code in this area and its responsibilities under its licence in relation to its communications with viewers.

**Breach of Rule 2.14**

## In Breach/Not In Breach

### Big Brother 2012

Channel 5, June to August 2012, various dates and times

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#### Introduction

Ofcom received a total of 2,085 complaints during the 2012 series of *Big Brother* covering a number of areas. Ofcom assessed all of these complaints. Those that Ofcom judged did not raise issues warranting investigation under the Code are listed on pp.57-60 of this issue of the Broadcast Bulletin. Ofcom investigated 1,334 complaints about offensive language, bullying and intimidation that we considered raised potential issues under the Code. These issues are the subject of this Finding.

*Big Brother* is a well-known reality show, now broadcast by Channel 5 (or “the Licensee”). Over the course of nine weeks a number of members of the public (“the Housemates”) live together in the Big Brother House (“the House”) where they compete to win a prize of £100,000. In entering the House contestants agree to live in a controlled environment, isolated from the outside world. All the conversations and actions of the Housemates are recorded and edited into a one hour programme shown on Channel 5 every night during the series.

Housemates are directed by Big Brother, the voice of the show’s producers, to undertake various tasks and competitions during their time in the House. Housemates are able to talk directly to Big Brother in the Diary Room. Big Brother can also choose to call Housemates to the Diary Room to reflect on their experiences in the House or to challenge their behaviour.

Each week Housemates are called to the Diary Room where they are asked by Big Brother to nominate two of their fellow Housemates for eviction from the House. The two Housemates with the most nominations are put up for eviction by the viewers of the programme, who are able to vote (via phone or Facebook) to save their favourite Housemate. The results of the public vote are revealed on a weekly live show broadcast on a Friday night. This format continues until a final Housemate remains and is declared the winner and receives the prize money.

#### a) 25 June 2012: Conor’s remarks about Deana and the epilator

Ofcom received 1,139 complaints regarding this programme. In summary complainants were offended by the threats of sexual and physical violence and the bullying nature of Housemate Conor McIntyre (“Conor”) towards fellow Housemate Deana Uppal (“Deana”).

In this episode of the programme Housemates had been set a challenge by Big Brother to eat a number of food items to Big Brother’s satisfaction. Some of the food items were not what they immediately appeared to be. Deana chose what appeared to be a cake, which it turned out was filled with Spam. It was clear that Deana did not like the food and was seen retching and spitting some of the food into the bucket while mascara ran down her face.

After this task was completed Big Brother announced that all of the Housemates, apart from Deana, had passed to Big Brother’s satisfaction. Although Big Brother did give Housemates a prize for completing the task, some Housemates speculated that

the prize would have been better had Deana completed the task to Big Brother's satisfaction.

Later in the episode a group of Housemates gathered around the dining table, while Deana was in the kitchen. Housemate Caroline Wharram ("Caroline") became convinced that Deana had used an epilator at the kitchen table and the following exchange took place:

- Caroline: *"Deana, your leg hair is on the kitchen table!"*
- Deana: *"What are you saying, that I used my epilator on the kitchen table?"*
- Caroline: *"You can see it!"*
- Deana: *"Oh shut up...[Pause]...I think it's your pubes!"*
- [Laughter from the Housemates]
- Arron: *"How inappropriate."*
- Caroline: *"So inappropriate."*
- Conor: *[starts to rap using a hairbrush as a microphone] It's your epilator, stick it up your arse, we don't give a fuck because I'm going to fucking smash<sup>1</sup> your face in you little piece of shit.*
- Ashleigh: *"Maybe you need to play fun games with her tonight."*
- Conor: *"With who? I'll give her a fun game. I'll stick this [indicates the hair brush] up her fucking minge, the stupid bastard. I'll give her a fucking epilator [gestures thrusting the hairbrush into his groin]. I'm going to play loads of pranks on her because she's a fucking piece of shit, I don't give a fuck if I get pulled up to the Diary Room so it could be..."*
- Ashleigh: *"Yeah, but what if she gets you back with water?"*
- Conor: *"What?"*
- Ashleigh: *"What if, say you got her with water like Arron<sup>2</sup>?"*
- Conor: *"And she threw it over me, I'd punch her in the face, just knock her out, just get up from that you piece of shit just...[Makes punching sound]."*

Shortly after Conor's remarks, he was called to the Diary Room where Big Brother read back the potentially offensive comments quoted above to Conor and asked him:

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<sup>1</sup> In its comments to Ofcom, Channel 5 was strongly of the view that this word was "squish" not "smash". The word is not clearly pronounced but on balance Ofcom considers "smash" more likely.

<sup>2</sup> Earlier in the series Arron and Deana had a water fight in the bedroom which resulted in Deana throwing a glass of water over Arron.

Big Brother: *"Do you understand how unacceptable this kind of language is..."*

Conor: [Interrupts] Yes.

Big Brother: *...when aimed at another Housemate?*

Conor: *Yes, it was just anger.*

Big Brother: *Big Brother suggests you find other ways to express your anger. Conor do you understand how serious...*

Conor: *Oh yeah, yeah one hundred per cent, yes."*

On leaving the Diary Room Conor approached the sofa area of the House where he was questioned about his conversation with Big Brother by Housemates Luke Scrase ("Luke S") and Lauren Carre ("Lauren"). The relevant part of this discussion was as follows:

Lauren: *"Oh, you said something stupid.*

Conor: *Saying just stupid stuff out of context, no, just stupid stuff. Just angry shit you know what I mean?*

Luke S: *What was the first letter and last letter?*

Conor: *Oh, it was the whole sentence, it was really bad.*

Lauren: *Is it well funny when they repeat it back to you?*

Conor: *Not that time, no.*

Lauren: *Were you cringing?*

Conor: *Mmm, 'cause I know it's stupid, it's just anger.*

Lauren: *You don't mean it.*

Conor: *No, I don't mean it.*

Luke S: *I think I know what it was.*

Conor: *I don't mean anything it was just like pure anger."*

The next day Conor visited the Diary Room where the following exchange took place:

Voice Over: *"Last night Conor lost his temper and said some unacceptable comments about Deana. He's come to talk to Big Brother.*

Conor: *I just want to say to you, um, apologise for what I said last night, because I never apologised before. I wasn't, I was on bad form, I was angry and I never apologised and I felt bad for not apologising. So I just wanted to apologise for what I said last night."*

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

“In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender, race, religion, beliefs and sexual orientation).”

Ofcom therefore asked Channel 5 for its comments on how this content complied with this Rule.

b) 28 June 2012: Caroline’s “gorilla” comment

Ofcom received 128 complaints about this incident. In summary, complainants were offended by the potentially racist nature of some remarks made by Housemate Caroline.

During this episode Housemates were set a task by Big Brother which involved Caroline being spun on a small roundabout while eating a bag of sweets. Fellow Housemate Adam Kelly (“Adam”), who is black, volunteered to spin Caroline. Once she had completed the task Caroline complained of feeling ill and the following exchange took place with Housemate Scott Mason (“Scott”):

- Caroline: *“I just don’t understand, why did he [Adam] have to do the spinning, out of everyone in here why him, fucking wanker, he’s horrible.”*
- Scott: *“He’s not worth rising to and explaining it.”*
- Caroline: *“He’s just a ridiculous gorilla [pause] with a bowl haircut [pause] no sanitation.”*
- Scott: *“He won’t have washed his hair once.”*
- Caroline: *“It’s just disgusting.”*

Later in the programme Caroline was called to the Diary Room where Big Brother read back her earlier comments and asked:

- Big Brother: *“Caroline, what did you mean by this?”*
- Caroline: *[Pause] Sorry. I’m sorry. Yes, that was really, really horrible.”*
- Big Brother: *“Caroline, do you understand how the use of this type of language to describe Adam could be considered offensive?”*
- Caroline: *“Yes, I really genuinely didn’t mean it at all, I really, really didn’t mean that at all.”*
- Big Brother: *“Do you understand how it could be considered offensive?”*
- Caroline: *“I don’t know why I said that, that’s horrible, I really didn’t mean it like no connotation, nasty connotations.”*

