

Ofcom Broadcast and On Demand Bulletin

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Introduction

Under the Communications Act 2003 (“the Act”), Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives¹. Ofcom also has a duty to secure that every provider of a notifiable On Demand Programme Services (“ODPS”) complies with certain standards requirements as set out in the Act². Ofcom must include these standards in a code, codes or rules. These are listed below.

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

- a) [Ofcom’s Broadcasting Code](#) (“the Code”) for content broadcast on television and radio services.
- b) the [Code on the Scheduling of Television Advertising](#) (“COSTA”) which contains rules on how much advertising and teleshopping may be scheduled in television programmes, how many breaks are allowed and when they may be taken.
- c) certain sections of the [BCAP Code: the UK Code of Broadcast Advertising](#), which relate to those areas of the BCAP Code for which Ofcom retains regulatory responsibility for on television and radio services. These include:
 - the prohibition on ‘political’ advertising;
 - sponsorship and product placement on television (see Rules 9.13, 9.16 and 9.17 of the Code) and all commercial communications in radio programming (see Rules 10.6 to 10.8 of the Code);
 - ‘participation TV’ advertising. This includes long-form advertising predicated on premium rate telephone services – most notably chat (including ‘adult’ chat), ‘psychic’ readings and dedicated quiz TV (Call TV quiz services). Ofcom is also responsible for regulating gambling, dating and ‘message board’ material where these are broadcast as advertising³.
- d) other licence conditions which broadcasters must comply with, such as requirements to pay fees and submit information which enables Ofcom to carry out its statutory duties. Further information can be found on Ofcom’s website for [television](#) and [radio](#) licences.
- e) Ofcom’s [Statutory Rules and Non-Binding Guidance for Providers of On-Demand Programme Services](#) for editorial content on ODPS. Ofcom considers sanctions in relation to advertising content on ODPS on referral by the Advertising Standards Authority (“ASA”), the co-regulator of ODPS for advertising or may do so as a concurrent regulator.

[Other codes and requirements](#) may also apply to broadcasters, depending on their circumstances. These include the Code on Television Access Services (which sets out how much subtitling, signing and audio description relevant licensees must

¹ The relevant legislation is set out in detail in Annex 1 of the Code.

² The relevant legislation can be found at Part 4A of the Act.

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

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

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

Broadcast Standards cases

In Breach

Debate on EU Referendum

Akaal Channel, 23 June 2016, 09:15

Introduction

Akaal Channel is a satellite television channel that provides religious and other programming targeted at the Sikh community in the UK. The licence for Akaal Channel is held by Akaal Channel Limited (“Akaal Channel” or “the Licensee”).

Ofcom was alerted to the programme *Debate on EU Referendum* by a complainant who objected to this programme being broadcast while polls were open¹ for the Referendum on the UK’s membership of the EU.

Ofcom viewed the one-hour programme which was in English and Punjabi and translated those parts of the programme which were in Punjabi into English. In the introduction given by the presenter at the beginning of this programme, it was made clear that the programme had originally been broadcast “*four days*” before polling day in the EU Referendum. It was then repeated at 09:15 on 23 June 2016, when polls were open for the EU Referendum.

The programme featured Nina Gill MEP (arguing on behalf of the Remain outcome in the EU Referendum) debating with Jagdish Singh (arguing on behalf of the Leave outcome in the EU Referendum). During the programme these two contributors, the presenter, and various audience members who contacted the programme by telephone touched on various policy matters relating to the EU Referendum.

Ofcom considered the material raised issues warranting investigation under Rule 6.4 of the Code, which states:

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

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

Response

Akaal Channel said that it was aware that if programmes “contained reference to the [referendum] and the repeat fell on [the referendum] day, then it should be removed from the schedule”. However, it accepted that in this case “human error occurred which [led] to the scheduling [of] the programme incorrectly on referendum day”.

The Licensee said this error had occurred when the final schedule was being “exported” into Akaal Channel’s play-out system. It said that to correct the error, scheduling staff had “reverted to the standard programme repeat pattern, which meant that a repeat of the programme *Debate on EU Referendum* was added to the

¹ On 23 June 2016, polling stations were open between 07:00 and 22:00.

schedule”. Akaal Channel added, however, that “the date itself did not register with” the member of scheduling staff “that this was the referendum date when they were focussed on fixing the schedule to correct the error”.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to ensure special impartiality requirements are observed, in particular during referendums. These requirements are reflected in Section Six of the Code.

Rule 6.4 requires that discussion and analysis of referendum issues must finish when the polls open. This programme however was broadcast after the polls had opened and prior to the polls closing at 22:00. The purpose of Rule 6.4 is to ensure that broadcast coverage on the day of a referendum does not directly affect voters’ decisions.

This *Debate on EU Referendum* included detailed comment on the EU Referendum and featured studio contributors representing the two outcomes of the EU Referendum and was broadcast two and a quarter hours after polling stations had opened in the UK. We noted that this incident had resulted due to human error. However, our Decision was that this was a clear breach of Rule 6.4.

Ofcom reminds all licensees to ensure that all their staff are adequately briefed on the requirements of Rule 6.4 during polling days for elections and referendums.

Breach of Rule 6.4

In Breach

Your World with Neil Cavuto

Fox News, 23 June 2016, 21:00

Introduction

Fox News is a news channel originating in the USA, broadcast on the digital satellite platform and licensed by Ofcom in the UK. The licence for this channel is held by Fox News Network Limited Liability Company (“FNN” or the “Licensee”).

Your World with Neil Cavuto is a weekday business and financial news programme broadcast on Fox News. The programme is broadcast simultaneously in the USA (at 16:00 EST) and UK (at 21:00 GMT).

Ofcom was alerted to this programme by a complainant who objected to this programme discussing the Referendum on the UK’s membership of the EU on the day of the vote while the polls were still open¹.

At 21:05 there was a news item, lasting approximately five minutes, relating to the EU Referendum, which included the following statements:

“Well, it’s that historic vote in the UK and it’s continuing right now. We all know Britain will either stay or leave the European Union – first polls are gonna close there in about an hour”.

“This is the end of a very messy, very long campaign and at stake is everything – it’s the UK’s future in Europe – the European’s future in the world. Now 46 million people are registered to vote, that is about 70% of the population here. It will be the highest ever turnout in UK history in what is only the third ever referendum. At the heart of this is whether the UK should cut all ties with the European Union and go at it alone or if they should remain within as part of the super state, the European super state which makes many decisions on the behalf of the UK”.

“Now those who want to stay say it is simply madness to be cut off from our largest trading partners in the UK and economically it would lead to a massive recession. Those who want to leave say too many laws are written by the super state in Europe, that the UK no longer has control of the majority of its laws or even of its destiny. Now of course the big question, who is gonna win? Well the last polls had it neck and neck, fifty-fifty, nothing between the two but the bookies, the people who are taking money and placing bets say its 84% likely that the UK will vote to remain so that could be wrong, but that’s an indication so far, we will find out at about 7am our time and we will keep you updated...”.

¹ On 23 June 2016, polling stations were open between 07:00 and 22:00.

“I mean we are governed by a bunch of bureaucrats that don’t speak English in a funny place called The Hague, which makes no sense at all, and it tells Britain what to do, it takes British money, it doesn’t send much of it back – it’s a very unfair one-way street when you begin to dig into it and the biggest thing of course is that all of this is all a disguise over the immigration issue”.

At 21:50, there was a further brief news item, which included the following statements:

“Well the final countdown is just moments away with polls set to close in the United Kingdom and stocks here surging as investors expect the UK to stay in a European Union but what if voters decide to go? British banks are warning of potential chaos – the Bank of England is said to be on high alert tonight. Is that really something to be worried about or is it just plain old fear mongering?”

“It’s hard – as a man on the street it’s fifty-fifty, the polls are saying it’s fifty-fifty, maybe a little bit skewed to Remain. The betters as you know are heavily skewing it to Remain. I will say this Charles, and I said this before, there is a lot of establishment pressure on the public to vote ‘Remain’. Politicians, moronic celebrities who don’t know anything about trade imbalances, they are waiting on this, the media – the BBC is like a running ad for Remain, and it goes on and on so that is a lot for the Brexit, British exit crowd to really fight up against. I will say this though, the markets are going to be nasty tomorrow and tumultuous if they vote to leave because everybody is pricing in a “Remain” but long term I don’t buy this argument that Britain is going to fall apart. I mean there’s no way - this is a very industrious culture, it’s an entrepreneurial culture, they can set their own rules, I don’t know why any Brit maybe I’m just too much of a Yank, why would any Brit wanna offshore its sovereignty to Brussels? That makes no sense to me but that’s what we have today, you know and it looks like the establishment pressure, both the Labour Party and the Conservatives, David Cameron, a Conservative, is for Remain, they are putting a lot of pressure on the public and there is a lot of propaganda out there and usually that type of brainwashing does work”.

“I think it will be anti-climactic tomorrow, but long-term economically this is where it gets interesting. It’s such an absurd argument to say that somehow Britain is gonna implode, that this is an existential threat if they leave the EU. There are plenty of countries that are not in the EU that are doing pretty good. Japan is not in the EU ok, doing ok. I believe Norway is not in the EU, the US is not in the EU, this is a sovereign country, and I’ll tell ya, good fiscal policy of low taxes and less regulation also known as Thatcherism worked in the past and could work again and I just don’t get why three people would offshore your sovereignty to a bunch of bureaucrats in Brussels, that makes no sense to me, but anyway we are gonna find out in a couple of hours”.

Ofcom considered the material raised issues warranting investigation under Rule 6.4 of the Code, which states:

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

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

Response

The Licensee said that *Your World with Neil Cavuto* “examines the effect political developments may have on US domestic and international financial markets”. It added that the programme is broadcast “specifically so that it coincides with the closing of the US stock market which occurs at 16:00 EST” on weekdays “to help viewers to understand market performance that day”. FNN also said that the programme was “prepared with a view towards an American audience and the expectations of what an American audience would find interesting”.

The Licensee stated that this particular edition of *Your World with Neil Cavuto* covered the EU Referendum vote “in the context of its impact on financial markets” and was not “advocating a particular position on the vote”. It added that the programme “explored current and potential impacts, and possible long-term effects” but this was “all grounded in the context of any outcome’s impact on financial markets”. For example, FNN said that the news item at 21:05 “presented a summary of the positions others are advocating as to whether the UK should remain an EU member”. It added that in the item broadcast at 21:50, there was discussion as to whether “the vote may create trade imbalances and market turbulence”.

The Licensee said that “due regard” must be given to the right of freedom of expression, and that “within the remit of this freedom, it is important that individuals are permitted to explore current affairs and their future impacts”. While acknowledging that the right to freedom of expression “can be subject to certain limitations”, FNN argued that this programme “was clearly within the scope of a legitimate news reporting and commentary protected by Article 10” of the European Convention on Human Rights (“ECHR”).

FNN also argued that viewers would have been aware that the programme had “a financial business focus”. It added that the two news items in this case were broadcast in the final hour before the polls closed – one about 55 minutes before and the second “about five minutes” before polls closing for the EU Referendum.

Finally, the Licensee cited paragraph 1.26 of Ofcom’s published Guidance to Section Six of the Code. This states that “[t]he purpose of Rule 6.4 is to ensure that broadcast coverage on the day of the election does not directly affect voters’ decision”. FNN argued that “[i]n light of the business focus of the [p]rogramme, and its airtime in the UK, it is unlikely that the programme ‘directly affect[ed] voters’ decision” in relation to the EU Referendum.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to ensure special impartiality requirements are observed, in particular during referendums. These requirements are reflected in Section Six of the Code.

In reaching our Preliminary View, we took account of the right to freedom of expression as contained in Article 10 of the ECHR. This encompasses the broadcaster’s right to transmit and the audience’s right to receive creative material, information and ideas without interference but subject to restrictions prescribed by law and necessary in a democratic society. However, the broadcaster’s right to freedom of expression is not absolute. In carrying out its duties, Ofcom must balance

the right to freedom of expression on one hand against the requirements in the Code, for example, in the area of referendums.

Rule 6.4 requires that discussion and analysis of referendum issues must finish when the polls open. This programme however was broadcast after the polls in the UK had opened and prior to the polls closing at 22:00. The purpose of this rule is to ensure that broadcast coverage on the day of a referendum does not directly affect voters' decisions.

Ofcom noted that two news items broadcast between 21:00 GMT and 22:00 GMT on *Your World with Neil Cavuto* discussed various aspects of the EU Referendum including: the likelihood of a vote to leave the EU; issues debated during the period before the EU Referendum vote such as immigration; how the Bank of England would react in relation to a British exit from the EU; and, how an exit from the EU could potentially benefit British trade relationships with the rest of the world. By way of example, we noted the following statements:

"Now those who want to stay say it is simply madness to be cut off from our largest trading partners in the UK and economically it would lead to a massive recession. Those who want to leave say too many laws are written by the super state in Europe, that the UK no longer has control of the majority of its laws or even of its destiny".

"I don't know why any Brit maybe I'm just too much of a Yank, why would any Brit wanna offshore its sovereignty to Brussels? That makes no sense to me but that's what we have today".

We therefore considered that the programme clearly contained a number of statements (others are set out in the Introduction) which constituted discussion and analysis of referendum issues while the polls were still open.

We took into account the various points the Licensee put forward. For example, *Your World with Neil Cavuto* was according to FNN "prepared with a view towards an American and the expectations of what an American audience would find interesting". However, as an Ofcom-licensed service, Fox News must comply with all relevant requirements of the Code, including Rule 6.4. FNN argued that the programme: covered the EU Referendum vote "in the context of its impact on financial markets"; was not "advocating a particular position on the vote"; "explored current and potential impacts, and possible long-term effects"; and was "all grounded in the context of any outcome's impact on financial markets". As already discussed above, however, this programme contained a number of statements that constituted discussion and analysis of issues related to the EU Referendum.

We noted FNN's argument that "[i]n light of the business focus of the [p]rogramme, and its airtime in the UK, it is unlikely that the programme 'directly affect[ed] voters' decision" in relation to the EU Referendum. Rule 6.4 applies to all Ofcom-licensed services and any content constituting discussion and analysis of referendum issues that is aired between polls opening at 07:00 and prior to closing at 22:00. We also had regard to the fact that the prohibition in Rule 6.4 on discussion and analysis of referendum issues while the polls are open is not qualified in any way – for example by the possibility of a broadcaster justifying the material by the context.

Our Decision therefore was that this content was in breach of Rule 6.4.

Breach of Rule 6.4

In Breach

Fox Extra

Fox News, 7 April 2016, 15:23

Introduction

Fox News is a news channel originating in the USA, broadcast on the digital satellite platform and licensed by Ofcom in the UK. The licence for the channel is held by Fox News Network, Limited Liability Company (“FNN” or “the Licensee”).

Fox Extra is a series of very brief editorial programmes that cover a range of subject matters. Fox News inserts episodes of *Fox Extra* into its international feed in place of the advertisements which are transmitted in its American feed.

Ofcom was alerted by a complainant to an episode of *Fox Extra* broadcast on 7 April 2016 that the complainant considered was not duly impartial.

The programme, which was two minutes and 34 seconds in duration, featured Judge Andrew Napolitano¹ giving his views on the subject of abortion. He said:

“Welcome to my chambers. In the past couple of weeks, we’ve all been exposed to the spectacle of surreptitiously taken tape recordings of Planned Parenthood² physicians and employees boasting about the baby body parts they have removed from abortions and the profits they have made on their sale³. Put aside the fact that the sale of body parts from abortions or from any other place is a Federal crime punishable by up to ten years in jail per body part, this is very, very devastating to the Democratic Party which has a mantra the idea that a baby in the womb of his or her mother is not a person. Because, you see, by listening to these tapes – and they are very difficult to listen to, any discussion of human slaughter is difficult to listen to – but by listening to these tapes, you recognise that the victims of the abortions truly are people. And that is very upsetting to the Democratic Party and to the pro-abortion lobby because their whole legal argument is based upon one line in Roe v. Wade⁴, the Supreme Court opinion, that mimics Dred Scott v. Sandford⁵ which held that African-Americans were not people, in which Roe v. Wade said says the baby in the womb is not a person. If the baby in the womb is a person then all abortion is murder and all of it would have to stop under standard State and Federal law. So it is only that argument

¹ Judge Andrew Napolitano is Senior Judicial Analyst for Fox News. He sat on the New Jersey bench between 1987 and 1995.

² Planned Parenthood is an American not-for-profit organisation that provides reproductive health services, including abortions.

³ In 2015, a number of secretly recorded videos were released by the Center for Media Progress (“CMP”). CMP claimed the videos showed a doctor from Planned Parenthood discussing the sale of foetal body parts. See: <http://www.bbc.co.uk/news/world-us-canada-33545006>.

⁴ The effect of the US Supreme Court case of Roe v. Wade (1973) was to make abortions legal in the United States.

⁵ In Dred Scott v. Sandford (1857), the Supreme Court ruled that Americans of African descent were not American citizens.

that keeps abortions legal. Yet, when you see babies, fully-grown babies, babies five, six, seven, ten inches in size, being shown as to how the body parts are severed so the organs can be harvested, the conclusion is inescapable: that they are persons in the womb, they have natural biological parents. Even one cell in the womb has all of the genetic material necessary to grow to full-term. Of course they're persons, and the Democratic Party and Planned Parenthood, which receives half a billion a year in your tax dollars, doesn't want to confront that. But when we confront the realisation that the babies in the womb are persons, abortion is murder".

Judge Napolitano was filmed standing outside the Fox News offices and his remarks were accompanied by aggressive rock music. He was also filmed from a wide variety of camera angles, including very tight close-ups of his face, sometimes straight to camera. The images of the judge regularly switched between colour and monochrome.

It was Ofcom's view that this programme was dealing with a matter of political controversy and a matter relating to currently public policy i.e. whether abortion should be lawful in the United States. We considered this content raised issues warranting investigation under Rule 5.5 of the Code. This 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".

We therefore asked the Licensee for its comments on how the content of the programme complied with this rule.

Response

FNN said that this episode of *Fox Extra* was "one of a series of short editorial opinion pieces presented by Judge Andrew Napolitano called "Judge Napolitano's Chambers", in which Judge Napolitano provides his personal views and opinions on various topical issues in the US". FNN described *Fox Extra* as "not a factual programme". The Licensee told Ofcom that Judge Napolitano "is a well-recognised commentator in the US" who is "known for holding and expressing strong opinions on a range of issues, including his strongly-held pro-life and anti-abortion views".

FNN firstly sought to question whether "the material in the Programme falls within the boundaries of Rule 5.5 as it does not discuss a matter of political controversy, nor do the opinions relate to current public policy". Rather, in the Licensee's view, "the Programme centres on an opinion that is expressed on a matter of US domestic law and involves moral and ethical arguments which are currently topical in the US, but are not live in the UK". The Licensee suggested that "the expectation of this Programme of those who are familiar with the Fox News channels... outweighs other contextual factors such as how the programme presented its arguments". The Licensee referred to the recognition in Ofcom's Guidance to Section Five ("the Guidance") that "just because... broadcasters deal with particular matters that elicit strong emotions, does not mean the special impartiality rules are engaged".

Should Ofcom determine however that the special impartiality requirements were engaged, the Licensee made a number of points arguing that the programme complied with Rule 5.5.

FNN said “the Programme is not a news item but rather an editorial opinion that offers personal views”. FNN also noted that Ofcom states in the Guidance that it is “essential that current affairs programmes are able to explore and examine issues and take a position even if that is highly critical”.

The Licensee questioned “whether (and, if so, how) it is appropriate for Ofcom to apply the same standards of ‘due impartiality’ to programmes created outside of the UK and scheduled for a global transmission (i.e. not exclusively aimed at a British audience)”. FNN told Ofcom that its understanding of paragraph 1.22 of the Guidance⁶ is that “the impartiality requirements should be less stringent in relation to programmes (such as the Programme) which involve non-UK matters (especially where these are not political but concern issues of morality), and particularly where they are not primarily aimed at UK audiences”. In FNN’s view, it was relevant “that viewers of the Fox News channels will be familiar with its robust treatment of topical US issues”.

Given these contextual factors, and the fact “that an alternative viewpoint was...referred to”, the Licensee considered that there had not been a breach of Rule 5.5. The Licensee also said that “the context to the Programme highlights that the views expressed are not only in response to a controversy over the sale of foetal organs, but also against clear alternative viewpoints, namely the current US law on abortion”. FNN considered the audience would “regard it as obvious that the Programme rallies against the fact that abortion is legal and the view that it does not constitute murder”. In FNN’s view, this was made “particularly clear” where Judge Napolitano says:

“...[pro-abortionists] *whole legal argument is based upon one line in Roe v. Wade... in which Roe v. Wade said the baby in the womb is not a person*”.

FNN argued that “a significant section of the audience would have been familiar with the content and approach of the Programme and its presenter, Judge Napolitano, who is a respected US jurist and here presenting a legal opinion on a point of US law”. It added that “the opinion endorsed by the Judge is neither one which is unusual or unknown”. The Licensee said that “abortion is widely considered to be an incredibly polarising debate in the US and this is well understood in the UK (not least by viewers of the Fox News channels)”. In FNN’s view “it should therefore be unsurprising to any audience that the abortion debate, and commentary about the Planned Parenthood tape, would include the type of emotive criticism displayed in the Programme”. Therefore, the Licensee argued that “any potential lack of impartiality is mitigated by the audience’s understanding that strong views will be aired by this particular commentator, on this particular network, and on this particular subject matter”.

Finally, the Licensee highlighted that “the Programme is presented with cutting camera angles and loud music”. The Licensee suggested “this crafting further suggests that the opinions put forward will be strong and potentially disagreeable to some”. Therefore, FNN considered that “the need for such content to be presented in a way that is impartial is again...reduced”.

⁶ This states: “The ‘special impartiality’ rules (Rules 5.4 to 5.13 inclusive) apply to national and international matters, although the impartiality due to a non-national matter may be less. To give an example, broadcasters are expected to apply impartiality rules to a subject such as the American Presidential Elections. For those Ofcom Licensees who are not broadcasting to the United Kingdom, the impartiality requirements still apply but the amount due may be less depending on the subject matter and the original country of reception”.

Response to Preliminary View

The Licensee also made representations in response to Ofcom's Preliminary View (which was to find a breach of Rule 5.5).

The Licensee said that it "fully acknowledge[d] that assessing the possible application of Rule 5.5 in these circumstances is difficult" and "appreciate[d] the care with which Ofcom have examined the issues". However, it said it "respectfully disagree[d] with [the] Preliminary View that the Programme was not presented with due impartiality".

In particular, FNN considered that the Preliminary View had not "adequately assess[ed] the strong contextual factors applicable in this instance that support a finding that due impartiality was achieved". The Licensee summarised these as follows:

- FNN said "due consideration should be given to the fact that the overwhelmingly adult audiences of Fox News, Fox Extra, Judge Napolitano's Chambers and *America's Newsroom* know and expect that Fox News is a home of strident presenter opinions". In light of this, FNN considered that "no reasonable viewer would expect a short 'personal view' piece of this nature to be expressed in a balanced, 'on the one hand; on the other hand' style". The Licensee considered that "Judge Napolitano's opinions as expressed in the Programme are consistent with the overall conversational style of the channel which, in the round, is unavoidably relevant to the way in which impartiality is to be understood in this context". FNN also noted Ofcom's recognition in the Guidance that "many in an audience are 'comfortable with adjusting their expectations of due impartiality' where a 'personal view' programme is concerned". Taking this into account, the Licensee considered that "no reasonable viewer would expect the statements in the Programme to be the sole view expressed on the network regarding the matter". In FNN's opinion, the "typical Fox News viewer instead would recognize the Programme as the expression of one particular personal point of view – among many presented on the network".
- The Licensee considered that it had achieved due impartiality across 'a series of programmes taken as a whole'. In order to demonstrate this, the Licensee gave examples of programmes broadcast in the same period as *Fox Extra* that had "showcased views on all sides of the abortion debate". In particular, the Licensee drew Ofcom's attention to another edition of *Fox Extra* entitled *The State of Abortion* which it said it broadcast 13 times between 23 February 2016 and 5 May 2016. The Licensee said that this programme included reporter Shannon Bream detailing "prominent pro-choice groups' positions in support of abortion".
- FNN considered that Ofcom had not given "appropriate weight" to the fact that the programme "focusses primarily on a U.S. issue". The Licensee said that the programme "makes repeated references to American case law, the statutory position on the sale of body parts and the Democratic Party's view on abortion". The Licensee said the "circumstances under which the Programme aired underscore these facts". In particular, FNN highlighted that over the period the programme was broadcast, "Whole Woman's Health v. Hellerstedt"⁷, a landmark

⁷ In *Whole Woman's Health v. Hellerstedt* (2016) the U.S. Supreme Court ruled that Texas cannot place restrictions on the delivery of abortion services that create an undue burden for

case regarding the constitutionality of state regulations of abortion clinics, was pending review by the U.S. Supreme Court". The Licensee considered this further emphasised that, "in context, the Judge was discussing a matter particular to U.S. law".

- The Licensee considered the "entire style and content of the Programme is clearly North American". The Licensee also considered the "aggressive rock music' and energetic editing identifies the Programme as a soapbox for a classically American provocateur rather than a platform for measured political debate". For these reasons, FNN argued that for Ofcom "to conclude that 'due impartiality' has not been achieved simply on the basis of a strongly expressed view would therefore be inappropriate, given this wider context".

In summary, while FNN acknowledged the "issue is not straightforward" it asked Ofcom to "reconsider its conclusions before reaching a final decision" in light of the reasons above "and the fact that there appears to only have been a single complaint".

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 the special impartiality requirements set out in section 320 of the Act are complied with. This objective is reflected in Section Five of the Code.

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

Section Five of the Code acts to limit, to some extent, freedom of expression 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 has the freedom to discuss any controversial subject or include particular points of view in its programming, broadcasters must always comply with the Code.

Rule 5.5 of the Code requires that: "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".

women seeking an abortion. (<http://www.reuters.com/article/us-usa-court-abortion-idUSKCN0ZC0JL>)

Application of due impartiality

Ofcom first considered whether the requirements of Section Five of the Code applied in this case, that is, whether this programme concerned matters of political or industrial controversy or matters relating to current public policy. As the Licensee noted, the Guidance makes clear that just because a programme is dealing with a subject, such as abortion, which elicits strong opinions and reactions, does not mean necessarily that Section Five is engaged.

As described above, Judge Napolitano's monologue lasted just over two and a half minutes. He initially made reference to a specific US-focused news story (i.e. the release of videos which it was alleged showed Planned Parenthood representatives arranging the sale of the body parts of aborted fetuses). However, we considered that he ultimately presented a very clear anti-abortion argument, from both a legal (with a particular focus on US law) and a generally applicable ethical perspective.

Ofcom noted that the legality of abortion in the United States remains a highly controversial issue with between 18 and 22 per cent of the US population believing that abortion should be illegal in all circumstances⁸. We also noted the Licensee described abortion as "an incredibly polarising debate in the US".

We considered that Judge Napolitano's comments explicitly linked his interpretation of the legal position regarding abortion to the broader political debate in the United States on this issue. For example, he said:

"Put aside that fact that the sale of body parts from abortions or from any other place is a federal crime punishable by up to ten years in jail per body part, this is very, very devastating to the Democratic Party which has a mantra that the idea that a baby in the womb of his or her mother is not a person".

"...but by listening to these [Planned Parenthood] tapes, you recognise that the victims of the abortions truly are people and that is very upsetting to the Democratic Party and to the pro-abortion lobby..."

"Of course they're persons [ie babies in the womb], and the Democratic Party and Planned Parenthood, which receives half a billion a year in your tax dollars, doesn't want to confront that".

In addition, while the judge's remarks focused primarily on the political and ethical debate in the United States about abortion, in our view the subject of the legality of abortion is controversial in many countries around the world. By way of example, in Northern Ireland, where this programme would have been broadcast by virtue of its Ofcom licence, abortion is illegal in most circumstances, in contrast to the legal position in the remainder of the United Kingdom.

For these reasons we considered that the programme was concerned with "matters of political or industrial controversy and matters relating to current public policy" and the Licensee was required to preserve due impartiality pursuant to Rule 5.5 of the Code.

⁸ Gallup (polls held nine times between 2010 and 2015). See: <http://www.gallup.com/poll/1576/abortion.aspx>

Having concluded that the rules in Section Five were engaged, Ofcom went on to assess whether the programme preserved due impartiality.

Preservation of due impartiality

In judging whether due impartiality has been preserved in a programme, the Code makes clear that the term “due” means “adequate or appropriate to the subject and nature of the programme”. The Code states that “‘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”. In particular, the Code underlines that “the approach to due impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content, and the extent to which the content and approach is signalled to the audience”. In addition, context, as set out in Section Two (Harm and Offence) of the Code is important in preserving due impartiality. Context includes a number of factors such as the editorial content of the programme, the service on which the material is broadcast, the likely size, composition and expectation of the audience and the effect on viewers who may come across the programme unawares.

While the programme was only two minutes and 34 seconds in duration, it was entirely dedicated to Judge Napolitano putting forward his views opposing abortion. Judge Napolitano ultimately concluded that “*abortion is murder*”.

We therefore firstly assessed the extent to which the programme provided alternative viewpoints to those of Judge Napolitano.

The Licensee said that “the Programme highlights that the views expressed are...in response to...clear alternative viewpoints, namely the current US law on abortion. This would be evident to the audience, who would regard it as obvious that the Programme rallies against the fact that abortion is legal and the view that it does not constitute murder”.

Ofcom recognised that, to a degree, alternative viewpoints were referred to in the programme. In particular, we noted that Judge Napolitano made three brief references to what he described as the Democratic Party’s “*mantra*” that “*a baby in the womb of his or her mother is not a person*”. For example, Judge Napolitano said that the release of the secretly recorded videos was:

“very, very devastating to the Democratic Party which has a mantra the idea that a baby in the womb of his or her mother is not a person”; and,

“very upsetting to the Democratic Party because their whole legal argument is based upon one line in Roe v. Wade...[which] says the baby in the womb is not a person”.

However, we considered these references were not made in a way that put forward or referred to an alternative viewpoint in a manner that materially helped to preserve due impartiality. In Ofcom’s view, Judge Napolitano referred to the Democratic Party’s position on this point in a pejorative way, to dismiss it, and punctuate the arguments supporting his own conclusion (i.e. that “*abortion is murder*”). We therefore did not consider that these references to an alternative viewpoint were sufficient to provide due impartiality, either in themselves or in conjunction with other contextual factors.

The Licensee also gave a number of examples of content broadcast on Fox News between September 2015 and May 2016 which it said “showcased views on all sides of the abortion debate”. The Licensee said that this demonstrated it had achieved due impartiality across ‘a series of programmes taken as a whole’.

However, the Code defines ‘a series of programmes taken as a whole’ as “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”. We noted that there was no editorial link made clear to the audience between this episode of *Fox Extra* and the other content identified by the Licensee. As such, we did not consider that these programmes could be described as being from the same “series of programmes taken as a whole”. Therefore, the representations of alternative viewpoints in the other programming identified by the Licensee did not assist in maintaining due impartiality in this case.

Ofcom next took account of relevant contextual factors, including the subject and nature of the programme, to assess the extent to which they might help to preserve due impartiality in this case.

We first analysed audience expectations for this programme. In Ofcom’s view, the content and approach of this programme may well have been familiar to some extent to the audience for Fox News. We also considered it likely that regular viewers of the channel may have been familiar with both Judge Napolitano and his views on abortion. However, in light of the controversial nature of the programme’s subject matter, and the highly strident nature of Judge Napolitano’s views, we did not consider the audience’s expectation and the nature of the Fox News channel outweighed the requirement to ensure that due impartiality was maintained in this programme.

The Licensee also pointed to Ofcom’s recognition in the Guidance that many in the audience of ‘personal view’ programmes are “comfortable with adjusting their expectations of due impartiality”. However, the Guidance also states that “in order [for ‘personal view’ programmes] to maintain due impartiality, alternative viewpoints should be adequately represented”. Rule 5.9 of the Code further makes clear that when broadcasting ‘personal view’ and ‘authored’ programmes alternative viewpoints must be adequately presented either in the programme, or in a series of programmes taken as a whole. As already noted, Ofcom did not consider that alternative viewpoints were adequately presented in the programme, or in a series of programmes taken as a whole, so as to ensure that due impartiality was maintained.

Regarding the format of the programme, the Licensee said that it was “presented with cutting camera angles and loud music” and argued that this would have suggested to viewers “that the opinions put forward [in the programme] will be strong and potentially disagreeable to some”. The Licensee noted that these elements are common to a series of *Fox Extra* reports hosted by Judge Napolitano and therefore served to signal to viewers that Judge Napolitano was presenting another “in his series of strongly worded editorials”. The Licensee considered this further reduced the need for the content to be duly impartial. However, Ofcom considered these stylistic elements served to emphasise Judge Napolitano’s arguments in this item. The programme was still a broadcast (albeit a brief one) dealing with a current affairs topic transmitted as part of the editorial schedule on a rolling news channel and audiences would have viewed it in this light. Our view was that although these particular audio and visual elements may perhaps have signalled to regular viewers that Judge Napolitano was presenting another of his opinion pieces, and that the views he would express in this item were likely to be “strong” and “potentially

disagreeable”, we did not consider that these audio and visual elements made a material contribution to preserving due impartiality.

We also took into account that the fact that the Licensee had questioned whether Ofcom should apply “the same standards of ‘due impartiality’ to programmes created outside of the UK and scheduled for a global transmission”. The programme was not included in the original US transmission of Fox News but was selected by the Licensee for inclusion as part of its international feeds, including those licensed by Ofcom. As an Ofcom licensed service, Fox News must comply with the Code and, as appropriate, maintain the requirement to preserve due impartiality. We noted that the Licensee said that its understanding of the Guidance was that “the impartiality requirements should be less stringent in relation to programmes which involve non-UK matters”. The Guidance in fact states that “the ‘special impartiality’ rules...apply to national and international matters, although the impartiality due to a non-national matter **may** be less” [emphasis added]. The Guidance is therefore clear that there is no automatic and/or substantial reduction in the extent that due impartiality must be maintained in relation to the non-UK matters. The requirement may be reduced in certain circumstances, but it will depend on the facts of the individual case.

Ofcom acknowledged that the viewpoint on abortion put forward in the programme by the judge was seen through the prism of the American legal and political system. We also noted the Licensee’s comments that the programme was broadcast during the period *Whole Woman’s Health v. Hellerstedt* was heard in the U.S. Supreme Court. The Licensee also considered that the “entire style and content of the Programme is clearly North American”.

However, we took account of the fact that Judge Napolitano’s anti-abortion remarks clearly extended beyond a solely US-focused discussion about a particular court case or news story. They criticised abortion in general terms using highly emotive language which would also resonate with viewers in the United Kingdom, where in Ofcom’s view abortion continues to be a controversial subject. For example, he said:

“If the baby in the womb is a person then all abortion is murder...”

“Yet, when you see babies, fully-grown babies, babies five, six, seven, ten inches in size, being shown as to how the body parts are severed so the organs can be harvested, the conclusion is inescapable, that they are persons in the womb, they have natural biological parents”.

“But when we confront the realisation that babies in the womb are persons, abortion is murder”.

We therefore considered Judge Napolitano’s comments would be controversial and as relevant to UK (and other international) audiences as they would be to US-based viewers. As a result, the requirement to preserve due impartiality was not materially reduced by the fact that the programme was focused on non-UK matters.

For all these reasons, it was Ofcom’s Decision that, on balance, due impartiality was not preserved in this programme.

Breach of Rule 5.5

In Breach

The Jeremy Kyle Show

ITV, 27 March 2016, 11:25

Introduction

The Jeremy Kyle Show is a popular daytime talk show broadcast on ITV, hosted by Jeremy Kyle, in which members of the public discuss relationship problems in a frank and often confrontational manner in front of a studio audience. The programme is compiled by ITV Broadcasting Limited (“ITV” or “the Licensee”) on behalf of the ITV Network.

Ofcom was alerted by a complainant to an episode, broadcast on Easter Sunday¹ morning, which, in the complainant’s view, featured inappropriate content for broadcast at that time.

The 60-minute episode included three separate items. The first item lasted for approximately the first 36 minutes of the programme, and centred on an individual called Sarah, her ex-friend, Kat, and Sarah’s partner, Carlos. The item also focused on the paternity of Kat’s baby and revealed the results of DNA tests involving three men (Carlos, Kat’s ex-partner David, and Luke, another man with whom Kat had had sex) one of whom might be the father of Kat’s child.

At the very start of the programme, a montage of clips was broadcast trailing the items to be included the programme. This montage included Sarah saying:

“I was pregnant with Carlos’s kid and had a miscarriage and [Kat] turned round and said I had an abortion”.

The first item was introduced by the following caption:

“Did you sleep with my boyfriend and is he your baby’s dad?”

Jeremy Kyle then introduced the item by referring to an appearance by Sarah and Kat in a previous episode of *The Jeremy Kyle Show*:

“Now you might just recognise my first guest today from a previous encounter on this very stage. Take a look at this, my friends”.

There was then a clip from a previous episode when Sarah had accused Kat of having had a sexual relationship with Sarah’s partner Carlos. The clip featured Carlos, Kat, and Luke, Kat’s ex-partner David, and Jeremy Kyle (“JK”):

Carlos: *“[Kat’s] saying I’m the potential dad. OK, if I’m the potential dad, give me the DNA test when that baby’s born, and we’ll find out!”*

¹ Ofcom noted that the complainant had objected to this programme being broadcast on Easter Sunday. Having carefully assessed all the circumstances of this broadcast, Ofcom considered that any potential offence caused by broadcasting this programme on a religious festival was justified by the context. We therefore did not pursue this case under Rule 2.3 (“In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...”).

- Kat: *David is the 100%, down the line father of this child.*
- Luke: *[Kat] said I was the father; Carlos was the father.*
- Kat: *Get it right, Luke, you're the one who said, at Carlos's flat yeah, that you asked me, right, if you was the dad to this baby, and I turned round and told you point-blank to your face, no.*
- JK: *Have you had sex with Luke?*
- Kat: *Yeah.*
- JK: *Have you had sex with Carlos?*
- Kat: *No.*
- JK: *Have you had sex with David?*
- Kat: *Yes, well obviously, I'm carrying his child.*
- ...
- JK: *Do you want us to do a DNA test, then?*
- Kat: *Yeah, cos I want David to realise that he's the dad.*
- JK: *And what if he's not?*
- Kat: *I know he is 100%.*
- JK: *100%?*
- Kat: *100%".*

At the end of this clip, Jeremy Kyle said:

"Now, as promised, we have brought them all back for those all-important DNA results. My first guest Sarah is utterly annoyed that her boyfriend of six years, Carlos, is in the frame at all. Sarah says her ex-friend Kat has been interfering in her relationship for far too long and [Kat] has told, get this, seven different men that they are her baby's dad! We're testing three. Sarah says that the DNA will prove that Carlos never cheated with Kat and then she wants 'it' as she describes her out of her life for good".

Sarah then appeared in the studio and was interviewed by Jeremy Kyle, who asked her if her partner Carlos had had sex with Kat. Sarah said Carlos could not remember and Jeremy Kyle replied:

"He can't remember having sex? How can you not remember?... You can't remember having sex? [Addressing the audience]. Can anybody in this audience, have you ever forgotten about having sex?"