Big Brother: *Big Brother considers your use of this language unacceptable and will not tolerate it in the House, Caroline. So Big Brother is giving you a formal warning and if you use this kind of language again may have no choice other than to remove you from the House.*

Caroline: *Oh God. [Long pause] Yeah I really didn't mean it at all, I just didn't think.*

Big Brother: *Caroline, do you understand why Big Brother has given you this formal warning?*

Caroline: *Yeah, absolutely I am really sorry. I am really sorry."*

Later in the programme the following exchange between Caroline and Adam took place in the garden:

Caroline: *"I do really like you, when you said the other day – do you not like me? I was just like "yeah Adam" and I just walked away because I was just...I do like you, but whenever I feel insecure I just take it out on other people in a really, really nasty way and I'm really, really sorry.*

Adam: *I appreciate it, thank you.*

Caroline: *No, no, please can you stop being nice, it's really annoying. Just tell me to go away.*

Adam: *Well, give me a hug and then you can go.*

Caroline: *No, I feel absolutely awful. I don't know why but I've been bullied in the past so I just felt like, I don't know why but it brought back these horrible emotions of someone having sole power of me, it just sounds so stupid but it just felt like, I just felt like really pathetic.*

Adam: *I hear what you're saying, I'm sorry that happened but I never showed you anything different.*

Caroline: *[Crying] Please don't say sorry.*

Adam: *I've never showed you anything different.*

Caroline: *No, I know that so please don't say sorry I'm obviously just so insecure [crying] I just felt like I was being bullied again but obviously you're not a bully, obviously I'm a bully.*

*[Adam and Caroline hug]*

Caroline: *I'm really sorry about everything.*

Adam: *OK, and I forgive you, thank you.*

Caroline: *Every time I think about the roundabout I just get really emotional I just hate it so much."*

Adam later commented to fellow Housemate Luke Anderson ("Luke A") that he was grateful that Caroline had apologised but he would take it with "a grain of salt" and see if her actions "showed different".

Ofcom considered this material raised issues warranting investigation under Rule 2.3 of the Code, as set out above.

Ofcom therefore asked Channel 5 for its comments on how this content complied with this rule.

c) 19 July 2012: Scott's comments about Deanna eating with her hands

Ofcom received 67 complaints about this episode. In summary complainants were offended by the potentially racist nature of remarks made by two Housemates, Scott and Ashleigh Hughes ("Ashleigh"). In this episode Scott and Ashleigh were sitting in the sofa area discussing Housemate Deana who is of Indian descent. The relevant part of this discussion was as follows:

Ashleigh: *"I was watching her [Deana] eat her cereal and I was actually cringing so much inside, like, she was getting the milk and the fucking – she was picking it up with her hands [gestures picking food up with her hands]."*

Scott: *What? What was she picking up with her hands? [Laughing]*

Ashleigh: *Milk and cereal! [Laughing]*

Scott: *Do you know what, they used to do that in my Dad's take-away. [Laughing] My Dad owned an Indian take-away and they used to eat everything with their hands. Maybe it's the culture.*

Ashleigh: *I don't know. I really don't know.*

Scott: *I think it's the culture."*

Later in the programme Scott was called to the Diary Room where the exchange as set out above was read back to him by Big Brother. He was then questioned about his comments.

Big Brother: *[Y]our use of language in this conversation could be seen as stereotyping and therefore potentially offensive. Do you understand?*

Scott: *Yes, definitely. Ooops, I'm sorry.*

Big Brother: *Big Brother has no option other than to issue you with a formal warning, if you use this type of language again then Big Brother may have to consider removing you from the Big Brother House. Do you understand, Scott?*

Scott: *Now I hear it back it sounds really bad. Oh, that's really horrible because I didn't actually, I wouldn't actually want to. I actually do like Deana and I wouldn't want to be like horrible about her, like that. I feel just disappointed in myself, getting carried away and*

*talking about someone especially like that. Yeah, I am really sorry about that."*

Ashleigh was then called to the Diary Room where, after Big Brother had reminded her about of the rules of unacceptable language and behaviour in the House, the following exchange took place:

Big Brother: *"[B]ig Brother would also like to remind you what bullying could consist of. Bullying could be excluding people, ridiculing or humiliating people, name calling, sarcasm and rumour spreading.*

Ashleigh: Yes.

Big Brother: *Do you understand?*

Ashleigh: *Yes, no I understand that [it appears to Ofcom that Ashleigh was talking about the incident above but this is not explicit from the exchange] could be a sign of bullying. And I'm sorry. I am sorry, it's not very nice. But yeah no, I understand my actions and I am very sorry."*

## Response

In responding to issues (a) and (b), Channel 5 first made some general comments on the background to the series. It made the following points in particular about the format of the programme, the expectations of the audience and the editorial justification of broadcasting potentially offensive material. It said:

*"[T]he close proximity of the living conditions, the challenges set by Big Brother and the restrictions and pressures that are at times applied can cause tempers to fray and lead to emotional outbursts and conflict. It is our view that, in general, viewers of Big Brother expect to witness such behaviour but also expect it to be appropriately addressed by Big Brother and subsequently resolved."*

*"We are clear that we have an obligation not to sanitise what occurs in the House in order to preserve viewer trust in the programme (provided that generally accepted standards are met). It is viewers who decide who is evicted from the House and it would be unacceptable for us to expect them to do so when they have only seen selectively edited highlights portraying all Housemates in a positive light. This means that behaviour that has the potential to cause offence may occasionally be broadcast so that viewers can make their own minds up about individual Housemates."*

*"[V]ery careful consideration is always given to the editorial justification for broadcasting potentially harmful behaviour or offensive behaviour that has occurred in the House. Such behaviour – which is often a result of conflict – can take many forms and we consider much of it can be broadcast if given sufficient context as long as it is [seen to be] adequately dealt with and responsibly broadcast to the audience."*

The Licensee then responded about the first two specific issues.

- a) 25 June 2012 'Conor's remarks about Deana and the epilator'

Channel 5 said that “it is important to understand the relationship between these two Housemates” and went on to explain that Conor did not appear to have forgiven Deana for putting him up for eviction during the first programme and that as a result Conor was “sometimes openly hostile towards her”.

The Licensee said that it does “not intervene in...heated arguments – this is standard editorial policy and, we believe, meets with general audience expectations.” However, Channel 5 explained that in line with its compliance procedures incidents of “violence or threats of violence/intimidation by a Housemate” are referred to the programme’s senior management and this had happened immediately in this case. As a result, Conor was called to the Diary Room where one of the programme’s Senior Producers (as Big Brother) interviewed him. The Licensee stated:

“[I]t is clear from the transcript of this Diary Room that Conor was left in no doubt that such remarks aimed at another Housemate were serious and unacceptable, and had the potential to cause offence. In addition, Big Brother concluded by strongly urging him to find different ways to express his anger.”

Channel 5 believed that Conor’s conversation immediately after leaving the Diary Room with Housemates Luke S and Lauren demonstrated that “he regretted the incident and knew that it had been a “stupid” thing to say”. The Licensee also stated that the next day Conor had voluntarily come to the Diary Room to apologise formally for his behaviour.

The Licensee said that it did not believe that Conor had any intention on acting on his comments and if there had been any doubts in this regard, Conor would have been immediately removed from the house.

Channel 5 stated that the Diary Room intervention, Conor’s subsequent embarrassment and his formal apology the next day provided an “appropriate level of context to make it [i.e. Conor’s comments about Deana] editorially justified for broadcast in compliance with the Code”.

b) 28 June 2012: Caroline’s “gorilla” comment

Channel 5 stated that Caroline’s comments were referred to the production team’s senior management and Caroline was called to the Diary Room where she was issued with a formal warning. The Licensee said that:

“[G]reat care was needed in attempting to determine what Caroline meant when she referred to Adam as a “gorilla” because it would not have been fair to her to have assumed that she meant it in a racial way...In order...to be fair to Caroline, Big Brother had to talk to her about what she meant, give her the opportunity to explain herself and make her understand how such remarks to describe Adam could cause offence.”

Channel 5 stated that Caroline had later apologised directly to Adam. It also said that:

“In broadcasting the remarks, the censure and the subsequent apology to Adam within the same programme, viewers were provided with a complete overview of what had occurred and how it was dealt with. Viewers saw that Big Brother acted swiftly, forcefully and with authority in making it clear to Caroline and the audience that the use of such language in the House is potentially offensive and will not be tolerated.”

## Decision

Under the Communications Act 2003 ("the Act"), Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that "generally accepted standards" are applied so as to provide adequate protection for members of the public from the inclusion of harmful and/or offensive material. These objectives are reflected in Section Two of the Code. Rule 2.3 requires broadcasters to ensure that the broadcast of potentially offensive material must be justified by the context.

In applying Rule 2.3, Ofcom must have regard to the need for standards to be applied "in the manner that best guarantees an appropriate level of freedom of expression". The Code is drafted in accordance with Article 10 of the European Convention of Human Rights ("the ECHR"), which sets out the right of a broadcaster to impart information and ideas and the right of the audience to receive them without unnecessary interference by public authority. In accordance with the fundamental right to freedom of expression, the Code does not prohibit the broadcast of potentially offensive material. However, broadcasters are required to ensure that potentially offensive material is justified by the context.

*Big Brother* is a long-running entertainment series, one in which conflict and tensions are common due to the unique circumstances in the House. The audience expects that heated exchanges and clashes between Housemates will take place over the course of the series, and for these incidents to be included in the nightly highlights programme, because such exchanges will inform the audience's voting decisions.

However, the audience also expects offensive language and behaviour by Housemates to be challenged by Big Brother in an adequate and proportionate manner. One of the established mechanisms for challenging Housemates' behaviour in the House, and thereby to provide context for any potentially offensive language or behaviour, is through interventions by Big Brother in the Diary Room.

a) 25 June 2012: Conor's remarks about Deana and the epilator

Ofcom considered Conor's comments and conduct raise concerns under Rule 2.3 of the Code, which requires that:

"In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Such material may include...offensive language...[and] sexual violence[.]"

The meaning of context includes (but is not limited to):

- "the editorial content of the programme, programmes or series;..."
- the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally or programmes of a particular description;...[and]
- the likely size and composition of the potential audience and likely expectation of the audience[.]"

In Ofcom's view, Conor's comments (set out in detail in the Introduction), although according to Channel 5 not made directly to Deana or heard by her, were nevertheless clearly capable of causing grave offence. His remarks contained explicit descriptions of sexual violence against a female Housemate, Deana. The potential

for offence was underlined by his gesture of thrusting a hairbrush towards his groin, so mimicking an act of sexual violence which compounded the effect of his already explicit verbal threats. Ofcom considers that a threat of sexual violence, with a specific reference to a named individual against whom it would be directed and to an object to be used in that act, together with an explicit gesture mimicking how that object might be used in that act, had the potential to cause extremely high levels of offence to a substantial proportion of the audience.

Furthermore, Conor then immediately went on to make a direct threat of further violence against Deana by saying that he would punch her in the face. This compounded the level of violent aggression which therefore increased the potential for causing considerable offence to viewers.

Ofcom was of the view that, given the potential to cause serious offence created by these comments, it was necessary for Channel 5 to consider how to mitigate the resulting offence. This could have been done either by sufficiently editing this pre-recorded content before it was broadcast, or broadcasting the content in its entirety with a correspondingly high level of justification by the context for the material to comply with Rule 2.3.

We noted that Channel 5 had not put forward an argument that it had edited the material before its transmission for the purpose of limiting the offence. Ofcom therefore considered whether the material broadcast was justified by the context.

Soon after Conor had made his comments, he was called to the Diary Room where he was reprimanded by Big Brother and told that his language was "*unacceptable*". It was also suggested by Big Brother that Conor find "*other ways to express...[his] anger*".

As a result of this intervention, viewers would have been left in no doubt that Big Brother disapproved of Conor's behaviour. However, Ofcom considered that viewers were likely to have felt that Channel 5 did not sufficiently challenge Conor about his behaviour during this exchange. The tone and level of questioning during the interview did not adequately reflect the gravity of the potentially serious offence caused by Conor's remarks. In Ofcom's opinion, viewers were likely to have considered that Conor was not sufficiently confronted or reprimanded by Big Brother. Big Brother did not, for example, suggest to Conor that the remarks were so offensive that if he made similar comments he may have to leave the House immediately, or give him a formal warning, or tell him very directly that such behaviour would not be tolerated in the House. As a result, Ofcom considered that, through this intervention alone, Channel 5 failed to sufficiently mitigate the very high level of potential offence to viewers.

Channel 5 said that Deana did not overhear Conor's comments. Although Conor's remarks would have been even more offensive if he had addressed them directly to Deana, the fact that she did not hear them did not, in Ofcom's opinion, sufficiently mitigate the offence they would have caused to viewers. We accept that Conor did not appear to have any intention on acting on his remarks and Deana's safety did not appear to be at risk. However, Ofcom's view is that these factors did not sufficiently mitigate the offence the comments would have caused to viewers.

Ofcom noted that Conor did express some regret to the other Housemates about his behaviour immediately after he emerged from the Diary Room. However, no other interventions were made that night by the Licensee, or comments made by Conor

broadcast, to justify by the context the broadcast of his highly offensive comments earlier that evening.

We went on to consider material broadcast subsequently in the series which referred to the offence caused by Conor's remarks.

The next day (26 June 2012), for example, Conor voluntarily entered the Diary Room to apologise to Big Brother. Ofcom considered that this act of remorse may have demonstrated to some viewers that Conor had understood the seriousness of the situation and the offence he had caused.

Ofcom then examined the programme of 3 August 2012, in which Conor was evicted and subsequently interviewed by presenter Brian Dowling ("the Presenter") about his time in the House. During this interview Conor was shown a selection of clips from his time in the House which illustrated his fractious relationship with Deana. Brian Dowling challenged Conor on his behaviour saying that "*a lot of people were annoyed, and offended, by the stuff you said about Deana*". Mr Dowling then addressed the specific incident involving the epilator asking Conor if he regretted his actions. The exchange continued:

Presenter: *"You did use extremely offensive language.*

Conor: *I know I did, yeah.*

Presenter: *If that was towards your girlfriend and you were watching how would you feel?*

Conor: *I would flip a lid, I put my hands up.*

Presenter: *Do you regret it?*

Conor: *One hundred per cent, one hundred per cent. I was a complete and utter mouthpiece. And whatever I says, I said it in the Diary Room, I hold my hands up. And I take it as a complete – and I apologise and I said I didn't mean it at all. What came out was complete anger, that was coming out my mouth and I would never say something like that."*

In Ofcom's opinion, during the exit interview Conor was challenged more about his offensive remarks about Deana than he had been by Big Brother in the Diary Room. The exit interview was also handled in a way that conveyed to viewers the seriousness of those remarks.

Following the interview Brian Dowling walked away from Conor to be ready for the next sequence and said directly to camera:

*"I'd like to think, I hope, that he feels genuinely sorry for those remarks towards Deana."*

These final words on the matter by Mr Dowling, speculating on Conor's remorse, underlined to viewers the seriousness of the comments and helped to underline that the broadcaster strongly disapproved of Conor's behaviour on behalf of the viewer. However, we noted that these comments were made five and a half weeks after Conor originally made his highly offensive comments.

Ofcom took account of all of the circumstances including: that Conor was summoned to the Diary Room and informed that his comments about Deana were unacceptable; the broadcast of Conor's remorse expressed to his fellow Housemates after the Diary Room reprimand; his direct apology to Big Brother the next day; and the manner in which the exit interview was conducted. However, Ofcom considered that, taken together, these factors were insufficient to remedy the very high level of offence that was caused on 25 June 2012 when Conor originally made his highly offensive comments. Channel 5 therefore did not apply generally accepted standards and Rule 2.3 of the Code was breached.