Soon afterwards there was the following exchange:

- JK: *"You told my team Kat smells...What does she [Kat] smell of?"*

Sarah: *Fish and raw sex.*

JK: *...And something else as well. What was the other thing you said she smells of?*

Sarah: *Raw sex.*

JK: *Raw sex? What's raw sex?*

Sarah: *It's like a really, bad, smelly fishy smell. Yeah, that's what she smelt like.*

JK: *I nearly asked you why, but I don't want to go down that route so to speak".*

Soon afterwards Jeremy Kyle asked Sarah:

"You told my team that [Kat] is that disgusting that she used to have sex with people in front of you...Did you watch?"

There was then the following exchange in which Sarah described having slept on one occasion in Kat's bedroom and hearing Kat having sexual intercourse:

Sarah: *"All we heard was the bed making funny noises.*

JK: *The bed making funny noises? What sort of noise does the bed make?*

Sarah: *Creaking noise.*

JK: *What sort of noise?*

Sarah: *Creaking".*

[Jeremy Kyle then imitated the sound of a creaking bed].

...

JK: *"Well, if the bed was making that noise, I'm bound to ask, what sort of noise was she making?*

Sarah: *Orgasm noises.*

JK: *I don't know what an orgasm noise is".*

Jeremy Kyle then walked off the studio stage and approached Steve, one of the programme's security guards, and said:

"Steve, Steve, do you know your average orgasm noise for a woman? I've got to ask you this, they'll probably cut it out, have you got an orgasm face?"

During the rest of the item, the following individuals contributed, either joining Jeremy Kyle on the studio stage or speaking from their seats in the studio audience: Kat; Sarah's partner, Carlos; Kat's ex-partner, David; Kat's current partner, Ben; Luke, a man with whom Kat had had sex with; a friend of Kat's called Sammy; and Sammy's boyfriend.

During the item, there were several instances of aggressive confrontation between the above participants, including posturing, shouting and menacing/threatening behaviour, which required the programme's security guards to intervene and keep the guests separate from one another. In addition, Jeremy Kyle frequently told the contributors to "*shut up*" or "*shut your mouth*" throughout the episode.

The programme contained a large number of examples when the sound was dipped to conceal offensive language. Ofcom estimated that there were approximately 130 examples of the sound being dipped, totalling approximately three and a half minutes over the course of the 36-minute segment. There was also one example of bleeped language.

Ofcom considered that this material raised potential issues warranting investigation under Rule 1.3 of the Code:

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

We therefore asked ITV for comments as to how the programme complied with this rule.

Response

ITV stated its belief that this episode did not breach Rule 1.3 of the Code.

ITV said that the *Jeremy Kyle Show* "undergoes a thorough compliance process, and is viewed by two different compliance team members, first at rough-cut stage, and again at final master stage". It explained that this process was designed "to provide a second 'eye and ear' for the assessment of issues such as whether offensive language has been completely edited, and the overall suitability of the content."

The Licensee said that the first item in this programme focused on the "attempted resolution of the paternity of Kat's recently born infant child, with the help of DNA tests taken by three men, whom it appeared could possibly all have been the father of the child".

The Licensee made the following points with regards to the suitability of the content for children.

Firstly, ITV said that "the discussion of sexual matters in the editorial context of the attempted resolution of relationship issues is a very regular feature of the show". It added that the "sexual references in the item arose mainly in the opening interview" between Jeremy Kyle and Sarah. It added that while the programme's various references to sexual matters "might be considered by some viewers to be relatively coarse or vulgar language, it was in no way a detailed or explicit description of sexual behaviour". It also said that the "discussion of sexual behaviour was clearly treated throughout in a humorous and sceptical fashion by the presenter, as was reflected in the laughter from the audience". Such an approach, in the Licensee's view, "would have served to lessen any potential offence".

For example, ITV said that when Sarah said that Kat smelt of fish and "*raw sex*", Jeremy Kyle "sought to lighten and re-direct this exchange with humour, saying: '*I nearly asked you why, but I really don't want to go down that route, so to speak*'. Further, after Sarah described having had '*sex in front of her*' and that she had heard Kat make '*orgasm noises*', the Licensee said that Jeremy Kyle had 'again sought to

deal with this humorously, making comic squeaking noises to imitate the sound from the bed described, and asked the usually deadpan programme security guard Steve if he knew “*your average orgasm noise for a woman*” and joking “*they’ll probably cut this out, have you got an orgasm face?*”.

Concluding on the issue of sexual references, ITV argued that “the expectations of the audience for *The Jeremy Kyle Show* would not have been exceeded by this particular discussion...[and] the discussion of sexual behaviour was therefore editorially justified, and suitably limited in terms of explicitness in this case”.

Secondly, ITV said that “Regular viewers of the programme are well used to the fact that there are often aggressive participants, and a good deal of confrontation, including shouting and threatening body language, and such was the case in this episode”. It added that in this programme, there was no sequence showing any “physical altercation” and that “the security guards were clearly in evidence throughout keeping order on stage and preventing any likelihood of violence”. The Licensee also said that Jeremy Kyle did “warn participants to calm down, and told them to stop swearing on more than one occasion”.

Thirdly, ITV acknowledged that “there was a good deal of blanking of sound in this episode, which was...to censor offensive language”. It said that it “chose to blank sequences rather than simply bleep particular words, in order that the viewer did not receive any obvious cues about the exact words used”. The Licensee added that “sometimes, we also chose to visually cover the participants’ mouths, to further render particular words unintelligible, thereby mitigating any offence caused simply by the fact that offensive language was apparently being used repeatedly”. ITV said that it was “conscious in this regard of other Ofcom adjudications related to repeat bleeping of pre-watershed swearing, such as *Ice Road Truckers*², where the actual words used remained relatively obvious to the viewer given the context”.

The Licensee made the following points as to whether the material was scheduled appropriately.

ITV said that *The Jeremy Kyle Show* is a “very well established daytime” programme and is “aimed at an adult audience, having little or no appeal to children”. The Licensee argued that “it is long established that it can be acceptable to discuss sexual matters in morning programming, provided that the context justifies the discussion, and that the discussion is suitably inexplicit”. In this regard, ITV cited Ofcom’s Decision not to record a breach of the Code, in relation to a previous edition

² Ofcom interprets this as a reference to Ofcom’s two published Decisions on *Ice Road Truckers* where we recorded breaches of Rule 1.16 of the Code (“Offensive language must not be broadcast before the watershed..., unless it is justified by the context. In any event, frequent use of such language must be avoided before the watershed.”) in part due to significant amounts of bleeped offensive language in pre-watershed programming. These two Decisions related to broadcast of *Ice Road Truckers* broadcast by:

- History+1 (see issue 190 of Ofcom’s Broadcast Bulletin, published 26 September 2011, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb190/obb190.pdf>); and
- Channel 5 (see issue 277 of Ofcom’s Broadcast Bulletin, published 20 April 2015, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb277/Issue277.pdf>).

of *The Jeremy Kyle Show*, broadcast on 9 September 2015 “that featured a guest discussing and imitating ‘oral sex noises’”³.

The Licensee said that the programme is “always broadcast in its first transmission at 09:25 weekdays, and may be repeated at other times on ITV and on ITV2 [including] Saturday and Sunday mornings”. ITV added that episodes containing a “particular focus on sexual issues” are “certified for broadcast in term time school hours only, when most children of school age would be unavailable to view”.

The Licensee said that this particular episode had been “certified for broadcast outside of term time school hours, as the main story focused on the issue of paternity, which is a very common issue that is often dealt with by the programme, rather than explicit sexual matters”. It also argued that the programme was scheduled between an episode of *Murder She Wrote* and *ITV News*, “neither of which are of particular interest to children”. However, it acknowledged that the programme was shortly followed by “a feature film that clearly would have been of interest to children”.

However, ITV said “with hindsight that the scheduling of the programme on this religious holiday [i.e. Easter Sunday] might have been considered inappropriate for a minority of viewers with strong religious beliefs, particularly in light of the general theme of sexual infidelity”. The Licensee concluded that, although it maintained that the scheduling of this programme did not breach Rule 1.3 of the Code “in the context of the established expectations of the content of *The Jeremy Kyle Show*”, it said it would be “taking steps aim in the future to avoid scheduling “similar material...on religious holidays in future...[or] close to films that are more likely to attract a younger audience”.

Decision

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

In applying Rule 1.3, Ofcom must have regard to the need for standards to be applied “in the manner that best guarantees an appropriate level of freedom of expression”. The Code is drafted in accordance with Article 10 of the European Convention on Human Rights, which sets out the right of a broadcaster to impart information and ideas and the right of the audience to receive them without unnecessary interference by a public authority.

Rule 1.3 states that broadcast material which is unsuitable for children must be appropriately scheduled.

In reaching our Decision in this case, we took into account our September 2011 guidance⁴ to all broadcasters that they should “take care to ensure that adult themes of a more sexualised nature are suitable for broadcast pre-watershed”.

³ Ofcom’s Decision not to record a breach of the Code related to an episode of *The Jeremy Kyle Show* broadcast on 9 September 2015 at 09:25 published in issue 293 of Ofcom’s Broadcast Bulletin on 23 November 2015 (see http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/1528201/Issue_293.pdf, p.34).

This episode was originally broadcast in the programme's long-running and regular scheduled slot of weekdays at 09:25, which is a time when children are unlikely to view the material because they are likely to be at school. Our concern in this case was whether this episode of *The Jeremy Kyle Show*, broadcast on a Sunday at 11:25, contained material that was unsuitable for children, and, if so, whether children were protected from it by appropriate scheduling.

Ofcom first considered whether the material was suitable for children. In Ofcom's view, overall this episode clearly included themes, content and tone aimed at an adult audience, as might be expected for *The Jeremy Kyle Show* audience. This episode centred on Kat, who was trying to confirm the identity of the father of her recently born baby between three men with whom she had had sex. The item included Sarah, formerly a friend of Kat, accusing Kat of having had sex with Sarah's boyfriend and several other men.

In our view, taken as a whole, the cumulative effect of: various sexual themes; examples of violent confrontations between contributors; and the significant number of examples of the sound being dipped to mask offensive language, produced content that was unsuitable for children. We have set out our reasons for this view below.

There were a number of sexual references from the very outset of the programme:

- the first item was introduced by the following caption: *"Did you sleep with my boyfriend and is he your baby's dad?"*;
- a clip from a previous episode was broadcast in which Jeremy Kyle asked Kat: *"Have you had sex with Luke? ...Have you had sex with Carlos?...Have you had sex with David?"*.
- Jeremy Kyle was shown asking Sarah if her partner Carlos had had sex with Kat. Sarah said Carlos could not remember and Jeremy Kyle replied: *"He can't remember having sex? How can you not remember?... You can't remember having sex? [Addressing the audience] Can anybody in this audience, have you ever forgotten about having sex?"*; and
- Sarah referred to Kat smelling of *"fish"* and *"raw sex"* and having *"a really bad smelly fishy smell"*.
- Sarah described watching Kat having sex, during which the bed made a *"creaking noise"* (at which point Jeremy Kyle imitated the sound of a creaking bed), and Sarah said she had heard *"orgasm noises"*. At this point Jeremy Kyle asked one of the programme's security guards *"do you know your average orgasm noise for a woman? I've got to ask you this, they'll probably cut it out, have you got an orgasm face?"*.

We acknowledged ITV's argument that "the discussion of sexual matters in the editorial context of the attempted resolution of relationship issues is a very regular feature of the show". However, we did not agree with the Licensee that the sexual references were "in no way a detailed or explicit description of sexual behaviour". In our view, at various times the language and actions used by Jeremy Kyle and his guests gave a level of detail descriptive of sexual behaviour which would be

⁴ <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/watershed-on-tv.pdf>

unsuitable for children. We did not consider that the use of humour by Jeremy Kyle would have materially lessened the unsuitability of the sexual references to any children in the audience. Rather, at times we considered Jeremy Kyle underlined the detail in the discussion of sexual themes, for example, by imitating the creaking noises of a bed when referring to a couple having sex, and also asking one of the programme's security guards whether he knew the "*average orgasm noise for a woman*" and whether the security guard had "*an orgasm face*".

Given all the above we did not agree with ITV's argument that taken together the sexual references were "suitably limited in terms of explicitness". We took the view that the cumulative effect of all the above references throughout the episode rendered the material unsuitable for children.

We noted that the programme also included various examples of threatening and aggressive behaviour and confrontation between the various contributors, which at times required the programme's security guards to separate them to avoid physical altercations occurring. For example, when Carlos was invited on to the stage to join the discussion, he ran out on stage to confront Kat, and Jeremy Kyle and a security guard separated Carlos and Kat. In addition, when Ben, Kat's partner, came out on to the studio stage, Carlos and he had an aggressive confrontation. Although what Carlos said was masked by the sound being dipped, Jeremy Kyle told Carlos to stop making threats: "*if you make threats, do you know what [dipped sound] shut up! If you make threats I want to tell you this, be quiet!*". Jeremy Kyle also frequently ordered the contributors to "*shut up*" or "*shut your mouth*", often in an aggressive tone.

We took into account ITV's arguments that: "Regular viewers of the programme are well used to the fact that there are often aggressive participants, and a good deal of confrontation, including shouting and threatening body language, and such was the case in this episode"; there was no sequence showing any "physical altercation"; "the security guards were clearly in evidence throughout keeping order on stage and preventing any likelihood of violence"; and Jeremy Kyle did "warn participants to calm down, and told them to stop swearing on more than one occasion". However, we considered that the repeated examples of confrontation, although they did not result in physical altercations, created an overall air of menace and aggression, which in our view, added to the overall adult tone of the programme. This therefore contributed to the unsuitability of this content for child viewers.

We also noted that this programme item included a large number of examples where the sound was dipped, at times lasting a few seconds. ITV acknowledged that "there was a good deal of blanking of sound in this episode, which was...to censor offensive language". The Licensee said that it "chose to blank sequences rather than simply bleep particular words, in order that the viewer did not receive any obvious cues about the exact words used". ITV added that "sometimes, we also chose to visually cover the participants' mouths, to further render particular words unintelligible, thereby mitigating any offence caused simply by the fact that offensive language was apparently being used repeatedly". The Licensee cited Ofcom's previous Decisions relating to "repeated bleeping of pre-watershed swearing, such as *Ice Road Truckers*⁵, where the actual words used remained relatively obvious to the viewer given the context".

⁵ See footnote 2.

Ofcom acknowledges that the masking (e.g. by bleeping or dipping the sound) of offensive language is one way in which broadcasters may edit post-watershed material to make it suitable for broadcast pre-watershed. Ofcom's published Guidance⁶ on observing the watershed on television and music videos states that:

"If the use of the masked offensive language in a programme is frequent, such that the programme requires multiple instances of bleeping, there can be a cumulative effect on viewers similar to that of the offence caused by repeated broadcast of the unedited offensive language. In programmes where there is frequent use of offensive language, broadcasters may need either to edit the programmes more rigorously for pre-watershed transmission to take account of this cumulative effect, or consider whether the programme is in fact appropriate for pre-watershed broadcast at all".

In this instance, Ofcom estimated that there were approximately 130 examples of the sound being dipped, totalling about three and a half minutes over the course of the 36-minute segment. In our view, as with the case of the excessive use of bleeping, the large number of examples of dipped sound in this case would clearly have indicated to viewers, including children, the high frequency of the use of offensive language. Therefore, although viewers could not clearly identify exactly which expletives are used, when the sound was dipped, viewers (including children) could have guessed from the context what the redacted words were. We considered that, the frequent use of the dipping of sound to mask offensive language in a programme would have had a cumulative effect on viewers similar to that caused by repeated broadcast of the un-masked offensive language itself. In our view, therefore, the significant amount of dipped language also contributed to the unsuitability of this content for children, especially as the examples of dipped sound were juxtaposed against the various examples of aggressive confrontation between contributors discussed above.

In summary, for the reasons set out above, we took the view that the cumulative impact of: the sexual references; examples of threatening and aggressive confrontation; and the frequent use of masked offensive language resulted in this episode being unsuitable for children.

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

In reaching our Decision, we noted that ITV said that *The Jeremy Kyle Show* undergoes a "thorough compliance process", and that if the material contains a particular focus on sexual issues, it is scheduled for broadcast in school term time only, when most children of school age would be unavailable to view. We noted ITV's various arguments that *The Jeremy Kyle Show*: is a "very well established daytime" programme; is "aimed at an adult audience, having little or no appeal to children"; and is concerned with "the resolution of family and relationship problems, and its content does routinely include confrontation between participants, and reference to sexual matters". We also acknowledged the Licensee's argument that "it can be acceptable to discuss sexual matters in morning programming, provided that the context justifies the discussion, and that the discussion is suitably inexplicit". In this

⁶ See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/watershed-on-tv.pdf>

regard, ITV cited Ofcom's Decision⁷ not to record a breach of the Code, in relation to a previous edition of *The Jeremy Kyle Show*, broadcast on 9 September 2015 "that featured a guest discussing and imitating 'oral sex noises'". However, that particular episode involved a relatively brief reference to sexual activities, and was broadcast at 09:25 on a weekday morning in school term-time, when children were likely to have been at school.

In this case, ITV said that its compliance team had certified the material "for broadcast outside of term time school hours, as the main story in the programme focused on the issue of paternity, which is a very common issue that is often dealt with by the programme, rather than explicit sexual issues". However, as set out above, Ofcom considered that the content of this particular episode was not suitable for children, in part due to the nature and amount of sexual references in the programme. Therefore, ITV needed to ensure that it was scheduled appropriately. While this programme may have been acceptable to broadcast on certain occasions during the daytime, when children were unlikely to be available to view, this was not the case on this occasion.

The programme was broadcast on a Sunday morning on ITV's most widely watched public service channel at a time when children would have been available to view in large numbers. This was borne out by audience figures for this programme, which showed that this episode attracted a total child audience (aged 4 to 15) of 37,000 children which represented 11% of the total audience, and of those 27,000 were children aged 4 to 9. We also noted ITV's argument that the programme was scheduled between an episode of *Murder She Wrote* and the *ITV News*, "neither of which of particular interest to children". However, we noted that this edition of *ITV News* was a short bulletin, immediately followed by the film *Willy Wonka and the Chocolate Factory* which the Licensee described as "a feature film that clearly would have been of interest to children". This film which started soon after the end of the programme in this case attracted a total child audience (aged 4 to 15) of 171,000 children, which represented 20.4% of the total audience, and of those 113,000 were children aged 4 to 9. In this context, we noted ITV's statement that it said it would be "taking steps aim in the future to avoid scheduling similar material...close to films that are more likely to attract a younger audience".

Given all the above, Ofcom considered that the scheduling of this episode, on a Sunday morning on ITV's most widely watched public service channel, would have likely exceeded the expectations of viewers (and particularly of parents).

Our Decision was therefore that, in the circumstances of this case, the material was not appropriately scheduled and breached Rule 1.3 of the Code.

Breach of Rule 1.3

⁷ See footnote 3.

In Breach

No Frills Breakfast

Radio Cardiff, 4 May 2016, 07:00

Introduction

Radio Cardiff is a community radio station broadcasting to the Butetown area of Cardiff. *No Frills Breakfast* is its weekday daily breakfast programme broadcast between 07:00 and 09:00. The licence for Radio Cardiff is held by Radio Cardiff Limited (“RCL” or “the Licensee”).

A complainant alerted Ofcom to an edition of *No Frills Breakfast* which featured a Plaid Cymru candidate in the 2016 Welsh Assembly elections on the day before the vote. The complainant objected to this candidate’s appearance when “no other party was invited onto the programme”.

The National Assembly for Wales consists of 60 elected Assembly Members (“AMs”). 40 AMs are directly elected on a constituency basis under a first-past-the-post electoral system. The remaining 20 AMs are elected on a regional basis under a form of proportional representation, with four AMs being elected from each of five electoral regions.

During this programme, at approximately 08:09, the presenter announced that they had been joined in the studio by Neil McEvoy, the Plaid Cymru candidate contesting the Cardiff West constituency in the 2016 Welsh Assembly elections. Mr McEvoy was also on the list of Plaid Cymru candidates in the South Wales Central electoral region in those elections. During the remainder of the programme, the presenter interviewed Neil McEvoy about his campaign in the Welsh Assembly elections. The interview, which was interspersed with music tracks played by the presenter, as well as advertising breaks, lasted until just before 09:00, when the programme ended.