### **Breach of Rule 2.3**

#### b) 28 June 2012: Caroline's "gorilla" comment

Ofcom's view is that there was uncertainty about Caroline's motive in calling Adam a "gorilla". Caroline herself denied that she had a racist intent, and she was clearly embarrassed by what she had said and saw how her comments might be interpreted by some as racist. Her comments, however, were clearly designed to be critical of, and rude about, Adam and his conduct. Ofcom considered that Caroline's use of the word "gorilla" to express her dislike of Housemate Adam, who is black, certainly had the potential to appear racist to viewers. Ofcom therefore considered her comments clearly had the potential to be offensive.

Ofcom considered next whether that potential offence was justified by the context.

Ofcom noted that the issue was dealt with immediately and robustly. Caroline was summoned to the Diary Room, where she apologised for her comments and was also given the opportunity to explain her intention. Ofcom noted that the 'formal warning' and the statement by Big Brother that the comments "*could be considered offensive*" and that Big Brother would "*not tolerate it in the House*" emphasised to viewers that even without racist intent, such comments had a substantial potential to offend and, within the context of the programme, should be seen by the viewer to have serious consequences.

Ofcom also considered that it was likely that the audience would expect some offensive comments to be made in the well-established format of *Big Brother*. However, the audience would also expect a robust approach to comments that had the potential to be perceived as racist.

Ofcom noted that Caroline was robustly challenged about her behaviour in the Diary Room, issued with a formal warning by Big Brother and told unequivocally that any repeat of such potentially offensive language and conduct could result in her removal from the House. Caroline was also shown apologising to Adam within the same episode.

This is in contrast to how Conor's remarks were handled – where no formal warning was issued and there was no direct consequence for him within the context of the programme. Nor was the ultimate sanction (expulsion from the House) at any time raised by Big Brother as a possible sanction against Conor to demonstrate that this was a matter of the utmost seriousness.

In Ofcom's view, these factors taken together were sufficient to justify the potential offence caused by Caroline's comments. Therefore in this instance generally accepted standards were applied and Rule 2.3 of the Code was not breached.

### **Not in Breach of Rule 2.3**

#### **c) 19 July 2012: Scott's comments about Deana eating with her hands**

In Ofcom's view, as with Caroline's remarks, there was some uncertainty as to whether or not Scott's comments were motivated by any underlying racial prejudice on the part of the Housemate. Ofcom recognised however that Scott's comments clearly had the potential to cause offence on the grounds of race.

We therefore considered whether the potential offence was justified by the context.

Ofcom again considered that the audience of a well-established programme such as *Big Brother* would expect potentially offensive comments to be broadcast during the course of a series, and for such comments to be broadcast. However, it would expect such comments where appropriate to be dealt with in a robust and proportionate manner, and where necessary for the audience to see consequences resulting from such comments within the context of the programme.

Scott was called to the Diary Room immediately after he made his remarks and was directly confronted by Big Brother during the Diary Room interview about the fact that his comments "*could be seen as stereotyping and therefore potentially offensive*" and was warned that if he used such language again "*Big Brother may have to consider removing you from the Big Brother House*". This response by Big Brother left viewers in no doubt that the broadcaster thought Scott's comments had the potential to offend and, within the context of the programme, should be seen to have serious consequences. Scott's apology in the Diary Room and the remorse he expressed about the comments underlined to viewers that he had been made to reflect on his potentially offensive language and had accepted that he was wrong to have spoken in such a way. The serious tone of the Diary Room interview, in Ofcom's opinion, did demonstrate that the Licensee strongly disapproved of Scott's comments such that it did mitigate any potential offence caused to viewers by them.

In relation to Ashleigh's actions, even though she had not actively supported or challenged Scott's potentially offensive comments (replying "*I don't know*" to him), by calling her to the Diary Room and challenging Ashleigh to understand how her part in such an exchange could be perceived as bullying, Big Brother effectively showed the viewer that it had disapproved of her behaviour.

Noting that Scott was challenged about his comments immediately and directly by Big Brother and issued with a formal warning, and his apology was shown in the same programme, Ofcom concluded that with this incident also the potential offence was justified by the context. Therefore Rule 2.3 of the Code was not breached.

### **25 June 2012: Conor's remarks about Deana and the epilator: Breach of Rule 2.3**

#### **28 June 2012: Caroline's "gorilla" comment: Not in Breach**

#### **19 July 2012: Scott's comments about Deana eating with her hands: Not in Breach**

## Resolved

### Big Brother's Bit on the Side

Channel 5, 4 July, 23:00

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#### Introduction

*Big Brother's Bit on the Side* ("BBBOTS") is the 'sister programme' to Channel 5's main *Big Brother* series. It is transmitted every evening after the 21:00 watershed during the period *Big Brother* is on air and provides background, celebrity chat and insight into the events in the Big Brother House ("the House"). The show is transmitted live and includes audience interviews, celebrity comment, clips from the House and interviews with evicted Housemates.

On 4 July 2012 Channel 5 (or "the Licensee") broadcast an edition of the programme in which presenter Emma Willis interviewed a former Housemate from a previous series of the programme Victor Ebuwa ("Victor"). During the interview Emma Willis asked Victor about the strategies of the Housemates to win the competition, and he replied:

*"There's a lot of functioning retards in there."*

The interview continued and at the start of the next part of the programme, Ms Willis made the following apology to the camera:

*"Before we can go any further, we must apologise if anybody took offence to anything Victor said during our strategy chat, so apologies."*

Ofcom received three complaints about the programme. In summary, all of the complainants were offended by the use of the term "retard" by Victor.

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

*"In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender, race, religion, beliefs and sexual orientation)."*

Ofcom therefore asked Channel 5 for comments on how the broadcast of Victor's remarks complied with this rule.

#### Response

Channel 5 stated that because the programme is live "the audience and guests are always firmly reminded that they should not use language or behaviour that might cause offence". Further, the Licensee stated that it has "appropriate and robust procedures in place, in order to deal with such situations swiftly and effectively".

In relation to the specific incident the Licensee said:

“[A] clear and unequivocal apology was made...which made it clear to viewers that Channel 5 considered Victor’s comments capable of causing offence.”

Channel 5 added that the comments were “swiftly removed from the On-Demand version of this programme”.

## Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that “generally accepted standards” are applied so as to provide adequate protection for members of the public from the inclusion of harmful and/or offensive material. These objectives are reflected in Section Two of the Code.

Rule 2.3 requires broadcasters to ensure that the broadcast of potentially offensive material must be justified by the context. The meaning of context is set out in the Code. It includes (but is not limited to):

- “the editorial content of the programme, programmes or series;...
- the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally or programmes of a particular description;...[and]
- the likely size and composition of the potential audience and likely expectation of the audience[.]”

Ofcom does not prohibit the use of any words, but potentially offensive language must be justified by the context.

Ofcom noted first that the use of discriminatory language can be profoundly offensive to some viewers. Ofcom’s own research into offensive language has identified the word “retard”<sup>1</sup> as polarising. The words “retard” and “retarded” provoked mixed responses but many people were offended by these words as they “singled out people in society and are extremely harmful and upsetting”. Those people who consider it offensive do so because it is a derogatory term that refers to disability. The use of the word “retard” by Victor therefore clearly had the potential to offend.

We therefore went on to consider if the use of the word was justified by the context. Ofcom took account of the fact that BBBOTS is a late-night entertainment show, broadcast live, which is known for its comic banter and outspoken guest and audience comments, and that viewers therefore may expect some material likely to offend. Following the use of the word “retard” by the guest Victor, Emma Willis did not react to the use of the word or apologise immediately for any offence it may have caused. In Ofcom’s view generally accepted standards were therefore not applied by the broadcaster regarding Victor’s comment and Rule 2.3 was breached.