By way of example, Neil McEvoy made the following statements during the programme:

“Our campaign has been that effective that the Labour Party are absolutely bricking it, in case I get elected. And so I would say are the Welsh political establishment...I want to get elected to the Welsh Assembly. I want to shake things up”.

“The bottom line is that if I get elected to the Assembly, or when I get elected to the Assembly let’s say, I will be asking some really serious questions about organisations, publicly funded in this city, and the way that they operate”.

“I am standing on a platform in this election for shared parenting”.

“I’m number two on the Plaid Cymru list. So if you don’t live in Cardiff West, for example, if you live down the Bay, live in Grangetown or wherever you live in Cardiff, you can still vote for me with your second vote”.

“This is Labour Wales, you know, we’re struggling. They’re closing youth clubs; they’re closing play centres. You know, people are really up against it, and you get these Labour parasites appointed, you know, to positions. I tell you what, if they were in the private sector they wouldn’t be employed”.

“I have great difficulty in getting anybody from the Labour Party to debate with me because they have no answers. They cannot debate issues with me because they’re so clearly wrong”.

“If I do make it over the line tomorrow, then I’ll be here to represent everyone, and everyone’s views as well”.

“The biggest scandal really, almost, is the way the Labour Party has run Wales for decades – 100 years basically if you look at...local government. And they have caused our poverty, and they glorify in the poverty of Wales...Tomorrow, you can vote for a party, Plaid Cymru, that has ideas, practical ideas”.

“What I’d ask you to do is go out tomorrow and vote Plaid Cymru first-past-the-post and also vote Plaid Cymru for the region...If you put your trust in us, and if you get me elected to that Assembly, I won’t let you down”.

Rule 6.1 of the Code requires that programmes dealing with elections must comply with the due impartiality rules set out in Section Five of the Code. In addition, Rules 6.2 to 6.13 of the Code apply to programmes broadcast during the designated period running up to the date of elections in the UK known as the “election period”¹. Section Six of the Code under the heading “Meaning of ‘election’” makes clear that for the purpose of this section: “elections include...Welsh...Assembly elections...”.

For the reasons explained in this Decision, Ofcom considered that the programme was a constituency and electoral area report and discussion relating to the constituency of Cardiff West and the South Wales Central electoral region in the Welsh Assembly elections. Rules 6.8 to 6.13 of the Code were therefore engaged. We considered the material raised issues warranting investigation under the following rules of the Code:

Rule 6.8: “Due impartiality must be strictly maintained in a constituency report or discussion and in an electoral area report or discussion”.

¹ For the 2016 Welsh Assembly elections, the election period was from 6 April 2016 to 5 May 2016.

- Rule 6.9: “If a candidate takes part in an item about his/her particular constituency, or electoral area, then candidates of each of the major parties must be offered the opportunity to take part. (However, if they refuse or are unable to participate, the item may nevertheless go ahead.)”
- Rule 6.11: “Any constituency or electoral area report or discussion after the close of nominations must include a list of all candidates standing, giving first names, surnames and the name of the party they represent or, if they are standing independently, the fact that they are an independent candidate. This must be conveyed in sound and/or vision. Where a constituency report on a radio service is repeated on several occasions in the same day, the full list need only be broadcast on one occasion. If, in subsequent repeats on that day, the constituency report does not give the full list of candidates, the audience should be directed to an appropriate website or other information source listing all candidates and giving the information set out above”.
- Rule 6.13: “If coverage is given to wider election regions, for example in elections to the Scottish Parliament, Welsh Assembly, Northern Ireland Assembly, London Assembly or European Parliament, then Rules 6.8 to 6.12 apply in offering participation to candidates. In these instances, all parties who have a candidate in the appropriate region should be listed in sound and/or vision, but it is not necessary to list candidates individually. However, any independent candidate who is not standing on a party list must be named. Where a report on a radio service is repeated on several occasions in the same day, the full list need only be broadcast on one occasion. If, in subsequent repeats on that day, the constituency report does not give the full list of candidates, the audience should be directed to an appropriate website or other information source listing all candidates and giving the information set out above”.

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

Responses

Initial responses

RCL’s response

The Licensee accepted that in this programme Neil McEvoy “made various statements referring to his candidacy and his aspirations were he elected as an AM in the [Welsh Assembly] elections; and that he had made various critical statements about the Labour Party”. It added that it was “surprised and disappointed” that the presenter had carried out the interview, which RCL described as “completely wrong” for having taken place. However, in relation to Rule 6.11, the Licensee said that at 13:25 it had “directed listeners” to recordings of debates² for all the Cardiff

² Ofcom noted that during the election period, the Licensee had broadcast constituency debates featuring various candidates contesting the four Cardiff directly-elected constituencies in the 2016 Welsh Assembly elections. This included on 3 May 2016, a constituency debate relating to the Cardiff West constituency, which featured Neil McEvoy (the Plaid Cymru candidate featured in the programme in the present case). Having assessed

constituencies in the Welsh Assembly elections “available to listen to in their entirety on the Radio Cardiff website”.

RCL said that the presenter had been presenting on Radio Cardiff for over 15 years and the presenter had been “responsible for interviewing politicians during previous elections”. It added it was therefore “confident” that the presenter was “fully aware” of Ofcom’s rules relating to elections. RCL also provided a copy of an email dated 11 April 2016 that it had “sent...to all presenters advising them” of the rules in the Code relating to elections, and instructed presenters to contact the Head of News “if they had any questions or were unsure of anything”.

The presenter’s response

The Licensee said that it had asked the presenter to comment in reply to Ofcom’s investigation, and provided the presenter’s response to Ofcom. RCL said that there were “a few points in [the presenter’s] letter which Radio Cardiff does not accept”. Where this was the case, we have indicated the Licensee’s comments on the presenter’s representations in brackets³. The presenter made the following points in their letter:

- On the day of the broadcast in this case, 4 May 2016, the presenter said they were “surprised” when Neil McEvoy “came to the studio”. The presenter said that Mr McEvoy “wanted to talk about” a newspaper article written about him and the presenter “enabled him to respond to this”.

(On this point, RCL said that Neil McEvoy had previously been a presenter on Radio Cardiff and, in its view, Mr McEvoy “was aware that he should not have come to the station to do an interview”. RCL added that “[h]aving listened to the show we feel that from beginning to end [Neil McEvoy] was campaigning for the election, and both [the presenter] and Neil McEvoy were aware that they were contravening Ofcom’s election rules”.)

- The presenter said that during the programme in this case, “[u]nfortunately, as the conversation developed, the topic of the Assembly Election was referred to”. The presenter said that they therefore “[i]mmediately stated that other Politicians were able to air their perspectives if they came to the studio before the end of the show”.

(The Licensee “fully accept[ed]” that the presenter’s on-air invitation to other candidates “failed to offer other politicians reasonable notice to respond”).

- The presenter acknowledged that they had allowed Neil McEvoy “to express his views and apologises for the fact that conversation had developed in the way it did, which may have contravened Ofcom’s rules”.
- The presenter said that they “had not ever seen any of the Ofcom rules prior to” Ofcom’s investigation in this case and apologised for this fact. In relation to Rule

recordings of these four debate programmes, Ofcom considered they did not raise issues warranting investigation under the Code.

³ Ofcom noted that the Licensee and the presenter differed in their accounts of the inclusion of political guests in *No Frills Breakfast* prior to 4 May 2016. Ofcom has only referred to those elements of the Licensee’s and the presenter’s representations which Ofcom considered relevant in order to reach a Decision in this case.

6.8, the presenter said that they had been impartial in “[p]olitical interviews pertinent to the Welsh Assembly elections” prior to 12 April 2016⁴ when told to stop such interviews by the Licensee. In relation to Rule 6.9, the presenter said that they had “contacted and interviewed” candidates of the larger parties prior to 12 April 2016.

(RCL said that the presenter had been provided with a “rough breakdown” of Ofcom’s election rules in its 11 April 2016 email that had been sent to all presenters. It also pointed to the presenter’s previous experience of interviewing politicians in the past on Radio Cardiff during election periods).

In conclusion, the Licensee expressed the view that the presenter was “acting as a rogue presenter deliberately ignoring guidelines set by Ofcom and Radio Cardiff”. It added that, in its view, the presenter’s “behaviour constitutes Gross Misconduct and following our investigations we feel our best course of action is to dismiss” the presenter. RCL said that “[w]e cannot apologise enough...We fully intend to insist that all Radio Presenters attend a lecture given by us on the exact do’s and don’ts” of Ofcom’s election rules.

Responses to Ofcom’s Preliminary View

Ofcom provided its Preliminary View in this case (which was to record breaches of Rules 6.8, 6.9, 6.11 and 6.13) to the Licensee; the presenter of this edition of *No Frills Present*; and Neil McEvoy, who also appeared in this particular programme. Below is a summary of their responses⁵.

RCL’s further response

The Licensee said it intended to provide “more in depth training available to all presenters in relation to pre-election periods in the future”. It added that it was “loath to lose an experienced and valued presenter” like the presenter of *No Frills Breakfast* in this case. Therefore, RCL’s “management meeting” had decided “not to dismiss” the presenter, but to offer the presenter “further training including on political objectivity and the importance of factual integrity, particularly in relation to pre-election periods, if [the presenter] is agreeable”.

The presenter’s further response

The presenter said that during the programme in question Neil McEvoy had “surprised me when he popped into the studio” to talk about a newspaper article that had been published that day. The presenter added that “Our conversation did digress into a chat about the Assembly election and I am not the kind of presenter who cuts guests off when they are venting their feelings about an issue”. However, the presenter said that “With Hindsight I have agreed with Radio Cardiff Management that I should have turned off his microphone and I apologise for not doing so”.

⁴Ofcom interprets this as a reference to the Licensee’s email to all its presenters dated 11 April 2016 “advising them” of the rules in the Code relating to elections (see RCL’s response above).

⁵ As with the initial responses in this case (see footnote 3). Ofcom has only referred to those elements of the Licensee’s, presenter’s and Neil McEvoy’s representations on Ofcom’s Preliminary View which Ofcom considered relevant in order to reach a Decision in this case.

The presenter said that they had “never had any training whatsoever in the intricacies of the Ofcom Rules” while as a presenter at Radio Cardiff. The presenter added that the email dated 11 April 2016 sent by the Licensee “to all Radio Cardiff Presenters...was the first time to my knowledge that any Ofcom rules had been put in writing to all volunteers”.

The presenter disputed that they were a “rogue presenter deliberately ignoring guidelines” as stated by RCL in its initial representations. They added that “I am a well-established presenter with an individual style that all my guests, without exception, enjoy. I am told that my show is possibly one of the most popular on the station as a result I do five two hour shows a week far more than any other presenter at the Station”. The presenter also said that they had “not been dismissed by the Station Management Team”.

In conclusion, the presenter said they “fully accept the criticisms of my show made by Ofcom” in its Preliminary View and “I confirm I will not make the same mistake again”.

Neil McEvoy’s response

Neil McEvoy said that he had been “invited to the station to take part in a breakfast show during the election campaign”. He added that he was “very supportive” of Radio Cardiff and “did not want to be seen as rude” to the presenter of *No Frills Breakfast* and “so was keen to attend the show, especially after having accepted (and then taken part) in a debate at the station” on 3 May 2016⁶.

Mr McEvoy said that on the day of the broadcast his “campaigning was taking [him] geographically close to the radio station, so [he] made the effort and called into see” the presenter and “took part in the breakfast show”. Mr McEvoy added that during the programme he and the presenter “started off discussing a smear in the local press and we digressed into electoral matters”.

Mr McEvoy also said he was “shocked” that RCL had said that he “was aware that he should not have come to the station to do an interview”. Mr McEvoy said that “[t]he general rule for me as a candidate is that if invited, I turn up, subject to time management and effectiveness”. He added that between 2008 and 2012, he had been a presenter at Radio Cardiff but “[a]t no point was I offered any training, other than for the decks”. Mr McEvoy also said he was “not aware” of the presenter of *No Frills Breakfast* in this case “having undergone any training in OFCOM rules either”.

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 the special impartiality requirements set out in section 320 of the Act are complied with. This objective is reflected in Section Five of the Code. Broadcasters are required to follow the rules in Section Five of the Code to ensure that the due impartiality requirements of the Act are complied with. In addition, Section Six of the Code reflects the specific requirements relating to broadcasters covering elections, as laid out in the Representation of the People Act 1983 (as amended).

⁶ See footnote 2.

When applying the requirement to preserve due impartiality, Ofcom recognises the importance of the right to freedom of expression, as contained in Article 10 of the European Convention on Human Rights. However, UK legislation requires broadcasters to preserve due impartiality on major matters of political controversy, including elections. Broadcasters in covering election issues must ensure that, during the election period, they preserve due impartiality and due weight is given to all the larger parties⁷ (and other parties where appropriate).

Ofcom's published Guidance⁸ to Section Six of the Code states that there is no obligation on broadcasters to provide any election coverage. However, if broadcasters choose to cover election campaigns, they must comply with the rules set out in Section Six of the Code, and in particular the constituency and electoral area reporting requirements laid out in Rules 6.8 to 6.13 of the Code. These specific rules apply to the broadcast of a particular constituency and electoral area report or discussion during an election period. Ofcom considers these rules to be particularly important because they reflect a statutory duty⁹ placed upon Ofcom, namely, to have in place a code of practice with respect to the participation of candidates in broadcast items at various elections. As such, we consider it a fundamental requirement upon Ofcom licensees that they should comply with Rules 6.8 to 6.13, if featuring candidates in broadcast items during elections.

The full text of Rules 6.8, 6.9, 6.11 and 6.13 is set out above.

Rule 6.8 requires that due impartiality is strictly maintained in a constituency report or discussion and in an electoral area report or discussion.

Rule 6.9 obliges broadcasters to ensure that if a candidate takes part in an item about his/her particular constituency, or electoral area, then candidates of each of the larger parties must be offered the opportunity to take part. The larger parties for any given election are listed in the Ofcom list of larger parties. For the 2016 Welsh Assembly elections, the larger parties were: the Conservative Party; the Labour Party; the Liberal Democrats; Plaid Cymru; and UKIP.

The relevant parts of Rule 6.11 require, in summary, that if a radio licensee broadcasts any constituency or electoral area report or discussion after the close of nominations it must include a list of all candidates standing, giving first names, surnames and the name of the party they represent. This rule goes on to set out what should happen if a constituency report on a radio service is repeated on several occasions in the same day.

The relevant parts of Rule 6.13 state, that if coverage is given to elections to the Welsh Assembly then Rules 6.8 to 6.12 apply in offering participation to candidates. In this instance, with a radio station, all parties who have a candidate in the appropriate region should be listed in sound although it is not necessary to list candidates individually.

⁷ The larger parties for any given election are listed in the Ofcom list of larger parties (see: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/larger-parties.pdf>). For the 2016 Welsh Assembly elections the larger parties were: the Conservative Party; the Labour Party; the Liberal Democrats; Plaid Cymru; and UK Independence Party ("UKIP").

⁸ See: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section6.pdf>

⁹ By section 93 of the Representation of the People Act 1983 (as amended).

Constituency or electoral area report or discussion

To determine whether the electoral area reporting rules (Rules 6.8 to 6.13) applied in this case, we first had to determine whether the programmes contained a constituency/electoral area report or discussion. Paragraph 1.39 of Ofcom's Guidance to Section Six of the Code states:

“...the principal point for broadcasters is to ensure that when interviewing candidates in reports that either raise issues about their constituency/electoral area or raise the profile of the candidate in connection with their constituency/electoral area, other candidates in the constituency/electoral area (as described in Rules 6.9 and 6.10) have an opportunity to take part as appropriate...a useful test for broadcasters is to ask whether a report could be seen as promotional for a candidate within his/her constituency/electoral area. If it is, then it requires input from, at least, the other main parties and potentially others depending on the constituency/electoral area”.

In this case we noted that the presenter said, in their representations, that Neil McEvoy had “surprised” the presenter when Mr McEvoy “came to the studio” wanting “to talk about” a newspaper article written about him and the presenter “enabled him to respond to this”. The presenter added that during the programme in this case, “[u]nfortunately, as the conversation [with Neil McEvoy] developed, the topic of the Assembly Election was referred to”.

We noted in his representations that Neil McEvoy said that he: had been “invited to the station to take part in a breakfast show during the election campaign”; “did not want to be seen as rude” to the presenter of *No Frills Breakfast* and “so was keen to attend the show, especially after having accepted (and then taken part) in a debate at the station” on 3 May 2016¹⁰; and that on the day of the broadcast his “campaigning was taking [him] geographically close to the radio station, so [he] made the effort and called into see” the presenter and “took part in the breakfast show”. However, Mr McEvoy said that during the programme he and the presenter “digressed into electoral matters”.

Neil McEvoy was a candidate contesting the Cardiff West constituency in the 2016 Welsh Assembly elections, and was on the list of Plaid Cymru candidates in the South Wales Central electoral region in those elections. He appeared on an edition of *No Frills Breakfast* broadcast during the “election period”¹¹ for the Welsh Assembly elections. Mr McEvoy made a number of statements, as outlined in the Introduction, in which he commented on his candidacy in both the constituency contest for Cardiff West and the South Wales Central electoral region. He also heavily criticised the Labour Party, one of the other political parties competing with Mr McEvoy for election in the Welsh Assembly elections. RCL accepted that in this programme Neil McEvoy “made various statements referring to his candidacy and his aspirations were he elected as an AM in the [Welsh Assembly] elections; and that he had made various critical statements about the Labour Party”. We also noted that the presenter acknowledged that they had allowed Neil McEvoy “to express his views and apologise for the fact that conversation had developed in the way it did, which may have contravened Ofcom's rules”. We therefore considered this programme clearly

¹⁰ See footnote 2.

¹¹ See footnote 1.

constituted a constituency and electoral area discussion and Rules 6.8 to 6.13 applied.

Rule 6.8

This programme featured only one party candidate who was contesting either the Cardiff West constituency or the South Wales Central electoral region in the Welsh Assembly elections. At no point during this programme were the viewpoints reflected of larger party¹² candidates competing with Neil McEvoy in the Cardiff West constituency (and South Wales Central electoral region).

We noted that in relation to Rule 6.8, the presenter said in their representations that they had been impartial in “[p]olitical interviews pertinent to the Welsh Assembly elections” prior to 12 April 2016 when told to stop such interviews by the Licensee. We also took into account the presenter’s statement about the programme in this case, that although the “conversation did digress into a chat about the Assembly election...I am not the kind of presenter who cuts guests off when they are venting their feelings about an issue”.

However, in order to comply with Rule 6.8 in this case, RCL had to reflect the viewpoints of at least the candidates of the larger parties, as appropriate in this particular programme or in clearly linked¹³ programmes. This did not happen in this case, and our Decision was therefore that due impartiality in this constituency and electoral area discussion was not strictly maintained, and the programme breached Rule 6.8 of the Code.

Rule 6.9

The Code makes clear that if a candidate is given an opportunity to discuss matters relating to their constituency or electoral area then broadcasters must ensure that other candidates from the larger parties should also be offered an opportunity to take part. In this case this meant that the Licensee was, as a minimum, required to offer candidates from the Conservative Party, the Labour Party, the Liberal Democrats, and UKIP contesting the Cardiff West constituency the opportunity¹⁴ to take part in this programme.

¹² i.e. the candidates of the Conservative Party, the Labour Party, the Liberal Democrats and UKIP.

¹³ Paragraph 1.47 of Ofcom’s published Guidance to Section Six states: “Broadcasters may structure a constituency/electoral area report or discussion over a series of broadcasts, for example in the form of a series of candidate interviews in different programmes. However, in line with Rule 5.6 [‘The broadcast of editorially linked programmes dealing with the same subject matter (as part of a series in which the broadcaster aims to achieve due impartiality) should normally be made clear to the audience on air] the broadcaster should ensure that the fact that a constituency/electoral area report or discussion is being split over several programmes is clearly signalled to the audience...”.

¹⁴ Paragraph 1.54 of Ofcom’s published Guidance to Section Six states: “In elections where candidates are being elected from multi-member constituencies or electoral areas, there are likely to be a number of candidates being fielded by each individual party. In each electoral contest, for each party that would qualify for inclusion in constituency/electoral area report or discussion by virtue of Rules 6.9 and 6.10, there is no obligation on broadcasters to offer every candidate representing a single party the opportunity to take part in that constituency/electoral area report or discussion. However, at a minimum, broadcasters should ensure that they do offer the chance to take part in that constituency/electoral area report or

We noted that in relation to Rule 6.9, the presenter said that they had “contacted and interviewed” candidates of the larger parties prior to 12 April 2016. However, we did not consider this equated to offering the relevant candidates the opportunity to take part in the constituency and electoral area discussion in this case, broadcast on 4 May 2016. We noted that at one point in the programme, the presenter said:

“By the way, dear listener, I do give the opportunity for anybody from any of the other political parties to come into the studio right now and talk to me. Because you can’t talk to me tomorrow, because tomorrow [i.e. polling day] I’m not allowed to talk to politicians”.

Rule 6.9 requires the broadcaster to directly contact relevant candidates (or their representatives) to offer these candidates the opportunity to take part in a constituency report or discussion. We considered that a general broadcast invitation transmitted approximately half an hour before the end of a constituency discussion like the one made by the presenter in this case could not reasonably be described as offering the candidates of the larger parties “the opportunity to take part” in this constituency discussion. We noted that the Licensee “fully accept[ed]” that the presenter’s invitation above “failed to offer other politicians reasonable notice to respond” in the context of this constituency and electoral area discussion.

Given the above, our Decision was therefore that the programme breached Rule 6.9 of the Code.

Rules 6.11 and 6.13

Rule 6.11 requires that, when broadcasting a constituency report or discussion following the close of nominations¹⁵ any constituency report must include a list of all candidates standing, giving first names, surnames and the name of the party they represent or, if they are standing independently, the fact that they are an independent candidate. This must be conveyed in sound and/or vision. Rule 6.13 applies a similar requirement in relation to electoral area reports about electoral areas electing a number of elected representatives. In such circumstances the electoral area report must include a list of all the parties (not candidates) who have a candidate in the electoral region. However, any independent candidate who is not standing on a party list must be named.

RCL said that at 13:25 on the day of the broadcast (i.e. over four hours after the programme in this case had finished), it had “directed listeners” to recordings of debates¹⁶ for all the Cardiff constituencies “available to listen to in their entirety on the Radio Cardiff website”. However, Rules 6.11 and 6.13 require a list of candidates and parties to be included in a constituency and electoral area discussion when it is actually broadcast. This did not happen with this edition of *No Frills Breakfast* in this case. Therefore, our Decision was that Rules 6.11 and 6.13 were breached.

discussion to each party that would qualify by virtue of Rules 6.9 and 6.10”. Given that all the relevant larger parties were contesting both the Cardiff West directly-elected constituency and the South Wales Central electoral region, it was only incumbent on the Licensee to offer the opportunity to take part in this programme to the five larger party candidates contesting the Cardiff West constituency.

¹⁵ In the Welsh Assembly elections, the close of nominations was 7 April 2016.

¹⁶ See footnote 2.

Conclusion

In reaching our Decision, we took into account that the Licensee said: the presenter was “fully aware” of Ofcom’s rules relating to elections; the interviewee in this programme, Neil McEvoy, “was aware that he should not have come to the station to do an interview”; it had sent an email dated 11 April 2016 to the presenter containing a “rough breakdown” of Ofcom’s election rules; and, the presenter in this case was “deliberately ignoring guidelines set by Ofcom and Radio Cardiff”. By contrast, the presenter said in their representations that they “had not ever seen any of the Ofcom rules prior to” Ofcom’s investigation in this case and “never had any training whatsoever in the intricacies of the Ofcom Rules” while as a presenter at Radio Cardiff. In addition, the presenter disputed that they were a “rogue presenter deliberately ignoring guidelines” set by Ofcom and Radio Cardiff. In addition, Neil McEvoy said that he was “shocked” that RCL had said that Neil McEvoy “was aware that he should not have come to the station to do an interview”.

There was therefore a difference of opinion as to the facts of this case between: the Licensee; the presenter of *No Frills Breakfast*; and Mr McEvoy. For example, RCL and the presenter appeared to disagree as to the presenter’s familiarity with the Code in the area of elections, and the nature and content of training and direction given by RCL to the presenter about, for example, the rules in Section Six of the Code.

On the information available to Ofcom, we noted that RCL’s email dated 11 April 2016 to all its presenters did provide some information about Section Six of the Code and this appeared to have been sent to the presenter. However, we noted that this email gave only limited information about the Code, for example stating:

“Ofcom requires us to be completely unbiased when it comes to political coverage. For the news team, this means we have to make sure all parties get equal coverage in our news bulletins...Please be ultra careful and consult [RCL’s head of News] ...if you are unsure”.

Ofcom reminds licensees to ensure producers and presenters are appropriately trained in all aspects of Sections Five and Six of the Code in good time ahead of election periods. We noted that RCL did not provide any other evidence of what processes it had in place to ensure that this edition of *No Frills Breakfast* when broadcast complied with Section Six of the Code. In reaching our Decision, we took account however of the steps that the Licensee was taking to improve compliance in this area by: requiring “all Radio Presenters to attend a lecture given by us on the exact do’s and don’ts of Ofcom’s election rules”; providing “more in depth training available to all presenters in relation to pre-election periods in the future”; and, offering the presenter of *No Frills Breakfast* “further training...in relation to pre-election periods”.

However, for all the reasons given above, our Decision is that the programme was in breach of Rules 6.8, 6.9, 6.11 and 6.13 of the Code.

Breaches of Rules 6.8, 6.9, 6.11 and 6.13

In Breach

Tritio Matra

Channel i, various dates and times

Introduction

Channel i is a news and general entertainment channel aimed at the Bangladeshi community in the UK and Europe. The licence for Channel i is held by Prime Bangla Limited (“Prime Bangla” or “the Licensee”).

Two complainants contacted Ofcom with concerns about three episodes of *Tritio Matra*, which were each sponsored by six companies. The programme was described on the EPG as an “*open discussion programme based on current affairs*”.

Ofcom commissioned independent English translations of each broadcast, as they were predominantly broadcast in Bengali.

Tritio Matra, 24 December 2015, 23:30

A panel discussed Bangladeshis living or wishing to travel overseas and the policies affecting them – in particular, those working in Saudi Arabia or wishing to visit it to perform Hajj or Umrah¹.

Tritio Matra, 1 January 2016, 23:30

A panel discussed the possible ramifications of the process and results of the municipal elections held throughout Bangladesh on 30 December 2015.

Tritio Matra, 17 January 2016, 12:00

A panel discussed the state of Bangladeshi politics, including the panel members’ perceived absence of democracy, need for electoral change, skewed distribution of wealth and commercialisation of education and health.

Given their subject matter, we considered these three programmes raised issues warranting investigation under Rule 9.15 of the Code, which states:

“News and current affairs programmes must not be sponsored”.

We therefore sought comments from the Licensee as to how the broadcasts complied with this Rule.

Response

Prime Bangla apologised “for the errors”, adding that it had restructured and “made a strict policy with [its] new team that this will never repeat any more”. The Licensee said it therefore had “no formal comments to make...”.

¹ The Hajj is an annual pilgrimage to Mecca, Saudi Arabia. The fifth pillar of Islam is to make this pilgrimage at least once in one's lifetime. The Umrah is a pilgrimage to Mecca that can be undertaken at other times of the year.

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, including “that the international obligations of the United Kingdom with respect to advertising included in television...services are complied with”. These obligations include ensuring compliance with the Audiovisual Media Services (“AVMS”) Directive.

This is reflected in, among other rules, Rule 9.15 of the Code, which prohibits the sponsorship of news and current affairs programmes and is directly derived from Article 10(4) of the Directive. It supports the important principle that news and current affairs must be reported with due accuracy and presented with due impartiality. A broadcaster’s editorial control over the content of its news and current affairs programming should not be, or appear to be, compromised.

The Code defines a current affairs programme as one “that contains explanation and/or analysis of current events and issues, including material dealing with political or industrial controversy or with current public policy”.

Tritio Matra, 24 December 2015, 23:30

The programme’s host and studio guests discussed Bangladeshis living or wishing to travel overseas and the policies affecting them – in particular, those working in Saudi Arabia or wishing to visit it to perform Hajj or Umrah. Among other things, they discussed: the need to “*export ... more skilled manpower from Bangladesh*” and policies that could achieve this; the difficulties Bangladeshis face both abroad and in obtaining a visa to visit Saudi Arabia; and Bangladesh government representation in Saudi Arabia.

Tritio Matra, 1 January 2016, 23:30

The programme’s host and studio guests discussed the possible ramifications of the process and results of the municipal elections held throughout Bangladesh on 30 December 2015. Among other things, they discussed: how the election was conducted; the election results and whether the political parties and electoral systems in Bangladesh provide democracy.

Tritio Matra, 17 January 2016, 12:00

The programme’s host and studio guests discussed the state of Bangladeshi politics, including the panel members’ perceived: absence of democracy; need for electoral change; skewed distribution of wealth; and commercialisation of education and health.

Ofcom considered these discussions in the above episodes of *Tritio Matra* constituted explanation and analysis of current events and issues affecting Bangladeshis, which included material dealing with political controversy and/or with current public policy.

We therefore concluded that the programmes met the definition of current affairs, as set out in the Code. As the programmes were sponsored (by six companies), they were in breach of Rule 9.15.

Ofcom has recorded a number of breaches of Section Nine of the Code against Prime Bangla², most recently in April 2016. Of particular concern is a previous breach of Rule 9.15 recorded in December 2015 in relation to sponsorship of a previous episode of *Tritio Matra*.

Given the number of breaches recorded against Prime Bangla, Ofcom recently met the Licensee to discuss its approach to compliance with Section Nine of the Code.

Ofcom noted that, in its representations on the current case, the Licensee said it had now “restructured” to ensure no recurrence. Taking into account the Licensee’s recent compliance history in this area, we therefore monitored two subsequent episodes of *Tritio Matra*, broadcast at 12:00 on 19 and 20 May 2016, commissioning a full independent English translation of each.

Tritio Matra, 19 May 2016, 12:00

The programme’s host and studio guests discussed: whether a lawless culture exists in Bangladesh (with discussion including high profile murders and possible state involvement in them); whether Bangladesh was becoming a failed state; how the country was viewed internationally; the USA’s intentions towards Bangladesh; and a possible “*international conspiracy surrounding Bangladesh*”.

Tritio Matra, 20 May 2016, 12:00

The programme’s host and studio guests discussed, among other things: whether a high incidence of child murders, oppression of women, murders by beating, abductions and kidnapping, together with a tendency to disrespect people, were “*a result of social decadence*”, due to “*other political reasons*” or merely isolated incidents; the current roles of local government and women in it; and sustainable development goals.

Ofcom considered the discussions in these two episodes of *Tritio Matra* constituted explanation and analysis of current events and issues affecting Bangladeshis, which included material dealing with political controversy and/or with current public policy. We therefore concluded that the programmes met the definition of current affairs, as set out in the Code. However, we noted that these programmes were not sponsored and were not therefore in breach of Rule 9.15 of the Code, recurrence having been successfully avoided in these instances.

In the event of recurrence, Ofcom will consider further regulatory action.

Breaches of Rule 9.15

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb2521/obb253.pdf>;
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb273/Issue273.pdf>;
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb276/Issue276.pdf>;
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb279/obb279.pdf>;
http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb294/issue_294.pdf; and
<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb302/>

In Breach

Channel sponsorship

NDTV 24X7, 8 and 19 May 2016

And The Winner Is...

NDTV 24X7, 19 May 2016

Introduction

NDTV 24X7 is a channel that shows news, current affairs and business programming. The service broadcasts in English and is based in India, however it is also directed at UK audiences and is available on the digital satellite platform. The licence for NDTV 24X7 is held by New Delhi Television Limited (“New Delhi TV” or “the Licensee”).

Ofcom received a complaint from a viewer who considered the channel incorrectly carried sponsored programmes. On reviewing material broadcast on 8 and 19 May 2016, Ofcom noted the following on-screen and audio reference:

“...NDTV 24x7 in association with Pay TM”.

Ofcom also noted that during the broadcast of *And The Winner Is...*, a programme covering the legislative assembly elections in India that took place on 19 May 2016, the following sponsorship credit appeared over end-of-part and start-of part bumpers:

“Lloyd Air conditioners presents And The Winner Is... powered by Dalmia Bahrat Cement”.

Ofcom considered that this material raised issues warranting investigation under the following Code rule:

Rule 9.15: “News and current affairs programmes must not be sponsored”.

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

Response

The Licensee confirmed that the sponsorship credits were broadcast at the points highlighted by Ofcom and apologised for these errors. New Delhi TV said the principle of Rule 9.15 was well understood and therefore while the service is created for broadcast in India, a clean feed is usually delivered to the UK for broadcast here. However, due to human error, the channel and programme sponsorship credits were included in the UK feed.

Channel sponsorship

The Licensee went on to explain that since the issue was highlighted, “processes [had] been implemented to use a technical cue” to trigger the switch between the UK and Indian feed. The Licensee said that this will ensure the channel ident containing the channel sponsorship credit is replaced by a clean version for UK audiences.

Programme sponsorship

With regard to the programme sponsorship credit the Licensee explained that given the programme was a live election results show, it was broadcast with “dynamic breaks”. However, due to the nature of how the breaks were triggered, the scheduling system failed to replace the end and start-of-part bumpers with a clean version for UK viewers.

It added “to ensure this does not happen again processes have been put in place for an ongoing review by the Master Control Room team” in the case of any future broadcasts of a similar nature.

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, including “that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”. These obligations include ensuring compliance with the Audiovisual Media Services (“AVMS”) Directive.

The AVMS Directive explicitly prohibits the sponsorship of news and current affairs programmes and this is therefore prohibited by Rule 9.15.

Channel sponsorship

Ofcom firstly noted that the credits made clear that the channel had a sponsorship arrangement with Pay TM.

Secondly, we considered whether NDTV was a news service. The Code permits the sponsorship of programmes, programme segments and channels. The guidance¹ that accompanies Section Nine of the Code sets out the considerations that broadcasters should take into account when entering into channel sponsorship arrangements, for example the amount of content that consists wholly or mainly of programmes that may be sponsored; the likely audience expectations; and the positioning of a channel. The guidance goes on to state that where a broadcaster is “regarded primarily as a news provider, a commercial arrangement such as channel sponsorship risks undermining the perception of the broadcaster’s editorial independence and will not be compatible with the Code”.

The Licensee confirmed that the service is a “news based channel” and we noted that the service is located in the News section of the Sky EPG. Further, the NDTV 24x7 website² describes the service as:

“...this flagship channel from the NDTV news network is India’s most watched English News channel”.

Given the content, positioning and audience expectation of this service we considered the channel constituted a news service under the Code.

¹ Ofcom Broadcasting Code: Section Nine guidance
http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/bg2016/Section9_may16.pdf

² http://www.ndtv.com/convergence/ndtv/corporatepage/ndtv_24_7.aspx

Ofcom noted the compliance measures taken by the Licensee following our request for comments on the matter. However, given that NDTV 24X7 is predominantly a news service, we concluded that it was unsuitable for channel sponsorship and therefore the sponsorship breached Rule 9.15.

Programme sponsorship

In this case we noted the sponsorship credits made clear that *And The Winner Is...* had a sponsorship arrangement in place with Lloyd Air Conditioners and Bahrat Cement.

We went onto consider whether *And The Winner Is...* was a current affairs programme. A current affairs programme is defined in the Code as:

“...one that contains explanation and/or analysis of current events and issues, including material dealing with political or industrial controversy or with current public policy”.

We noted the Licensee had confirmed to Ofcom that the channel consisted of news, review and debate on current issues. We also noted that the programme in question provided “special coverage” of the assembly elections in India and analysis of the results as successful candidates were announced. Given the coverage, debate and analysis of issues that were clearly of national and international concern, we considered the programme constituted a current affairs programme under the Code.

We noted the compliance measures taken by the Licensee once it became aware of Ofcom’s investigation; however, the sponsorship of this edition of *And The Winner Is...* breached Rule 9.15.

Breaches of Rule 9.15

Resolved

The Wright Stuff

Channel 5, 16 June 2016, 09:15

Introduction

The Wright Stuff is a weekday morning topical magazine programme broadcast live on Channel 5. The programme is presented by Matthew Wright and includes a panel of guests discussing various news items. Viewers are also invited to participate in the discussions via telephone, email, text and Twitter.

A viewer alerted Ofcom to offensive language in this episode during a discussion on whether there should be a ban on “*body shaming*” advertisements. At 10:41 a telephone caller identified as “Ava” was put to air and the following exchange took place between Matthew Wright (“MW”) and Ava:

MW: *“Well, that’s the trouble I have got with the debate Ava is where does it stop? I mean you start off with a body shaming ad and you have set up the arguments very well for getting rid of it but where do we go next, I mean, pop videos with impossible bodies? I mean it’s all around us, these images are everywhere”.*

Ava: *“Yeah, but what I don’t understand is why it can’t be every one of every size. I don’t understand why it’s always the really skinny woman or the really fit, toned man. I personally don’t find six-packs attractive and yet they are fucking everywhere now”.*

MW: *“Right, if, if –”.*

Ava: *“I don’t know, I just find it really disheartening and like I said”.*

MW: *“I think you just swore didn’t you Ava? I must have to apologise for that we can’t have that language on this show, and if that was the case I’m sorry but we will have to say goodbye. Let’s try another. I don’t think it was meant in anger so I do apologise if any offence was caused and I do apologise for cutting you off as well I don’t think you meant anything. Let’s try another”.*

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

“The most offensive language must not be broadcast before the watershed...”.

We therefore asked Channel 5 Broadcasting Limited (“Channel 5” or “the Licensee”) for its comments on how the broadcast of offensive language complied with this rule.

Response

The Licensee said it was “acutely aware of the real issues that surround live broadcasts” where “tempers are likely to flare because of the sometimes controversial topics being discussed”. It added that it holds regular compliance meetings with the team that produces *The Wright Stuff* to ensure that procedures are

constantly reviewed and updated. Channel 5 also said that a “clear protocol document is in place and the presenter and production team are briefed on the procedures laid out in the protocol”. Channel 5 also said that a compliance lawyer was “viewing the show when the incident in question happened” to ensure regulatory compliance.

In this case, the Licensee said that production staff had followed the programme’s “strict protocol when choosing viewers to put on air”. It added that a member of the public, Ava, had telephoned the programme to speak on the topic of body shaming advertisements as she had “suffered with an eating disorder and this was pertinent to the discussion”. Channel 5 said that Ava had not used offensive language when speaking to production staff and did not “give any indication that she was likely to do so if put on air”.

Channel 5 said that Ava was selected to be put on air and she was called back by an experienced production secretary “who ran through her points and warned her not to swear”. Ava then spoke to a researcher and “was again warned not to swear”. The Licensee added that despite all “standard procedures” having been followed, the caller “unpredictably and most probably unintentionally, went on to use offensive language whilst expressing her point”. Channel 5 said that Matthew Wright therefore “reacted quickly...[and] interrupted the caller and immediately apologised to viewers for any offence caused and the production team terminated the call”.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that “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 research¹ on offensive language clearly indicates that the words “fuck” and similar words are considered by audiences to be among the most offensive language.

The use of the phrase “fucking” in this programme was therefore a clear example of the most offensive language being broadcast before the watershed and so in breach of Rule 1.14.

Programmes that feature live interaction with viewers clearly carry an increased risk of members of the audience using offensive language on air. Broadcasters should therefore have procedures in place to minimise the risk, as far as practicable.