Ofcom noted that an apology was given by the presenter, but this was not until the start of the next programme part, 17 minutes later. The apology was delivered with sincerity by Ms Willis, going some way to mitigate the potential offence. The Licensee also took swift action to remove the offensive content from its online version of the

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<sup>1</sup> Audience attitudes towards offensive language on television and radio August 2011. See: <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>

programme. Taking all the relevant circumstances into account, Ofcom considered the case resolved.

**Resolved**

## Other Programmes Not in Breach

Up to 29 October 2012

Programme	Broadcaster	Transmission Date	Categories
Breakfast	BBC 1	29/09/2012	Scheduling
Celebrity Big Brother	Channel 5	07/09/2012	Undue prominence
Sikh Channel	Sikh Channel		Religious/Beliefs discrimination/offence
Sports Disasters	CBS Reality	02/09/2012	Scheduling
Yasser Habib	Fadak TV	24/05/2012	Religious/Beliefs discrimination/offence

## Complaints Assessed, not Investigated

Between 16 and 29 October 2012

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
5 News	Channel 5	17/10/2012	Materially misleading	1
8 Out of 10 Cats	Channel 4	22/10/2012	Race discrimination/offence	1
999: What's Your Emergency?	Channel 4	15/10/2012	Disability discrimination/offence	2
999: What's Your Emergency?	Channel 4	15/10/2012	Generally accepted standards	1
999: What's Your Emergency?	Channel 4	15/10/2012	Harm	1
999: What's Your Emergency?	Channel 4	22/10/2012	Harm	9
A Room with a View	Film4	26/10/2012	Nudity	1
Adam & Leanne	Juice 107.6 FM	17/10/2012	Crime	1
Adult Channels	Freeview	n/a	Digital Switchover	1
Advertisements	Various	n/a	Advertising scheduling	1
Al Murray Live - Barrel of Fun	Dave	03/10/2012	Generally accepted standards	1
Background music	BBC channels	n/a	Generally accepted standards	1
Background music	Various	n/a	Outside of remit / other	1
BBC News	BBC 1	30/09/2012	Television Access Services	1
BBC News	BBC 1	07/10/2012	Generally accepted standards	1
BBC News	BBC News 24	14/10/2012	Generally accepted standards	1
BBC News	BBC News 24	21/10/2012	Race discrimination/offence	1
BBC News	BBC Radio 2	n/a	Generally accepted standards	1
BBC News at Six	BBC 1	23/10/2012	Generally accepted standards	1
BBC News at Six	BBC 1	24/10/2012	Scheduling	1
BBC News at Ten	BBC 1	19/10/2012	Due accuracy	1
BBC News Update	BBC 1	25/10/2012	Generally accepted standards	1
BBC NewsWorld	BBC NewsWorld	n/a	Television Access Services	1
Bhai Balwant Singh Rajoana	Sikh Channel	28/03/2012	Due impartiality/bias	1
Big Brother	5*	03/08/2012	Race discrimination/offence	1
Big Brother	5*	12/08/2012	Generally accepted standards	1
Big Brother	Channel 5	05/06/2012	Offensive language	1

Big Brother	Channel 5	15/06/2012	Generally accepted standards	1
Big Brother	Channel 5	18/06/2012	Race discrimination/offence	1
Big Brother	Channel 5	18/06/2012	Sexual material	1
Big Brother	Channel 5	19/06/2012	Generally accepted standards	2
Big Brother	Channel 5	22/06/2012	Violence and dangerous behaviour	1
Big Brother	Channel 5	23/06/2012	Sexual material	1
Big Brother	Channel 5	27/06/2012	Offensive language	1
Big Brother	Channel 5	30/06/2012	Generally accepted standards	3
Big Brother	Channel 5	30/06/2012	Generally accepted standards	1
Big Brother	Channel 5	02/07/2012	Generally accepted standards	1
Big Brother	Channel 5	03/07/2012	Generally accepted standards	2
Big Brother	Channel 5	06/07/2012	Generally accepted standards	4
Big Brother	Channel 5	06/07/2012	Materially misleading	1
Big Brother	Channel 5	07/07/2012	Generally accepted standards	5
Big Brother	Channel 5	07/07/2012	Offensive language	1
Big Brother	Channel 5	07/07/2012	Race discrimination/offence	58
Big Brother	Channel 5	08/07/2012	Generally accepted standards	11
Big Brother	Channel 5	08/07/2012	Generally accepted standards	1
Big Brother	Channel 5	10/07/2012	Generally accepted standards	41
Big Brother	Channel 5	10/07/2012	Outside of remit / other	1
Big Brother	Channel 5	10/07/2012	Product placement	1
Big Brother	Channel 5	11/07/2012	Generally accepted standards	7
Big Brother	Channel 5	11/07/2012	Generally accepted standards	1
Big Brother	Channel 5	11/07/2012	Race discrimination/offence	2
Big Brother	Channel 5	12/07/2012	Generally accepted standards	1
Big Brother	Channel 5	13/07/2012	Generally accepted standards	3
Big Brother	Channel 5	13/07/2012	Outside of remit / other	1
Big Brother	Channel 5	14/07/2012	Generally accepted standards	12
Big Brother	Channel 5	14/07/2012	Generally accepted standards	1
Big Brother	Channel 5	15/07/2012	Generally accepted standards	16
Big Brother	Channel 5	15/07/2012	Generally accepted	1

			standards	
Big Brother	Channel 5	16/07/2012	Generally accepted standards	301
Big Brother	Channel 5	16/07/2012	Outside of remit / other	1
Big Brother	Channel 5	19/07/2012	Outside of remit / other	4
Big Brother	Channel 5	19/07/2012	Outside of remit / other	1
Big Brother	Channel 5	21/07/2012	Generally accepted standards	1
Big Brother	Channel 5	21/07/2012	Sexual orientation discrimination/offence	1
Big Brother	Channel 5	22/07/2012	Generally accepted standards	1
Big Brother	Channel 5	23/07/2012	Religious/Beliefs discrimination/offence	1
Big Brother	Channel 5	24/07/2012	Transgender discrimination/offence	8
Big Brother	Channel 5	26/07/2012	Race discrimination/offence	4
Big Brother	Channel 5	27/07/2012	Generally accepted standards	5
Big Brother	Channel 5	27/07/2012	Generally accepted standards	3
Big Brother	Channel 5	27/07/2012	Materially misleading	5
Big Brother	Channel 5	27/07/2012	Race discrimination/offence	1
Big Brother	Channel 5	30/07/2012	Outside of remit / other	1
Big Brother	Channel 5	31/07/2012	Generally accepted standards	6
Big Brother	Channel 5	31/07/2012	Race discrimination/offence	1
Big Brother	Channel 5	01/08/2012	Competitions	1
Big Brother	Channel 5	01/08/2012	Generally accepted standards	1
Big Brother	Channel 5	01/08/2012	Voting	9
Big Brother	Channel 5	02/08/2012	Generally accepted standards	106
Big Brother	Channel 5	03/08/2012	Generally accepted standards	81
Big Brother	Channel 5	03/08/2012	Generally accepted standards	1
Big Brother	Channel 5	03/08/2012	Generally accepted standards	1
Big Brother	Channel 5	06/08/2012	Generally accepted standards	2
Big Brother	Channel 5	10/08/2012	Generally accepted standards	1
Big Brother	Channel 5	10/08/2012	Voting	1
Big Brother	Channel 5	11/08/2012	Religious/Beliefs discrimination/offence	1
Big Brother	Channel 5	11/08/2012	Violence and dangerous behaviour	1
Big Brother	Channel 5	13/08/2012	Competitions	1
Big Brother	Channel 5	13/08/2012	Generally accepted	1