In reaching our Decision, we took into account that Channel 5 had followed its procedures for vetting all callers to *The Wright Stuff*, which includes every caller being twice specifically warned not to use offensive language, before the callers are allowed on air. We also took into account that immediately following the incident, Matthew Wright apologised and the telephone call was terminated.

In light of these actions, Ofcom considered the matter resolved.

Resolved

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

Broadcast Licence Conditions cases

In Breach

Retention and production of recordings

The Hub (Roseland Peninsula, Cornwall), 23 May 2016, 20:00

Introduction

The Hub is a community radio station licensed to provide a service for the residents of the Roseland Peninsula in Cornwall. The licence is held by Hub Media CIC (“Hub Media” or “the Licensee”).

A listener complained to Ofcom alleging offensive language in a music track and by a presenter broadcast around 20:00 on 23 May 2016.

Ofcom asked the Licensee to provide a recording of the output. However, the Licensee explained that it was unable to provide the recording due to issues with the computer logging machine.

Ofcom considered that this raised issues warranting investigation under Conditions 8(2)(a) and (b) of ICR’s licence, which state:

- “8(2) In particular the Licensee shall:
- (a) make and retain, for a period of 42 days from the date of its inclusion, a recording of every programme included in the Licensed Service...
 - (b) at the request of Ofcom forthwith produce to Ofcom any...recording for examination or reproduction...”.

Ofcom therefore asked the Licensee for its formal comments on its compliance with these licence conditions.

Response

The Licensee said that there had been a change of management that officially took control of the station on 1 June 2016, and it had no knowledge or information as regards how the business was operated prior to that time, but was “stunned” that there was no audio available for the period concerned. The Licensee assured Ofcom that this would not happen again, and that the logging system is now checked daily.

With regard to the material which prompted the complaint, it said that the presenters concerned had been removed, and that processes were now in place to ensure compliance issues are dealt with and “this sort of problem will not happen under the new management”.

Decision

Under the Communications Act 2003, Ofcom has a duty to ensure that in each broadcaster’s licence there are conditions requiring the licensee to retain recordings of each programme broadcast, in a specified form and for a specific period after broadcast, and to comply with any request to produce such recordings issued by

Ofcom. These obligations are reflected in Conditions 8(2)(a) and (b) of Community Radio licences, as set out above.

Ofcom noted the Licensee's statement that the recording failure took place under the previous management at The Hub. However, the licensed entity had not changed over the period concerned, and Hub Media was obliged under the terms of its licence to ensure that recordings of its output are retained for 42 days.

We welcomed the steps taken under new management to prevent a similar occurrence. However, breaches of Licence Condition 8 are significant because they impede Ofcom's ability to assess whether a particular broadcast raises potential issues under the relevant codes. This can therefore affect Ofcom's ability to carry out its statutory duties in regulating broadcast content.

We are therefore putting Hub Media on notice that we will monitor its new arrangements to retain and provide recordings to Ofcom, and will consider taking further regulatory action should similar issues arise in the future.

Breaches of Licence Conditions 8(2)(a) and (b)

In Breach

Retention and production of recordings

Legacy 90.1 (Manchester), 13 June 2016, 16:00

Introduction

Legacy 90.1 is a community radio station licensed to provide a service for the African and Caribbean community in Manchester. The licence is held by Peace Full Media Limited (“PFM” or “the Licensee”).

A listener complained to Ofcom alleging offensive references to homosexuality during a discussion about an attack at a gay night club in Orlando.

Ofcom asked PFM to provide a recording of the output. However, the Licensee explained that it was unable to provide the recording due to the failure of a hard drive on its recording system.

Ofcom considered that this raised issues warranting investigation under Conditions 8(2)(a) and (b) of PFM’s licence, which state:

- “8(2) In particular the Licensee shall:
- (a) make and retain, for a period of 42 days from the date of its inclusion, a recording of every programme included in the Licensed Service...
 - (b) at the request of Ofcom forthwith produce to Ofcom any...recording for examination or reproduction...”.

Ofcom therefore asked the Licensee for its formal comments on its compliance with these licence conditions.

Response

PFM said it was aware that it is an important condition of its licence to record all output, and it adheres to this condition. The Licensee explained each Friday it normally checks and backs up recordings of the station’s output for the previous week. A check on Thursday 9 June showed the system was operational with no indication of a problem. PFM said that a hard drive failure on Friday 10 June caused recordings to stop, and then to record only intermittently until Thursday 16 June at which point the failure came to its attention. The Licensee explained that the system was then rebooted and recordings of the station’s output resumed. No recording was therefore available for the date and time concerned. The Licensee stated that this failure was exacerbated because the office is not staffed daily and there was no automatic backup recording system in place. It explained that it was currently researching a secondary recording system.

Decision

Under the Communications Act 2003, Ofcom has a duty to ensure that in each broadcaster’s licence there are conditions requiring the licensee to retain recordings of each programme broadcast, in a specified form and for a specific period after broadcast, and to comply with any request to produce such recordings issued by

Ofcom. These obligations are reflected in Conditions 8(2)(a) and (b) of Community Radio licences, as set out above.

Ofcom has recorded two previous breaches of the same Licence Conditions against PFM for its failure to provide recordings to Ofcom.¹

In the current case, Ofcom noted the Licensee's intention to introduce a secondary recording system. However, we were concerned, particularly in light of the previous cases, that the existing backup system was reliant on the main recording system functioning correctly, meaning that when the main system failed to record, the backup system could not operate. Ofcom was also concerned that due to the office being unstaffed, the recording failure was not picked up immediately.

Breaches of Licence Condition 8 are significant because they impede Ofcom's ability to assess whether a particular broadcast raises potential issues under the relevant codes. This can therefore affect Ofcom's ability to carry out its statutory duties in regulating broadcast content.

We remind the Licensee of its obligations under the terms of its licence to ensure that recordings of its output are retained for 42 days and provided to Ofcom on request. We are therefore putting PFM on notice that we will monitor its ongoing compliance in this area and should similar compliance issues arise in the future Ofcom may take further regulatory action.

Breaches of Licence Conditions 8(2)(a) and (b)

¹ See <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb247/obb247.pdf>

In that decision Ofcom recorded a breach of Conditions 8(2)(a) and (b) of the Licensee's Community Radio Licence, because a computer failure had resulted in the station's broadcast output not being recorded for four days in August 2013. In that case, PFM Limited had informed Ofcom that it: "now has a second computer [to] make a back-up recording of its output".

See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb254/obb254.pdf>

In that decision Ofcom recorded a breach of Conditions 8(2)(a) and (b) of the Licensee's Community Radio Licence because an individual accessing and deleting content on the recording system had resulted in the station being unable to provide content from 9 to 15 January 2014.

Broadcast Fairness and Privacy cases

Not Upheld

Complaint by Brabners LLP on behalf of Regenda Limited

Granada Reports, ITV Granada, 14 January 2016

Summary

Ofcom has not upheld this complaint of unjust or unfair treatment made by Brabners LLP (“Brabners”) on behalf of Regenda Limited (“Regenda”)¹.

The programme included an item about the Muirhead Avenue Development in Liverpool (“the Development”), a shared ownership scheme part owned by Redwing Living (“Redwing”), which is owned wholly by Regenda. The programme included contributions from residents who claimed they had experienced problems with the Development. The report also included an interview with Mr Stephen Twigg MP who said that he had raised concerns on behalf of the residents.

Ofcom found that:

- The broadcaster took reasonable care to satisfy itself that material facts with regard to residents’ complaints about issues with the Development were not presented, disregarded or omitted in the programme in a way that was unfair to Regenda.
- Regenda was given an appropriate and timely opportunity to respond to the claims made about the Development in the programme.
- The programme represented Regenda’s statement in response to the claims made about the Development in the programme in a fair manner.

Programme summary

On 14 January 2016, ITV Granada broadcast an edition of its news programme, *Granada Reports*, which included an item about complaints which had been raised by residents about the quality of the building work at the Development in Liverpool. The newsreaders introduced the report by referring to “*the shared ownership dream that’s turned into a nightmare*” and said that it was “*the Liverpool housing experiment that was supposed to get people on to the housing ladder*”. They said that some of the residents who bought into the scheme ten years earlier now said that problems with the Development had left them feeling trapped.

The reporter, Mr Matt O’Donoghue, spoke to residents at two of the flats. One of the residents, Ms Rachel Mitchell, said that part of the rendering had fallen off her apartment and that when it rained damp appeared on the wall. She explained that shared ownership had seemed the ideal way for her to get onto the property ladder. The reporter said that Ms Mitchell had told him that she had spent years living in a “*stinking flat*” before Redwing had “*accepted essential pipework was missing and corrected the problem*”. He said that Ms Mitchell had told him that “*all the residents*

¹ Regenda is a housing and property business, based in the north west of England.

have been made to pay thousands of pounds by their registered social landlord to correct the rendering, even though a survey shows that it was not put on properly in the first place". Ms Mitchell said:

"I'm spending a lot of money on this and it's just not working. I can't sell it. I don't enjoy living here, it's horrible".

The reporter also spoke to residents Mr Richie and Mrs Irene Nicholson, who said they had been plagued with problems from the start. Mrs Nicholson said:

"We've had three major things wrong, with the ceilings, the floors and now the electrics".

The reporter said that an independent report prepared by an electrician stated that the wiring in Mr and Mrs Nicholson's property had never been up to standard. He said that residents at the Development had called in NICEIC², the electricians' governing body, to check the whole Development and that its inspection showed issues with the wiring in 19 out of 22 flats inspected.

The item included an interview with local MP, Mr Twigg, who said that he had met with residents on "*countless occasions*" and had raised concerns on their behalf.

The reporter said that the programme makers had repeatedly asked Redwing for an interview and that the company had provided a statement for the programme. The reporter read out part of the statement as follows:

"They [Regenda] say that they do not accept any of the allegations, and they say that the work was carried out professionally and to the relevant standards, and they put the issues down to routine maintenance which has been needed after 10 years. But we are pleased to say this evening that Redwing have now agreed to pay for the render to be replaced and put back to the original standard that it should have been there in the first place and they've also agreed, struck a deal with NICEIC, the registration body of electricians, to go into all of those 19 apartments and to repair their electrics and put it back to original standards".

An image of part of the statement was shown on screen, stating:

"We do not accept any of the allegations made about the building at Muirhead Avenue. The building was successfully regenerated in 2004 from a derelict structure into a residential property. All work was carried out professionally to the relevant standards".

Summary of the complaint and the broadcaster's response

Brabners complained that Regenda were treated unjustly or unfairly in the programme as broadcast because:

- a) The programme included a number of incorrect allegations, conclusions and statements about the Development (the specific issues complained about are set out below).

In response to the complaint in general, ITV said that tenants had complained about the quality of the building work at the Development for a number of years.

² NICEIC is a voluntary regulatory body for the electrical contracting industry.

ITV understood that it was not in issue that the building work was deficient in various respects and that Regenda had previously accepted that there were defects in workmanship by their contractors or subcontractors.

ITV set out in detail the concerns which had been raised by residents at the Development. The broadcaster said that over the course of correspondence with Brabners about the issues raised by residents at the Development, the latter issued a number of statements for broadcast in which they made partial admissions on behalf of Regenda. Over the same period, the local print media had also covered the tenants' problems with the Development on several occasions. ITV said that the news report featured only a few of the concerns raised by residents over the years.

Turning to the specific sub-heads raised under this head of complaint:

- i) Brabners said that Ms Mitchell said of her property "*I can't sell it...I'm going to lose a lot of money. If I have to walk away, I will lose a lot of money*". These comments unfairly implied that the Development was blighted by wrongdoing on the part of Regenda and that at least one resident had tried and failed to sell their home. Brabners said that the programme did not state whether Ms Mitchell's home, or those of other tenants in the Development, had been on the market and, if so, for how long those homes had been up for sale or their current market value.

In response, ITV said that the programme interviewed Ms Mitchell as an example of a tenant who had suffered problems with her flat. The report stated that she had spent years living in a "*stinking flat*" because essential pipe work was missing. ITV added that Regenda admitted that remedial work was required and was not completed for several years after the issue was first reported.

The broadcaster said that the programme fairly represented Ms Mitchell's concerns that she could not sell her property and would lose money. Further, they said that Ms Mitchell was fully entitled to voice those concerns in circumstances where substantial repair works were still to be undertaken to the rendering. The repair works needed to the render on the exterior of the property were clearly visible in the footage included in the report and would be similarly visible to prospective purchasers of the flat, as well as being obvious to any surveyor instructed by a prospective purchaser in a sale of the flat.

ITV said it understood that only three of 22 apartments in the Development had changed ownership in the preceding ten years, with two being repossessed and the other requiring more than £40,000 of remedial work before completion of a sale. This further corroborated Ms Mitchell's statement regarding the difficulty of any sale of her property.

- ii) Brabners complained that the inclusion of an interview with Mr Twigg was unfair, as it was undated archive footage and implied that Mr Twigg continued to have criticisms about the Development. Brabners also said that the footage with Mr Twigg implied that Regenda was in some way responsible for the various issues with the Development that were being reported on, which was not the case.

With regards to this complaint, ITV said that the interview with Mr Twigg was recorded in December 2015. Another interview in very similar terms had been

recorded earlier in the investigative process and Mr Twigg had been vocal in his criticisms of the Development on a number of occasions in the past, most recently earlier in 2016 when he successfully lobbied the local council to carry out an Environmental Health inspection at the Development. The broadcaster said that Mr Twigg had not revised his opinions about the Development between the recording of the interview and the date of the broadcast, and the inclusion of this footage represented the local MP's view on the broad issue of the tenants' complaints about the Development. ITV added that Mr Twigg was given sight of the recording prior to broadcast, to ensure the content of his comments met with his approval.

- iii) Brabners said that the reporter's comment that he was "*pleased to say this evening*" that Regenda had "*now agreed*" to carry out the work on the rendering was unfair as it was made to sound like breaking news. This wrongly inferred that Regenda had "bowed to pressure" and been forced to carry out the work, when, as the broadcaster was aware, Regenda had already agreed to carry out the work and reimburse residents for earlier work.

In response, ITV said that a letter from Brabners dated 12 January 2016 made it clear that work on the rendering had been delayed for a considerable period of time (to the dismay of the residents), pending the outcome of a claim on their insurance. The broadcaster said that Regenda had confirmed on 12 January 2016 that work would actually begin on 18 January 2016 with the item in question being broadcast on 14 January 2016. In these circumstances, ITV said it was not unfair for the reporter to say that he was pleased to say "*this evening*" that Regenda had "*now agreed*" to carry out the work on the rendering, since this had only been confirmed by them two days previously.

- iv) Brabners also said that the reporter's comment that Regenda appeared to have "*struck a deal with NICEIC*" was unfairly made to sound like breaking news. This wrongly implied that Regenda had "conspired" with NICEIC and was reluctant to carry out the electrical work.

In response, ITV said that Brabners' suggestion that the programme implied that Regenda had "conspired" with NICEIC was unsustainable. The broadcaster added that at the time of broadcast, following protracted negotiations with NICEIC, during which Regenda had initially agreed to pay for the remedial works and then reneged on the offer, NICEIC had agreed at its own cost and for the safety of the residents to pay an independent NICEIC contractor to carry out the essential remedial works. ITV said that the phrase "*struck a deal*" simply conveyed that this work was now to be carried out.

- b) Brabners complained that Regenda was not given a fair and reasonable opportunity to respond to the allegations in the programme. In particular, Brabners said that the programme makers wrote to them on 11 January 2016, setting out their intention to broadcast a programme about the Development during the week commencing 11 January 2016 and no earlier than 13 January 2016. The letter included limited information about the proposed broadcast and asked for a response by 13:00 on 13 January 2016. Brabners wrote to the programme makers, denying the allegations, asking for more information and asking ITV to delay the broadcast to afford Regenda a fair and reasonable opportunity to respond, but ITV did not accede to this request.

In response, ITV said that the programme makers had approached Regenda's Press Office on 11 December 2015, a month before the broadcast, seeking a response to the matters which were to be included in the broadcast. This request was forwarded to Brabners, who emailed the ITV journalist on 14 December 2015 threatening legal action and requesting that further correspondence for Regenda should be sent directly to Brabners rather than to Regenda's press officer.

ITV said that owing to the Christmas holiday period, and that contact was only to be made through Brabners, correspondence was delayed further until ITV's programme lawyer could set out in further detail the exact allegations to be made in the broadcast. This information was sent on 11 January 2016, by which time similar allegations had already been reported independently in the local newspaper, the Liverpool Echo, published on 10 January 2016, which quoted a lengthy statement in response to those allegations, attributed to a Regenda spokesman.

ITV argued that, in these unusual circumstances, where Regenda had already published a statement in relation to these matters and the ITV journalist had made contact outlining similar matters on 11 December 2015, it was reasonable and proportionate for ITV to require a response for broadcast by 13 January 2016. ITV therefore declined a demand from Brabners for an extension of time to 19 January 2016. ITV also said that *Granada Reports* is a regional news programme, and by virtue of the Liverpool Echo article, this was now a current local news story, which also justified the relatively short response time. The broadcaster added that Regenda and its solicitors were already well aware of the issues to be answered, as could be seen from Brabners' lengthy responses. ITV said they were in fact able to produce a statement for broadcast which indicated that they needed no further time to investigate the allegations in question.

- c) Brabners complained that Regenda's statement for broadcast was not fairly represented in the programme. Brabners said that the programme gave the impression that Regenda's position was that they did not accept the allegations, but the statement was heavily edited and the programme did not accurately reflect Regenda's position.

In response, ITV said that the programme was not obliged, as a matter of fairness, to reproduce verbatim Regenda's entire statement provided for broadcast and the programme reflected fairly the salient points of the statement (as set out in the "Programme summary" above).

ITV said that the programme made clear that this was a summary of Regenda's response, stating that the whole of Regenda's statement was on the programme's website.

Turning to the specific points raised under this head of complaint:

- i) Brabners said that Regenda's explanation in relation to the rendering on the Development was not included, namely that problems with the rendering on the outside of the Development had been the subject of an insurance claim that had taken longer to resolve than Regenda would have liked. Regenda had explained in the statement that some residents had sought to delay the work.

In response, ITV said that the salient point was that the work was now to be undertaken and this was reflected in the broadcast. It was not relevant that

Regenda had made an insurance claim and was awaiting payment from insurers before commencing work (although ITV said that they understood that the insurance claim was, in fact, rejected on the ground that the original workmanship was found by the insurers to be defective). Regenda's statement did not give details of which residents, if any, had sought to delay the works or the reasons for this and, in the absence of such information, it would have been unfair, and indeed potentially defamatory to those residents, to include this part of their statement in the broadcast.

- ii) Brabners said that Regenda's response in relation to the electrical works was not included, namely that Regenda had identified some electrical repairs and offered to carry out the repairs in autumn 2015, but only two residents had taken up the offer. Brabners said that Mr and Mrs Nicholson had not done so.

In response, ITV said that the salient point was that the electrical works were going to be undertaken and this was reflected in the broadcast. It was simply incorrect that Regenda had identified the need for those works and their statement for broadcast did not allege this to be so. The broadcaster said that the unsafe electrical works had been revealed by an NICEIC inspection, commissioned by the residents.

- iii) Brabners said that Regenda had told ITV that it was not aware of any damp problems in the building and that, in any event, that was commonly caused by condensation and was residents' responsibility to resolve.

ITV said that the broadcast did not refer to damp or mould inside the building, although they believed that tenants had complained about this in the past. This part of Regenda's statement was therefore irrelevant to the issues in the report.

- iv) Brabners said that Regenda had told ITV that the Housing Ombudsman Service had investigated complaints by residents at the Development, none of which was upheld.

ITV said that only one of the residents interviewed in the item had made a complaint to the Housing Ombudsman Service. It would therefore have been potentially confusing and misleading to viewers to include the fact that other residents, with different complaints not outlined in the programme, had not had these complaints upheld by the Housing Ombudsman Service. Although there was no finding in her favour due to the passage of time, Mrs Nicholson was advised by the Housing Ombudsman Service to take her complaint to court.

Ofcom's Preliminary View

Ofcom issued a Preliminary View to the parties that the complaint of unjust or unfair treatment should not be upheld and both parties were given the opportunity to make representations. Both Brabners and ITV submitted representations on Ofcom's Preliminary View and those representations (that are relevant to the complaint entertained and considered by Ofcom) are summarised below.

Brabners' representations

In relation to head a) iv) of the Preliminary View, Brabners said that viewers would have incorrectly understood from the broadcast of the programme that:

- a “deal have been struck with NICEIC”;
- by “striking a deal with NICEIC” Regenda accepted liability for some, or all, of the electrical work at the Development;
- by “striking a deal with NICEIC” Regenda admitted responsibility for some, or all, or the electrical work at the Development; and,
- due to the time of the “deal” with NICEIC Regenda had in some way capitulated to pressure or complaints from the residents.

Therefore, Brabners said that material facts were presented, omitted or disregarded in the news report in a way that was unfair to Regenda.

Also, in relation to head c) of Ofcom’s Preliminary View, Brabners said that in its view, Ofcom had failed to take into account that Regenda’s full statement for broadcast was never published on ITV’s website, despite the assurance made by the presenter during the programme. As a consequence, “key pieces of evidence” in support of Regenda’s response to the problems at the Development, were not made available to viewers at any point.

Further, Brabners said that although Ofcom had considered in its Preliminary View that the programme had included a fair reflection of Regenda’s response in that the programme had stated that the company did not accept the allegations made against it, such a “blanket denial” of all allegations did not fairly represent Regenda’s position. The basis on which Regenda denied the allegations was never fully conveyed in the programme and therefore it was not possible, in Brabners’ view therefore, to find that the programme included a fair reflection of Regenda’s response.

ITV’s representations

In relation to head a) iv) of Ofcom’s Preliminary View, ITV said it did not accept that viewers would have been left with the impressions as suggested by Brabners in its representations on the Preliminary View above. ITV said it agreed with Ofcom’s Preliminary View that:

- the report suggested that Regenda had come to an arrangement with NICEIC after discussions had taken place;
- the report fairly reflected the situation at the time of broadcast; and,
- the live studio update had not presented, disregarded or omitted material facts in a way that was unfair to Regenda.

ITV said that the documentary evidence it had provided to Ofcom clearly showed that there had been discussions between Regenda and NICEIC about the undisputed problems with the wiring at the Development, and that NICEIC had eventually decided to carry out the necessary work itself, notwithstanding that Regenda had offered to carry out the work, but had denied any liability or obligation to do so.

ITV said that whether or not there was any formal agreement between Regenda and NICEIC for NICEIC to carry out the work, Regenda was aware that electrical work was required and that NICEIC was going ahead with that work. ITV said that

therefore there was no “significant mistake of fact” in either the original report or in Ofcom’s Preliminary View, and that no unfairness to Regenda arose from the brief words used by the reporter in the live studio update to express that this work was now to be carried out.

In response to the complainant’s representations on head c) of Ofcom’s Preliminary View, ITV said that Ofcom’s Preliminary View had reached the correct conclusion that the programme had included a fair reflection of Regenda’s response to the claims made about it. ITV said that in its view, the parts of Regenda’s response which were not included in the programme, were not, “key pieces of evidence in support of Regenda’s response” and therefore there was no requirement for the broadcaster to have included this material in the report.

Decision

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

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

In reaching this Decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript, both parties’ written submissions and supporting information. We also took into account both parties’ representations on Ofcom’s Preliminary View that were relevant to the complaint considered.

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

- a) Ofcom first considered the complaint that the programme included a number of incorrect allegations, conclusions and statements about the Development.

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

The Code recognises the importance of freedom of expression and the public interest need to allow broadcasters the freedom to broadcast matters in news and current affairs programmes. However, in presenting material in programmes,

broadcasters must take reasonable care not to do so in a manner that causes unfairness to individuals or organisations in programmes.

Ofcom considered each sub-head of complaint in turn in order to reach a Decision as to whether Regenda was treated unfairly by the inclusion of incorrect allegations, conclusions and statements about the Development. In our consideration, we took into account the nature of the comments made in the programme and assessed whether they had the potential to materially and adversely affect viewers' opinion of Regenda in a way that was unfair. We then went on to consider whether, if they did have this potential, the manner in which the comments were presented in the programme resulted in unfairness.

- i) Ofcom first considered the complaint that Ms Mitchell said of her property "*I can't sell it*". She said "*I'm going to lose a lot of money. If I have to walk away, I will lose a lot of money*". Brabners said these comments unfairly implied that the Development was blighted by wrongdoing on the part of Regenda and that at least one resident had tried and failed to sell their home.

We carefully viewed the programme and noted that in the context of a discussion about problems residents had had with the Development, Ms Mitchell spoke about how her flat had provided her with an opportunity to get on the housing ladder. The presenter and Ms Mitchell referred to problems she said she had had with the property and Ms Mitchell said "*I'm spending a lot of money on this and it's just not working. I can't sell it. I don't enjoy living here, it's horrible*" (see the "Programme Summary" section above for further details).

We recognised that Ms Mitchell's contribution was included in the programme as an example of a tenant who had suffered problems with her flat and that as a consequence, she said that she was unable to sell it. However, we considered that the nature of Ms Mitchell's comments were such that they had the potential to materially and adversely affect viewers' opinions of Regenda and, in particular, its ability to redress problems with the Development identified by its tenants. Given this potential, Ofcom then considered whether the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented in a way that was unfair to Regenda.

Ofcom considered that Ms Mitchell's comments were not presented in the programme as unequivocal statements of fact, but rather as her own personal opinion of her situation. In particular, Ms Mitchell was shown providing her first-hand testimony of the events which she said had taken place and we took the view that viewers would have understood therefore that the purpose of her contribution was to express her views on the Development, which she was entitled to do, based on her own experience as a resident. In addition, we noted from the broadcaster's statement that to corroborate the claim regarding the difficulties Ms Mitchell may have had with selling the property, as well as taking into consideration Ms Mitchell's comments and seeing first-hand the issues she was complaining about (for example, issues with the rendering), the programme makers had also taken into account that only three of the 22 properties had changed ownership in the preceding ten years. Moreover, we noted that the programme included part of a statement by Regenda in which it was made clear that the company did not accept any of the allegations made by the residents included in the programme. Therefore,

viewers would have been in a position to have reached their own conclusions on this matter.

Therefore, taking into account all the factors above, we considered that the broadcaster took reasonable care to satisfy itself that material facts regarding Ms Mitchell's comments had not been presented, disregarded or omitted in a way that was unfair to Regenda.

- ii) Ofcom then considered the complaint that the inclusion of an interview with local MP, Mr Twigg, was unfair, as it was undated archive footage and implied that Mr Twigg continued to have criticisms about the Development. Brabners also said that the footage with Mr Twigg implied that Regenda was in some way responsible for the various issues with the development that were being reported on which was not the case.

We noted that Mr Twigg said:

"I've met with the residents here on countless occasions, both before I was the MP, and as their local MP. And I've raised concerns on their behalf. I think it's really important that we get to the bottom of all the different issues some of which went right back to the sales and construction period other issues that have arisen more recently".

We noted that Mr Twigg did not refer to any specific allegations about the Development, but it was clear from his interview that he had intervened on behalf of residents in taking up various issues with Regenda over a period of time and, more recently, in his capacity as the residents' local MP. We took the view that Mr Twigg's comments about the number of complaints and the length of time it was taking to resolve the issues had the potential to materially and adversely affect viewers' opinions of Regenda and its response to criticisms made about it. Given this potential, Ofcom then considered whether the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented in a way that was unfair to Regenda.

Ofcom considered that Mr Twigg's comments were not presented as unequivocal statements of fact in the programme, but rather as his personal opinion based on his own experience of dealing with concerns raised by his constituents in relation to the Development. We again noted that, it was clear, from the inclusion of part of a statement by Regenda, that the company did not accept any of the allegations made against it in the programme. Therefore, viewers would have been in a position to have reached their own conclusions on this matter.

In relation to the date of Mr Twigg's interview, Ofcom noted that the footage was not dated and that viewers were likely to have understood the interview to have been recent. However, Ofcom noted from ITV's statement in response to the complaint that the interview was recorded in December 2015, one month prior to the broadcast of the programme, and that Mr Twigg was shown the recording prior to broadcast to ensure the content met with his approval. In these circumstances, we took the view that the inclusion of the interview without a date did not result in any unfairness to Regenda.

Therefore, taking into account all the factors above, we considered that the broadcaster took reasonable care to satisfy itself that material facts regarding

Mr Twigg's contribution and comments had not been presented, disregarded or omitted in a way that was unfair to Regenda.

iii) and iv)

We then considered together the two complaints about the reporter's update in the studio.

The first complaint was that the reporter said that he was "*pleased to say this evening*" that Regenda had "*now agreed*" to carry out the work on the rendering. Brabners said that this was unfair as it was made to sound like breaking news, inferring that Regenda had "bowed to pressure" and been forced to carry out the work, when, as the broadcaster was aware, Regenda had already agreed to carry out the work and reimburse residents for earlier work.

The second complaint was that the reporter said that Regenda appeared to have "*struck a deal with NICEIC*". Brabners said that this was unfair as it was made to sound like breaking news and implied that Regenda had "conspired" with NICEIC and was reluctant to carry out the electrical work.

We noted that the reporter said, with reference to the rendering, that:

"We are pleased to say this evening that Redwing have now agreed to pay for the render to be replaced and put back to the original standard that it should have been there in the first place..."

We considered Regenda's complaint that the wording incorrectly implied that this was breaking news, inferring that Regenda had bowed to pressure and been forced to carry out the work. We took into consideration the correspondence provided by ITV to Ofcom in which Brabners informed the programme makers on 12 January 2016 that the work on the rendering would commence on 18 January 2016. We noted also that the programme was broadcast on 14 January 2016. Therefore, irrespective of the fact that the programme stated that "*this evening*" Regenda had "*now agreed to pay for the render to be replaced*", there had only been two days between this information being provided to ITV and the broadcast of the programme. While Ofcom recognised that this may have given the inaccurate impression to viewers that Regenda had only agreed to pay for the replacement rendering on the evening of the broadcast, we considered that the time difference of two days was nominal and not likely to materially or adversely affect viewers' opinion of Regenda in a way that was unfair to the company.

We next considered the complaint about the reporter's studio update about the electrical works. We noted that the reporter said:

"They've also agreed, struck a deal with NICEIC the registration body of electricians, to go into all of those 19 apartments and repair their electrics and put it back to original standards..."

We considered the complaint that this implied that it was "breaking news", that Regenda had "conspired" with NICEIC and that the company was reluctant to carry out the work and we also took into account Brabners' representations in response to Ofcom's Preliminary View on this point. In Ofcom's view, however, the wording used by the reporter did not imply any conspiracy or

reluctance on the part of Regenda to carry out the remedial work, but rather it suggested that Regenda had come to an arrangement with NICEIC, after discussions had taken place. It was clear from the report that the electrical issues of the Development had been going on for some time, as indicated by a NICEIC report dated 30 October 2014, which was provided to Ofcom by the broadcaster. In addition, the programme included a summary of Regenda's position i.e. that it did not accept the allegations made about it in the programme and viewers would have therefore understood that while NICEIC had agreed to carry out the work, Regenda had not admitted responsibility for the matter. Taking these circumstances into account, we considered that the programme fairly reflected the situation at the time of the broadcast.

Therefore, in relation to the content of the reporter's studio update, we considered that material facts had not been presented, disregarded or omitted in the programme in a way that was unfair to Regenda.

Having assessed each sub-head of complaint, and taken into account the parties' submissions and representations in this case, we concluded that material facts were not presented, omitted or disregarded in the news report in a way that was unfair to Regenda. In particular, we also took note that as well as including criticism of Regenda's dealings the issues raised by residents of the Development, the programme included a summary of Regenda's position and stated that the company did not accept the allegations made in the programme.

Therefore, after careful consideration, and for all the reasons set out above, we found that Regenda was not treated unjustly or unfairly in the programme as broadcast.

- b) Ofcom next considered the complaint that Regenda was not given a fair and reasonable opportunity to respond to the allegations in the programme.

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

As noted in head a) above, the programme included comments that amounted to criticism of Regenda and its handling of issues raised by residents about the Development. Given the nature of these comments, we considered that they amounted to significant allegations against the company and that, as such, it was necessary for the complainant to be given an appropriate and timely opportunity to respond.

We examined the steps taken by the programme makers to provide Regenda with an opportunity to respond to the allegations. We noted that the programme makers wrote to Regenda's press office on 11 December 2015, setting out briefly some of the matters that were to be included in the broadcast. This request was forwarded by Regenda to Brabners, who responded to ITV on 14 December 2015 and requested that all future correspondence from ITV to Regenda be directed to Brabners. We noted that the letter of 11 December 2015 from ITV did not refer to all of the allegations that were to be included in the programme, however, this letter was followed up by an email from the programme makers to Brabners on 11 January 2016, which set out in greater detail the proposed content of the news item. In particular, this letter referred to complaints that some of the residents felt trapped and that their properties would be difficult to sell. The letter also stated

that the report would include an interview with Mr Twigg and that reference would be made to problems with the rendering and the electrics at the Development.

It was clear to Ofcom from the supporting material submitted by each of the parties that there had been correspondence between Regenda and ITV for a significant period of time before the broadcast of the programme. It was also apparent to us that many of the issues raised about the Development had been included in a series of newspaper articles in the *Liverpool Echo*, including one published on 10 January 2016 (four days prior to the broadcast). This article included a statement attributed to a Regenda spokesman, which covered many of the issues that were included in the programme. The article also referred to Regenda's position that it did not accept the allegations made against it and that routine maintenance and repairs were run as a matter of course for a development that was ten years old. It also said that the rendering on the outside of the building was due to be fixed later in the month and that some necessary electrical work had been identified but that some residents had declined to have repairs done.

Given these circumstances, namely that the issues raised in the programme had already been the subject of recent public debate about the Development prior to the broadcast, and that the programme makers had provided the complainant with letters which set out in broad terms the issues the programme would be exploring, Ofcom considered that it was reasonable to expect an organisation, with legal representation and a press office, to be able answer questions about its own conduct and practices within a relatively short period of time. Therefore, in the particular circumstances of this case, Ofcom considered that Regenda was given an appropriate and timely opportunity to respond to the allegations included in the programme.

Ofcom found that there was no unfairness to Regenda in this respect.

- c) Ofcom then considered the complaint that Regenda's statement for broadcast in the programme was not fairly represented in the programme.

In considering this head of complaint, we had regard to Practice 7.13 of the Code, which states that where it is appropriate to represent the views of a person who is not participating in the programme, this must be done in a fair manner.

In assessing this, Ofcom considered whether the extract from the statement that was included in the programme fairly represented Regenda's position in relation to the key claims made against the company. We compared the summary of Regenda's statement included in the programme as broadcast (as set out in the "Programme summary" section above) with the statement which Regenda had requested be read out in full during the programme. We noted that the summary included in the programme did not include the following points made in the statement representing Regenda's position:

- Regenda's explanation that problems with the rendering on the outside of the Development had been the subject of an insurance claim that had taken longer to resolve than it would have liked and that some residents had sought to delay the work.
- Regenda's response in relation to its identification of some electrical repairs which it had offered to carry out in autumn 2015, but only two residents (not including Mr and Mrs Nicholson) had taken up the offer.

- Regenda had told ITV that it was not aware of any damp problems in the building and that, in any event, that was commonly caused by condensation and was residents' responsibility to resolve.
- Regenda had told ITV that the Housing Ombudsman had investigated complaints by residents at the Development, none of which was upheld.

Ofcom recognises that programme makers and broadcasters can select and edit material provided to them by way of a written statement for inclusion in a programme. It is a matter of editorial decision making for the broadcaster to take and it would be unreasonable, in our view, for an individual or organisation to expect it to include a lengthy written statement in full. Broadcasters must, however, ensure that where it is appropriate to represent the views of an individual or organisation not participating in a programme that it is done in a fair manner.

We took into account Brabners' representations that "key pieces of evidence" in support of Regenda's response to the problems at the Development were not included in the programme. However, it was our view that Regenda's overall response to the allegations made in the programme was included, namely that it did not accept the allegations made against it. Further, the reporter's comment that: "*The whole of that statement is now up on our website and our viewers can go there to review that*", clearly indicated that the statement included in the programme was part of a longer statement. We recognised that the full statement was not immediately made available on ITV's website, however, given our view that it was not necessary for the programme makers to have included Regenda's full statement in the programme in order to have fairly represented its response to the claims made in the programme, the fact that the full statement was not subsequently made available on ITV's website, would not have resulted in unfairness to Regenda in the programme as broadcast.

We also considered the particular omissions from the statement cited by the complainant.

With regard to the rendering and the electrical works, as set out above, we noted that the programme provided an update on the current position, namely that the work was now to be carried out. We did not consider that it was necessary in the interests of fairness to set out the full background to the insurance claim in relation to the rendering or the history of the electrical issues. As the programme did not refer to internal damp or mould, Ofcom considered that it was not necessary for Regenda's statement on this point to be included in the programme. Nor did we consider that it was necessary in the interests of fairness for the news report to include any reference to investigations by the Housing Ombudsman, as it was not apparent that those investigations related specifically to the issues raised in the programme.

Therefore, given the above factors, we considered that the programme included a fair reflection of Regenda's response to the claims made about it and that, although summarised, viewers would have been left in no doubt that Regenda contested the allegations made against it.

Ofcom found that there was no unfairness to Regenda in this respect.

Ofcom has not upheld Brabners' complaint of unjust and unfair treatment in the programme as broadcast made on behalf of Regenda.

Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed between 25 July and 14 August 2016 and decided that the broadcaster or service provider did not breach Ofcom's codes, rules, licence conditions or other regulatory requirements.

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

Programme	Broadcaster	Transmission date	Categories
VPA Testifies	Believe TV	07/02/2016	Harm
This Morning	ITV	25/05/2016	Promotion of products/services
Big Brother	Channel 5	12/06/2016	Generally accepted standards

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

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

Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 25 July and 14 August 2016 because they did not raise issues warranting investigation.