			standards	
Big Brother	Channel 5	n/a	Age discrimination/offence	1
Big Brother	Channel 5	n/a	Generally accepted standards	1
Big Brother	Channel 5	n/a	Generally accepted standards	1
Big Brother	Channel 5	n/a	Generally accepted standards	1
Big Brother	Channel 5	n/a	Outside of remit / other	1
Big Brother	Channel 5	n/a	Product placement	1
Big Brother	Channel 5 / 5*	19/06/2012	Sexual material	1
Big Brother Live	5*	13/07/2012	Generally accepted standards	1
Big Brother: The Auditions	Channel 5	05/06/2012	Sexual material	1
Big Brothers Bit On The Side	Channel 5	13/08/2012	Due impartiality/bias	1
Big Brother's Bit on the Side	5*	08/07/2012	Outside of remit / other	1
Big Brother's Bit on the Side	5*	14/07/2012	Generally accepted standards	1
Big Brother's Bit on the Side	5*	16/07/2012	Outside of remit / other	1
Big Brother's Bit on the Side	5*	16/07/2012	Transgender discrimination/offence	4
Big Brother's Bit on the Side	5*	23/07/2012	Generally accepted standards	1
Big Brother's Bit on the Side	5*	30/07/2012	Outside of remit / other	1
Big Brother's Bit on the Side	Channel 5	26/06/2012	Generally accepted standards	1
Big Brother's Bit on the Side	Channel 5	02/07/2012	Race discrimination/offence	1
Big Brother's Bit on the Side	Channel 5	05/07/2012	Generally accepted standards	6
Big Brother's Bit on the Side	Channel 5	06/07/2012	Race discrimination/offence	162
Big Brother's Bit on the Side	Channel 5	24/07/2012	Generally accepted standards	1
Big Brother's Bit on the Side	Channel 5	25/07/2012	Race discrimination/offence	1
Big Brother's Bit on the Side	Channel 5	26/07/2012	Race discrimination/offence	1
Big Brother's Bit on the Side	Channel 5	30/07/2012	Generally accepted standards	1
Big Brother's Bit on the Side	Channel 5	01/08/2012	Competitions	1
Big Brother's Bit on the Side	Channel 5	02/08/2012	Competitions	26
Big Brother's Bit on the Side	Channel 5	02/08/2012	Generally accepted standards	1
Boardwalk Empire	Sky Atlantic	06/10/2012	Advertising scheduling	1
Boardwalk Empire (trailer)	Pick TV	27/09/2012	Violence and dangerous behaviour	1
Boardwalk Empire (trailer)	Sky Sports 1	24/09/2012	Violence and dangerous behaviour	1

Bombardier's sponsorship of Dave	Dave	19/10/2012	Animal welfare	1
Bombardier's sponsorship of Dave	Dave	22/10/2012	Animal welfare	1
Breakfast	BBC 1	24/10/2012	Generally accepted standards	1
Breakfast	BBC 1	27/10/2012	Generally accepted standards	1
Breakfast	BBC 1	27/10/2012	Religious/Beliefs discrimination/offence	1
Cash Cab	Quest	16/10/2012	Harm	1
Celebrity Big Brother	Channel 5	15/08/2012	Generally accepted standards	1
Celebrity Big Brother	Channel 5	16/08/2012	Generally accepted standards	1
Celebrity Big Brother	Channel 5	18/08/2012	Generally accepted standards	8
Celebrity Big Brother	Channel 5	19/08/2012	Harm	1
Celebrity Big Brother	Channel 5	20/08/2012	Generally accepted standards	1
Celebrity Big Brother	Channel 5	22/08/2012	Drugs, smoking, solvents or alcohol	3
Celebrity Big Brother	Channel 5	24/08/2012	Voting	1
Celebrity Big Brother	Channel 5	26/08/2012	Generally accepted standards	60
Celebrity Big Brother	Channel 5	28/08/2012	Generally accepted standards	2
Celebrity Big Brother	Channel 5	29/08/2012	Generally accepted standards	1
Celebrity Big Brother	Channel 5	30/08/2012	Generally accepted standards	1
Celebrity Big Brother	Channel 5	31/08/2012	Advertising minutage	1
Celebrity Big Brother	Channel 5	31/08/2012	Generally accepted standards	1
Celebrity Big Brother	Channel 5	05/09/2012	Generally accepted standards	1
Celebrity Big Brother	Channel 5	07/09/2012	Undue prominence	1
Celebrity Big Brother	Channel 5	n/a	Drugs, smoking, solvents or alcohol	1
Celebrity Big Brother	Channel 5	n/a	Product placement	1
Celebrity Juice	ITV2	18/10/2012	Generally accepted standards	2
Channel 4 News	Channel 4	17/10/2012	Due accuracy	1
Channel 4 News	Channel 4	17/10/2012	Violence and dangerous behaviour	1
Channel 4 News	Channel 4	26/10/2012	Due impartiality/bias	1
Channel Report	Channel TV	18/10/2012	Outside of remit / other	1
ChatGirl TV	Adult Channel	28/08/2012	Participation TV - Offence	1

ChatGirl TV2	GirlGirl	28/08/2012	Participation TV - Offence	1
ChatGirl TV2	GirlGirl	29/08/2012	Participation TV - Offence	1
Classic Car Rescue	Channel 5	08/10/2012	Materially misleading	1
Community Link Show	Gloucester FM	04/10/2012	Offensive language	1
Coronation Street	ITV1	01/10/2012	Materially misleading	1
Coronation Street	ITV1	14/10/2012	Drugs, smoking, solvents or alcohol	1
Coronation Street	ITV1	14/10/2012	Offensive language	1
Coronation Street	ITV1	15/10/2012	Generally accepted standards	1
Coronation Street	ITV1	15/10/2012	Transgender discrimination/offence	3
Coronation Street	ITV1	26/10/2012	Generally accepted standards	2
Crossfire	Peace TV	15/07/2012	Religious/Beliefs discrimination/offence	1
Crossfire	Peace TV	30/09/2012	Religious/Beliefs discrimination/offence	1
CSI: Miami	Channel 5	20/10/2012	Suicide and self harm	1
Dawn FM	Dawn FM	06/10/2012	Religious/Beliefs discrimination/offence	1
Daybreak	ITV1	19/10/2012	Due impartiality/bias	1
Daybreak	ITV1	n/a	Competitions	1
Dick and Dom's Hoopla	CBBC	28/09/2012	Violence and dangerous behaviour	1
Doctors	BBC 1	10/09/2012	Sexual material	1
Downton Abbey	ITV1	14/10/2012	Generally accepted standards	2
Drillbit Taylor	Film4	20/10/2012	Offensive language	1
Drugs Live: The Ecstasy Trial	Channel 4	26/09/2012	Drugs, smoking, solvents or alcohol	9
Drugs Live: The Ecstasy Trial	Channel 4	27/09/2012	Drugs, smoking, solvents or alcohol	2
Drugs Live: The Ecstasy Trial (trailer)	Channel 4	14/09/2012	Drugs, smoking, solvents or alcohol	1
Drugs Live: The Ecstasy Trial (trailer)	Channel 4	14/09/2012	Outside of remit / other	1
East Midlands Today	BBC 1	24/09/2012	Scheduling	1
EastEnders	BBC 1	05/10/2012	Materially misleading	2
EastEnders	BBC 1	15/10/2012	Race discrimination/offence	2
EastEnders	BBC 1	18/10/2012	Race discrimination/offence	1
EastEnders	BBC 1	26/10/2012	Outside of remit / other	1
Efterlyst	TV3	05/09/2012	Generally accepted standards	2
Emmerdale	ITV1	26/10/2012	Materially misleading	1
Extra Time	Talksport Radio	08/10/2012	Generally accepted	1

			standards	
Family Guy (trailer)	FX	04/10/2012	Generally accepted standards	1
FIFA World Cup Qualifier	ITV1	12/10/2012	Generally accepted standards	1
Format	Rinse FM	29/09/2012	Format	1
Foxy Bingo's sponsorship of The Jeremy Kyle Show	ITV1	n/a	Gambling	1
Fracture	Film4	25/10/2012	Offensive language	1
Frasier	Channel 4	17/10/2012	Outside of remit / other	1
Freeview programme guide	BBC HD	19/10/2012	Generally accepted standards	1
Friday Night Dinner	Channel 4	07/10/2012	Offensive language	1
Gordon Ramsay's Ultimate Cookery Course	Channel 4	19/09/2012	Surreptitious advertising	1
Have I Got a Bit More News for You	BBC 1	15/10/2012	Generally accepted standards	1
Have I Got News for You	BBC 1	19/10/2012	Generally accepted standards	1
Have I Got News for You	Dave	04/10/2012	Nudity	1
HBO NHL 24/7	Premier Sports	31/12/2011	Offensive language	1
Heroes of the Skies	Channel 5	18/10/2012	Offensive language	3
Heroes of the Skies	Channel 5	26/10/2012	Outside of remit / other	1
Hollyoaks	Channel 4	02/10/2012	Generally accepted standards	1
Hollyoaks	Channel 4	02/10/2012	Scheduling	1
Hollyoaks	E4	04/10/2012	Generally accepted standards	1
Hunted	BBC 1	11/10/2012	Violence and dangerous behaviour	1
Hunted	BBC 1	25/10/2012	Nudity	1
Hunted	BBC 1	25/10/2012	Violence and dangerous behaviour	1
Huw Stephens	BBC Radio 1	06/10/2012	Premium rate services	1
I'm a Celebrity...Get Me Out of Here! (trailer)	ITV channels	22/10/2012	Generally accepted standards	1
I'm a Celebrity...Get Me Out of Here! (trailer)	ITV1	26/10/2012	Animal welfare	1
I'm a Celebrity...Get Me Out of Here! (trailer)	ITV1	27/10/2012	Generally accepted standards	1
I'm a Celebrity...Get Me	ITV1	n/a	Generally accepted standards	1

Out of Here! (trailer)				
Inside Out	BBC 1	22/10/2012	Offensive language	1
Inspector George Gently	BBC 1	16/09/2012	Drugs, smoking, solvents or alcohol	1
ITV News and Weather	ITV1	08/10/2012	Generally accepted standards	1
ITV News and Weather	ITV1	18/10/2012	Due impartiality/bias	2
Jeremy Vine	BBC Radio 2	12/10/2012	Generally accepted standards	1
Jewish Mum of the Year	Channel 4	09/10/2012	Religious/Beliefs discrimination/offence	1
Jewish Mum of the Year	Channel 4	16/10/2012	Generally accepted standards	1
Jo Brand's Big Splash	Dave	21/10/2012	Offensive language	1
Journey to Islam "Human Rights - Rights or Wrongs"	Peace TV	13/07/2012	Sexual orientation discrimination/offence	1
Julia Hartley Brewer	LBC 97.3FM	05/10/2012	Violence and dangerous behaviour	1
Kanshi TV	Venus TV	n/a	Religious/Beliefs discrimination/offence	1
Kirky Kirkbride's Musical Mystery Tour	Bishop FM	21/09/2012	Offensive language	1
Law and Order	Channel 5	24/10/2012	Offensive language	1
Live at the Apollo	BBC 3	29/09/2012	Offensive language	1
Live International Boxing	Channel 5	13/10/2012	Sexual orientation discrimination/offence	3
Live International Under-21s Football	ESPN	16/10/2012	Race discrimination/offence	2
Live Special	Sangat TV	15/08/2012	Religious/Beliefs discrimination/offence	1
Loose Women	ITV1	15/10/2012	Due impartiality/bias	1
Loose Women	ITV1	17/10/2012	Generally accepted standards	1
Loose Women	STV	17/10/2012	Gender discrimination/offence	1
Me and Mrs Jones (trailer)	BBC 1	12/10/2012	Scheduling	1
Meet the Parents	E4	15/10/2012	Religious/Beliefs discrimination/offence	1
Mock the Week	BBC 2	11/10/2012	Generally accepted standards	1
Moto GP	BBC 2	21/10/2012	Outside of remit / other	2
My Daughter the Teenage Nudist	More4	18/10/2012	Gender discrimination/offence	1
My Tattoo Addiction	4seven	21/10/2012	Harm	1
My Tattoo Addiction	Channel 4	18/10/2012	Materially misleading	13
My Tattoo Addiction (trailer)	Channel 4	12/10/2012	Scheduling	1

My Tattoo Addiction (trailer)	Channel 4	18/10/2012	Scheduling	1
My Tattoo Addiction (trailer)	More4	12/10/2012	Scheduling	1
Never Mind the Buzzcocks	BBC 2	24/09/2012	Disability discrimination/offence	1
Never Mind the Buzzcocks	BBC 2	14/10/2012	Generally accepted standards	1
News	BBC 3	19/10/2012	Due accuracy	1
News	Smooth Radio	18/10/2012	Due impartiality/bias	1
News programming	BBC channels	n/a	Generally accepted standards	1
News programming	BBC channels / ITV channels / Sky news	n/a	Generally accepted standards	1
News programming	Fox News	n/a	Due impartiality/bias	1
Newsdrive	BBC Radio Scotland	24/10/2012	Due impartiality/bias	1
Newsnight Scotland	BBC 2 Scotland	23/10/2012	Due impartiality/bias	1
Nick Ferrari	LBC 97.3FM	11/10/2012	Materially misleading	1
Only the Brave and Courageous Show	BMHC Radio Hajj	10/10/2012	Gender discrimination/offence	1
Panorama (trailer)	BBC 2	16/10/2012	Generally accepted standards	1
Phones 4U's sponsorship of Star Trek	More4	16/10/2012	Sponsorship credits	1
Piers Morgan's Life Stories	ITV1	26/10/2012	Generally accepted standards	1
Playboy TV Chat	Playboy TV Chat	10/10/2012	Sexual material	1
Pluras kök	TV3 Sweden	15/09/2012	Drugs, smoking, solvents or alcohol	2
Premier League Football	Sky Sports 1	28/10/2012	Outside of remit / other	1
Programming	BBC channels	n/a	Outside of remit / other	2
Programming	BBC channels / Channel 4	n/a	Religious/Beliefs discrimination/offence	1
Question Time	BBC 1	18/10/2012	Due impartiality/bias	1
Radio Hartlepool	Radio Hartlepool	n/a	Generally accepted standards	1
Red Dwarf	Dave	18/10/2012	Religious/Beliefs discrimination/offence	5
Red Dwarf (trailer)	Dave	17/10/2012	Religious/Beliefs discrimination/offence	1
Red Light Central	Red Light 3	09/10/2012	Sexual material	1
Russell Howard's Good News	BBC 3	18/10/2012	Generally accepted standards	1
Russell Howard's Good News Extra	BBC 3	12/10/2012	Religious/Beliefs discrimination/offence	1
Seven Seas' sponsorship of ITV Weather	ITV1	n/a	Sponsorship credits	1

Sex, Death and the Meaning of Life	Channel 4	20/10/2012	Religious/Beliefs discrimination/offence	1
Sex, Death and the Meaning of Life (trailer)	Channel 4	11/10/2012	Religious/Beliefs discrimination/offence	2
Sex, Death and the Meaning of Life (trailer)	Channel 4	15/10/2012	Religious/Beliefs discrimination/offence	1
Sex, Death and the Meaning of Life (trailer)	Channel 4	16/10/2012	Religious/Beliefs discrimination/offence	1
Sex, Death and the Meaning of Life (trailer)	More4	10/10/2012	Religious/Beliefs discrimination/offence	1
Sex, Death and the Meaning of Life (trailer)	More4	13/10/2012	Religious/Beliefs discrimination/offence	1
Sex, Death and the Meaning of Life (trailer)	More4	13/10/2012	Religious/Beliefs discrimination/offence	1
Shooting Stars	Dave	04/10/2012	Nudity	1
Sikh Channel	Sikh Channel	01/10/2012	Generally accepted standards	3
Sing for Your Life	Channel 4	15/10/2012	Materially misleading	1
Sing For Your Life (trailer)	Channel 4	14/10/2012	Offensive language	1
Sky News	Sky News	16/09/2012	Due accuracy	1
Sky News	Sky News	22/09/2012	Due accuracy	1
Sky News	Sky News	05/10/2012	Generally accepted standards	309
Sky News	Sky News	24/10/2012	Gender discrimination/offence	1
Sky News	Sky News	n/a	Generally accepted standards	1
Sky News with Kay Burley	Sky News	02/10/2012	Generally accepted standards	1
Sky News with Kay Burley	Sky News	04/10/2012	Generally accepted standards	1
Sons of Guns	Discovery Channel	08/10/2012	Violence and dangerous behaviour	1
Stand Up To Cancer (trailer)	Channel 4	11/10/2012	Materially misleading	1
Stand Up To Cancer (trailer)	Channel 4	14/10/2012	Generally accepted standards	1
Stand Up To Cancer (trailer)	Channel 4	17/10/2012	Hypnotic and other techniques	1
Storm Night	Storm	25/09/2012	Sexual material	1
Street Crime UK	Pick TV	23/10/2012	Generally accepted standards	1
Strictly Come Dancing	BBC 1	20/10/2012	Generally accepted standards	1
Strictly Come Dancing	BBC 1	27/10/2012	Offensive language	1
Strictly Come Dancing	BBC 1	27/10/2012	Religious/Beliefs discrimination/offence	1
STV News at Six	STV	18/01/2012	Generally accepted	1