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

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

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Robin Bank's Breakfast Show	107 Jack FM Berkshire	01/07/2016	Gender discrimination/offence	1
Sun, Sex and Suspicious Parents (trailer)	4Music	10/08/2016	Scheduling	1
Can't Pay? We'll Take it Away!	5Star	01/07/2016	Crime and disorder	1
Can't Pay? We'll Take it Away!	5Star	24/07/2016	Product placement	1
Programme trailers	5Star	28/07/2016	Violence	1
Sex Pod (trailer)	5Star	31/07/2016	Scheduling	1
Sex Pod (trailer)	5Star	05/08/2016	Scheduling	1
When Kids Kill	5Star	17/07/2016	Generally accepted standards	1
Sex Pod (trailer)	5Star+1	03/08/2016	Scheduling	1
Undressed (trailer)	Animal Planet, Discovery History, Discovery Science, TLC	Various	Scheduling	7
Olympics 2016	BBC	09/08/2016	Materially misleading	1
BBC News	BBC 1	14/07/2016	Race discrimination/offence	1
BBC News	BBC 1	28/07/2016	Drugs, smoking, solvents or alcohol	1
BBC News	BBC 1	28/07/2016	Drugs, smoking, solvents or alcohol	1
BBC News at Ten	BBC 1	08/08/2016	Generally accepted standards	2
Dragons Den	BBC 1	31/07/2016	Generally accepted standards	1
EastEnders	BBC 1	04/07/2016	Sexual orientation discrimination/offence	1
EastEnders	BBC 1	11/07/2016	Transgender discrimination/offence	2
EastEnders	BBC 1	18/07/2016	Violence	1
EastEnders	BBC 1	25/07/2016	Generally accepted standards	1
Hugh's War on Waste	BBC 1	28/07/2016	Generally accepted standards	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Radio 1 Summer Mix (trailer)	BBC 1	28/07/2016	Generally accepted standards	1
Red Rock	BBC 1	19/07/2016	Undue prominence	1
Red Rock	BBC 1	20/07/2016	Offensive language	1
Ride London – Surrey classic	BBC 1	31/07/2016	Other	1
The Andrew Marr Show	BBC 1	17/07/2016	Disability discrimination/offence	1
The Living and the Dead	BBC 1	12/07/2016	Hypnotic and other techniques	1
The One Show	BBC 1	15/07/2016	Animal welfare	1
The One Show	BBC 1	20/07/2016	Violence	1
The Secret Agent	BBC 1	17/07/2016	Generally accepted standards	1
United States of Hate	BBC 1	05/07/2016	Religious/Beliefs discrimination/offence	1
Wimbledon 2016	BBC 1	04/07/2016	Race discrimination/offence	1
Look North	BBC 1 North	05/08/2016	Generally accepted standards	1
Only Connect	BBC 2	08/08/2016	Generally accepted standards	3
Robot Wars	BBC 2	30/07/2016	Sexual orientation discrimination/offence	1
Top Gear	BBC 2	12/06/2016	Generally accepted standards	3
Top Gear	BBC 2	03/07/2016	Dangerous behaviour	1
Top Gear	BBC 2	03/07/2016	Generally accepted standards	1
Top Gear	BBC 2	03/07/2016	Religious/Beliefs discrimination/offence	1
Versailles	BBC 2	29/06/2016	Offensive language	1
BBC News	BBC News Channel	15/07/2016	Violence	1
The Andrew Marr Show	BBC News Channel	03/07/2016	Generally accepted standards	1
Newsbeat	BBC Radio 1	04/07/2016	Crime and disorder	1
Newsbeat	BBC Radio 1	06/07/2016	Crime and disorder	1
Chris Evans	BBC Radio 2	04/08/2016	Offensive language	1
Jeremy Vine	BBC Radio 2	08/07/2016	Violence	1
Michael Ball	BBC Radio 2	17/07/2016	Generally accepted standards	1
Paddy O'Connell	BBC Radio 2	12/07/2016	Crime and disorder	1
The Chris Evans Breakfast Show	BBC Radio 2	06/07/2016	Race discrimination/offence	1
Guilt Trip	BBC Radio 4	27/07/2016	Race discrimination/offence	1
PM	BBC Radio 4	28/07/2016	Generally accepted standards	2
Today	BBC Radio 4	01/08/2016	Generally accepted standards	1
Danny Kelly	BBC Radio WM	08/07/2016	Offensive language	1
Station Ident	Bob FM	16/06/2016	Advertising content	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
The Dumping Ground	CBBC	17/07/2016	Dangerous behaviour	1
24 Hours in A&E	Channel 4	20/07/2016	Generally accepted standards	1
999: What's Your Emergency?	Channel 4	28/07/2016	Suicide and self harm	2
Channel 4 News	Channel 4	11/07/2016	Gender discrimination/offence	1
Channel 4 News	Channel 4	12/07/2016	Due impartiality/bias	1
Channel 4 News	Channel 4	14/07/2016	Due impartiality/bias	1
Channel 4 News	Channel 4	15/07/2016	Generally accepted standards	17
Channel 4 News	Channel 4	18/07/2016	Due impartiality/bias	1
Channel 4 News	Channel 4	25/07/2016	Generally accepted standards	1
Channel 4 News	Channel 4	28/07/2016	Due impartiality/bias	1
Channel 4 News	Channel 4	n/a	Due impartiality/bias	1
Child Genius	Channel 4	19/07/2016	Under 18s in programmes	1
Dispatches	Channel 4	11/07/2016	Materially misleading	1
Eden	Channel 4	18/07/2016	Animal welfare	1
Eden	Channel 4	20/07/2016	Race discrimination/offence	1
Eden	Channel 4	08/08/2016	Animal welfare	2
GoggleBox: Brexit Special	Channel 4	03/08/2016	Offensive language	1
Gogglesprogs	Channel 4	17/06/2016	Under 18s in programmes	3
Gogglesprogs	Channel 4	08/07/2016	Under 18s in programmes	2
Hollyoaks	Channel 4	18/07/2016	Offensive language	1
Hollyoaks	Channel 4	25/07/2016	Generally accepted standards	1
Life Stripped Bare	Channel 4	05/07/2016	Nudity	1
Rio 2016 Paralympics (trailer)	Channel 4	26/07/2016	Generally accepted standards	1
Rude Tube	Channel 4	22/07/2016	Generally accepted standards	1
Sunday Brunch	Channel 4	07/08/2016	Generally accepted standards	1
The Last Leg	Channel 4	10/06/2016	Elections/Referendums	2
The Last Leg	Channel 4	01/07/2016	Dangerous behaviour	2
The Last Leg	Channel 4	07/07/2016	Dangerous behaviour	1
The Last Leg	Channel 4	15/07/2016	Generally accepted standards	1
Advertisements	Channel 4 / Classic FM	n/a	Advertising placement	1
Secrets of Online Shopping	Channel 4 + 1	29/06/2016	Disability discrimination/offence	1
Baby Sellers	Channel 5	01/07/2016	Violence	1
Big Brother	Channel 5	17/07/2016	Dangerous behaviour	1
Big Brother	Channel 5	18/07/2016	Generally accepted	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
			standards	
Big Brother	Channel 5	22/07/2016	Generally accepted standards	1
Big Brother	Channel 5	24/07/2016	Generally accepted standards	92
Big Brother	Channel 5	24/07/2016	Offensive language	1
Big Brother	Channel 5	24/07/2016	Violence	2
Big Brother	Channel 5	26/07/2016	Disability discrimination/offence	1
Big Brother	Channel 5	28/07/2016	Generally accepted standards	1
Big Brother: Live Final	Channel 5	26/07/2016	Voting	9
Big Brother's Bit on the Side	Channel 5	04/07/2016	Animal welfare	1
Big Brother's Bit on the Side	Channel 5	14/07/2016	Gender discrimination/offence	2
Big Brother's Bit on the Side	Channel 5	19/07/2016	Generally accepted standards	3
Brexit: The Big Debate Live	Channel 5	18/07/2016	Crime and disorder	1
Brexit: The Big Debate Live	Channel 5	18/07/2016	Due impartiality/bias	1
Celebrity Big Brother	Channel 5	28/07/2016	Generally accepted standards	3
Celebrity Big Brother	Channel 5	28/07/2016	Materially misleading	1
Celebrity Big Brother	Channel 5	28/07/2016	Offensive language	3
Celebrity Big Brother	Channel 5	30/07/2016	Nudity	1
Celebrity Big Brother	Channel 5	31/07/2016	Generally accepted standards	255
Celebrity Big Brother	Channel 5	31/07/2016	Other	1
Celebrity Big Brother	Channel 5	01/08/2016	Materially misleading	1
Celebrity Big Brother	Channel 5	03/08/2016	Generally accepted standards	95
Celebrity Big Brother	Channel 5	04/08/2016	Generally accepted standards	67
Celebrity Big Brother	Channel 5	05/08/2016	Violence	4
Celebrity Big Brother	Channel 5	06/08/2016	Generally accepted standards	43
Celebrity Big Brother	Channel 5	07/08/2016	Competitions	1
Celebrity Big Brother	Channel 5	07/08/2016	Materially misleading	1
Celebrity Big Brother	Channel 5	10/08/2016	Generally accepted standards	1
Dogs Make You Laugh Out Loud	Channel 5	05/08/2016	Generally accepted standards	1
Impractical Jokers (trailer)	Channel 5	31/07/2016	Nudity	1
The Dog Rescuer	Channel 5	19/07/2016	Animal welfare	1
The Nightmare Neighbour Next Door	Channel 5	06/08/2016	Fairness	1
The Wright Stuff	Channel 5	18/07/2016	Disability discrimination/offence	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
The Wright Stuff	Channel 5	19/07/2016	Due impartiality/bias	1
The Wright Stuff	Channel 5	27/07/2016	Generally accepted standards	1
Toyota's sponsorship of cricket on 5	Channel 5	25/07/2016	Sponsorship credits	1
Ultimate Celeb Power Couples	Channel 5	31/07/2016	Generally accepted standards	1
Chart Show's Top 40 Singles Chart	Chart Show TV	12/07/2016	Sexual material	1
The Aquabats Super Show	CITV	16/07/2016	Generally accepted standards	1
Classic FM Romance promotion	Classic FM	n/a	Materially misleading	1
Betsafe's sponsorship of primetime on Dave	Dave	22/07/2016	Sponsorship credits	1
Betsafe's sponsorship of primetime on Dave	Dave	25/07/2016	Sponsorship credits	1
See the Funny Side (promotion)	Dave	21/07/2016	Generally accepted standards	1
Russell Howard's Good News	Dave	16/07/2016	Generally accepted standards	1
Wheeler Dealers	Discovery HD	04/07/2016	Undue prominence	1
Coach Trip	E4	27/07/2016	Disability discrimination/offence	1
Containment	E4	13/07/2016	Race discrimination/offence	1
Hollyoaks	E4	19/07/2016	Generally accepted standards	1
Hollyoaks	E4	29/07/2016	Offensive language	1
Rio 2016 Paralympics (trailer)	E4	27/07/2016	Generally accepted standards	1
About a Boy	Film4	07/07/2016	Scheduling	1
The Rebel	GOLD	25/07/2016	Religious/Beliefs discrimination/offence	1
"More Music Variety" ident	Heart FM	n/a	Materially misleading	1
Britain's Got Talent	ITV	28/05/2016	Scheduling	1
Britain's Got Talent	ITV	n/a	Generally accepted standards	1
Catchphrase	ITV	30/07/2016	Materially misleading	1
Coronation Street	ITV	04/07/2016	Generally accepted standards	2
Coronation Street	ITV	11/07/2016	Generally accepted standards	1
Coronation Street	ITV	29/07/2016	Generally accepted standards	1
Coronation Street	ITV	08/08/2016	Offensive language	1
Emmerdale	ITV	11/07/2016	Scheduling	1
Emmerdale	ITV	13/07/2016	Scheduling	1
Emmerdale	ITV	13/07/2016	Violence	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Emmerdale	ITV	14/07/2016	Nudity	1
Emmerdale	ITV	21/07/2016	Drugs, smoking, solvents or alcohol	1
Emmerdale	ITV	25/07/2016	Violence	1
Emmerdale	ITV	27/07/2016	Violence	1
Emmerdale	ITV	29/07/2016	Animal welfare	1
Emmerdale	ITV	29/07/2016	Disability discrimination/offence	1
Euro 2016	ITV	10/07/2016	Flashing images/risk to viewers who have PSE	1
Good Morning Britain	ITV	21/06/2016	Due impartiality/bias	1
Good Morning Britain	ITV	14/07/2016	Due impartiality/bias	1
Good Morning Britain	ITV	14/07/2016	Sexual orientation discrimination/offence	1
Good Morning Britain	ITV	15/07/2016	Due impartiality/bias	2
It'll Be Alright on the Night	ITV	19/08/2016	Generally accepted standards	1
ITV News	ITV	15/07/2016	Violence	1
ITV News	ITV	16/07/2016	Crime and disorder	1
ITV News	ITV	19/07/2016	Gender discrimination/offence	1
ITV News	ITV	25/07/2016	Due impartiality/bias	1
ITV News	ITV	28/07/2016	Due accuracy	1
ITV News	ITV	30/07/2016	Due accuracy	1
Loose Women	ITV	04/07/2016	Sexual material	1
Loose Women	ITV	07/07/2016	Generally accepted standards	1
Loose Women	ITV	19/07/2016	Generally accepted standards	1
McCain's sponsorship of Emmerdale	ITV	29/07/2016	Sponsorship credits	1
The Big Fish Off	ITV	18/07/2016	Sexual orientation discrimination/offence	1
The Chase	ITV	05/08/2016	Competitions	1
The Investigator: A British Crime Story	ITV	28/07/2016	Animal welfare	1
The Jeremy Kyle Show	ITV	25/07/2016	Under 18s in programmes	1
The Jeremy Kyle Show	ITV	26/07/2016	Drugs, smoking, solvents or alcohol	1
The Scorpion King	ITV	06/08/2016	Offensive language	1
This Morning	ITV	08/06/2016	Due impartiality/bias	1
This Morning	ITV	05/07/2016	Generally accepted standards	1
This Morning	ITV	20/07/2016	Dangerous behaviour	1
This Morning	ITV	22/07/2016	Religious/Beliefs discrimination/offence	1
This Morning	ITV	26/07/2016	Violence	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
This Morning	ITV	29/07/2016	Race discrimination/offence	1
This Morning	ITV	03/08/2016	Fairness	1
You've Been Framed!	ITV	06/08/2016	Generally accepted standards	1
ITV News London	ITV London	15/07/2016	Race discrimination/offence	1
Hell's Kitchen	ITV2	03/08/2016	Generally accepted standards	1
The Jeremy Kyle show	ITV2	01/08/2016	Generally accepted standards	1
Inspector Morse	ITV3	10/07/2016	Violence	1
Law and Order: UK	ITV3	27/07/2016	Animal welfare	1
Tour de France	ITV4	17/07/2016	Advertising minutage	1
Dinner Date	ITVBe	26/07/2016	Sexual material	1
Dinner Date	ITVBe	06/08/2016	Sexual material	1
SheZow	Kix	05/07/2016	Scheduling	1
James O'Brien	LBC 97.3 FM	25/07/2016	Religious/Beliefs discrimination/offence	1
Katie Hopkins	LBC 97.3 FM	30/07/2016	Generally accepted standards	1
Katie Hopkins	LBC 97.3 FM	31/07/2016	Generally accepted standards	1
Nick Ferrari	LBC 97.3 FM	28/07/2016	Generally accepted standards	1
Nick Ferrari	LBC 97.3 FM	08/08/2016	Due impartiality/bias	1
The Out-Laws	More4	29/07/2016	Animal welfare	1
Advertisements	n/a	n/a	Advertising placement	1
Shimmer and Shine	Nickjr+1	09/08/2016	Scheduling	1
Let's Meet Dr Zakir	Peace TV	07/07/2016	Crime and disorder	1
Blue Bloods	Sky Atlantic	12/07/2016	Religious/Beliefs discrimination/offence	1
Game of Thrones	Sky Atlantic	27/07/2016	Sexual material	1
Hooten & The Lady (trailer)	Sky News	09/08/2016	Nudity	1
Out and Proud	Sky News	10/08/2016	Generally accepted standards	1
Out and Proud (trailer)	Sky News	10/08/2016	Generally accepted standards	1
Sky News	Sky News	11/07/2016	Due impartiality/bias	1
Sky News	Sky News	13/07/2016	Privacy	1
Sky News	Sky News	14/07/2016	Gender discrimination/offence	1
Sky News	Sky News	15/07/2016	Due accuracy	1
Sky News	Sky News	15/07/2016	Offensive language	1
Sky News	Sky News	21/07/2016	Race discrimination/offence	1
Sky News	Sky News	26/07/2016	Generally accepted standards	1
Sky News	Sky News	27/07/2016	Generally accepted standards	2

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Sky News	Sky News	28/07/2016	Generally accepted standards	5
Sky News at Ten	Sky News	23/07/2016	Harm	1
Sky News with Kay Burley	Sky News	12/07/2016	Due impartiality/bias	1
Scottish Premiership	Sky Sports 1	05/08/2016	Materially misleading	1
Soccer AM	Sky Sports 1	06/08/2016	Materially misleading	1
Competition	Smooth Radio West Midlands	11/07/2016	Competitions	1
Car Crash TV (trailer)	Spike	02/08/2016	Violence	1
Police Interceptors	Spike	29/07/2016	Offensive language	1
Yeh Hai Mohabbatein	Star Plus	30/07/2016	Offensive language	1
Studio 66 Days	Studio 66 TV2	11/07/2016	Participation TV - Offence	1
The Alan Brazil Sports Breakfast	Talksport	30/06/2016	Gender discrimination/offence	5
News Hour	Times Now	20/07/2016	Crime and disorder	1
Advertisements	Various	03/08/2016	Advertising minutage	1
Matt Richardson	Virgin Radio	04/07/2016	Generally accepted standards	1

Complaints outside of remit

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

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

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

Complaints about television or radio programmes

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

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Advertisement	AMC UK	24/07/2016	Advertising content	1
Programming	BBC	10/08/2016	Outside of remit	1
BBC News	BBC 1	03/07/2016	Due impartiality/bias	1
BBC News	BBC 1	24/07/2016	Due impartiality/bias	1
BBC News	BBC 1	29/07/2016	Due impartiality/bias	1
BBC News	BBC 1	11/08/2016	Outside of remit	1
Look North	BBC 1	03/11/2015	Due accuracy	1
Olympics 2016	BBC 1	06/08/2016	Outside of remit	1
Olympics 2016	BBC 1	08/08/2016	Outside of remit	1
Olympics 2016	BBC 1	10/08/2016	Outside of remit	1
United States of Hate	BBC 1	05/07/2016	Due impartiality/bias	1
Panorama	BBC 2	22/07/2016	Due impartiality/bias	1
Wimbledon 2016	BBC Red Button	n/a	Outside of remit	1
Community Shield Football	BT Sport 2	07/08/2016	Outside of remit	1
Advertisement	CBS Reality	01/08/2016	Advertising content	1
Channel 4 News	Channel 4	31/07/2016	Outside of remit	1
Channel 4 News	Channel 4	02/08/2016	Outside of remit	1
Celebrity Big Brother	Channel 5	06/08/2016	Outside of remit	1
Programming	Channel i	02/08/2016	Outside of remit	1
Advertisement	Comedy Central	19/07/2016	Advertising content	1
Advertisement	Comedy Central	08/08/2016	Advertising content	1
Advertisement	Discovery HD	27/07/2016	Advertising content	1
Advertisement	Discovery Science	31/07/2016	Advertising content	1
Advertisement	Drama	30/07/2016	Advertising content	1
EJNYC	E! Entertainment	06/08/2016	Outside of remit	1
Cruise at 6	Holiday and Cruise Channel	07/08/2016	Advertising content	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Skyfall	ITV	06/08/2016	Outside of remit	2
Advertisement	ITV	02/08/2016	Advertising content	1
Advertisements	Nat Geo Wild	09/08/2016	Advertising content	1
Advertisement	Sky Sports 2	06/08/2016	Advertising content	1
Advertisement	Talksport	01/08/2016	Advertising content	1
Times Now Blueprints	Times Now	18/07/2016	Outside of remit	1
Advertisement	Tiny Pop	01/08/2016	Advertising content	1

Complaints about on demand services

Programme	Service name	Accessed date	Categories	Number of complaints
Programming	Eurosport Player	n/a	Other	1
Hell and Back	Netflix	20/07/2016	Protection of under 18s	1

For more information about how Ofcom assesses complaints about on demand services, go to: http://stakeholders.ofcom.org.uk/binaries/broadcast/on-demand/rules-guidance/rules_and_guidance.pdf

Investigations List

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

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

Here are alphabetical lists of new investigations launched between 25 July and 14 August 2016.

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

Programme	Broadcaster	Transmission date
Item for the Islamic Human Rights Commission	Ahlulbayt	14 June 2016
Red Rock	BBC 1	20 July 2016
Various programmes	Believe TV	15 June 2016
Labour Party EU Referendum Debate	BEN TV	10 June 2016
FOX and Friends	FOX News	28 June 2016
The Road to Martyrdom	London Live	07 July 2016
Harvey Beaks	Nicktoons	26 June 2016

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

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

Programme	Broadcaster	Transmission date
Kab Tak	ARY News	26 January 2016

For more information about how Ofcom considers and adjudicates upon Fairness and Privacy complaints about television and radio programmes, go to: <http://stakeholders.ofcom.org.uk/broadcasting/procedures/fairness/>