			standards	
Suburgatory	Channel 4	13/10/2012	Scheduling	1
Sunday Brunch	Channel 4	23/09/2012	Drugs, smoking, solvents or alcohol	1
Switch (trailer)	ITV1	13/10/2012	Scheduling	1
Switch (trailer)	ITV1	13/10/2012	Scheduling	1
Sydney White	BBC 2	13/10/2012	Generally accepted standards	1
Talk Talk's sponsorship of The X Factor	ITV1	13/10/2012	Sponsorship credits	1
Talk Talk's sponsorship of The X Factor	ITV1	13/10/2012	Sponsorship credits	1
TalkSport	TalkSport	19/10/2012	Race discrimination/offence	1
Tena sponsorship of Timeless Classics series	Yesterday	08/10/2012	Gender discrimination/offence	1
The Alan Titchmarsh Show	ITV1	24/10/2012	Animal welfare	6
The Alan Titchmarsh Show	ITV1	24/10/2012	Materially misleading	4
The Alan Titchmarsh Show	ITV1	24/10/2012	Outside of remit / other	2
The Audience	Channel 4	20/09/2012	Under 18s in programmes	1
The Ball's in our Court	Blighty	27/09/2012	Violence and dangerous behaviour	1
The Big Drive Home With Bruce Wright	Chorley FM 102.8	11/10/2012	Generally accepted standards	1
The Hairy Bikers: Mums Know Best	BBC 2	17/10/2012	Race discrimination/offence	1
The JD Show	Free Radio Coventry and Warwickshire	26/10/2012	Offensive language	1
The Jeremy Kyle Show	ITV1	04/09/2012	Violence and dangerous behaviour	1
The Jeremy Kyle Show	ITV1	05/09/2012	Generally accepted standards	1
The Jeremy Kyle Show	ITV1	05/10/2012	Disability discrimination/offence	3
The Jeremy Kyle Show	ITV1	15/10/2012	Generally accepted standards	1
The Jeremy Kyle Show	ITV2	20/08/2012	Television Access Services	1
The Jeremy Kyle Show	ITV2	03/10/2012	Scheduling	1
The Jewellery Channel	The Jewellery Channel	n/a	Outside of remit / other	1
The Last House on the Left	ITV4	24/10/2012	Generally accepted standards	1
The Official UK Top40	Viva	06/10/2012	Materially misleading	1
The Only Way is Essex	ITV2	17/10/2012	Generally accepted standards	1

The Simpsons	Sky1	07/10/2012	Offensive language	1
The Syndicate	BBC 1	24/04/2012	Offensive language	1
The Syndicate	BBC 1 Wales	24/04/2012	Drugs, smoking, solvents or alcohol	1
The Thick of It	BBC 2	29/09/2012	Religious/Beliefs discrimination/offence	1
The Wright Stuff	Channel 5	01/10/2012	Generally accepted standards	1
The Wright Stuff	Channel 5	15/10/2012	Generally accepted standards	1
The Wright Stuff	Channel 5	18/10/2012	Due impartiality/bias	1
The Wright Stuff	Channel 5	18/10/2012	Materially misleading	1
The X Factor	ITV1	13/10/2012	Generally accepted standards	2
The X Factor	ITV1	13/10/2012	Offensive language	1
The X Factor	ITV1	13/10/2012	Scheduling	1
The X Factor	ITV1	20/10/2012	Advertising minutage	1
The X Factor	ITV1	20/10/2012	Competitions	1
The X Factor	ITV1	20/10/2012	Generally accepted standards	1
The X Factor	ITV1	20/10/2012	Offensive language	11
The X Factor	ITV1	20/10/2012	Outside of remit / other	7
The X Factor	ITV1	20/10/2012	Scheduling	4
The X Factor	ITV1	20/10/2012	Violence and dangerous behaviour	1
The X Factor	ITV1	20/10/2012	Voting	1
The X Factor	ITV1	27/10/2012	Generally accepted standards	3
The X Factor	ITV1	27/10/2012	Voting	2
The X Factor	ITV1	n/a	Voting	1
The X Factor	ITV1 +1	13/10/2012	Outside of remit / other	2
The X Factor Results Show	ITV1	07/10/2012	Offensive language	13
The X Factor Results Show	ITV1	07/10/2012	Voting	1,329 <sup>1</sup>
The X Factor Results Show	ITV1	14/10/2012	Voting	3
The X Factor Results Show	ITV1	21/10/2012	Voting	2
The X Factor Results Show	ITV1	28/10/2012	Voting	2
This Morning	ITV1	22/10/2012	Generally accepted standards	1
Today	BBC Radio 4	17/10/2012	Race discrimination/offence	1

<sup>1</sup> These 1,329 complaints relate to Louis Walsh's decision to save contestant Rylan Clarke and force a 'deadlock' situation which resulted with the contestant with the fewest votes, Carolyne Poole, being eliminated. Ofcom judged that this matter did not raise issues under the Code as the format of the contest is made transparent and viewers vote in the knowledge that the ultimate decision to eliminate contestants or force a 'deadlock' situation rests with the judges.

University Challenge	BBC 2	22/10/2012	Offensive language	1
Unknown	LBC	n/a	Outside of remit / other	1
Victoria Derbyshire	BBC Radio 5 Live	01/10/2012	Generally accepted standards	1
Wales Tonight	ITV1 Wales	21/10/2012	Fairness & Privacy	1
Watchdog	BBC 1	19/09/2012	Crime	1
Waterloo Road	BBC 1	04/10/2012	Generally accepted standards	1
WE 3 (trailer)	Film4	07/10/2012	Scheduling	1
Welcome to India	BBC 2	10/10/2012	Religious/Beliefs discrimination/offence	1
World Grand Prix Darts	Sky Sports 1	14/10/2012	Outside of remit / other	1
WWE Hell in a Cell (Trailer)	Sky Sports 1	29/10/2012	Materially misleading	1
You've Been Framed!	ITV2	19/10/2012	Scheduling	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 25 October and 7 November 2012.

Programme	Broadcaster	Transmission Date
Advertisements	ARY QTV	5 October 2012
Charity appeal	DM Digital	28 July 2012
Coppers	Channel 4	9 January 2012
F1: Grand Prix	BBC 1	4 November 2012
Fresh Hits	BritAsia TV	6 October 2012
Girls (trailer)	Sky1	4 October 2012
Girls (trailer)	Sky1	7 October 2012
Leeds TV	Showcase 2	26 October 2012
Sangat TV	Sangat TV	1 October 2012
Showbiz India	Sahara One	23 September 2012
Street Crime UK	Pick TV	9 October 2012
Sur Kshetra	Rishtey	7 October 2012
The Breakfast Show	Key 103	31 October 2012
The Removal Men	Channel 5	24 October 2012
Viewer competition	True Movies, True Movies 2, True Entertainment	20 October 2012

**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/>.