

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.

Note of Decision in Sanctions Case

Heart for the World

Daystar, 7 June 2015, 21:30

Introduction

Daystar was a television channel broadcasting evangelical Christian programming. It was broadcast on the UK digital terrestrial platform until the end of 2015. The Ofcom digital terrestrial licence for this service is held by Daystar Television Network Limited (“DTNL” or “the Licensee”)¹.

This note relates to Ofcom’s breach decision² published on 23 May 2016, in issue 305 of the Broadcast and On Demand Bulletin in which the above programme was found in breach of Rules 2.1 and 4.6 of the Code. Ofcom also put the Licensee on notice that we considered the breaches to be serious, and would consider them for the imposition of a statutory sanction.

Summary of Decision

Ofcom has now considered the case in accordance with Ofcom’s Procedures for the consideration of statutory sanctions in breaches of broadcast licences³. We decided that, in the circumstances of this case, it would not be appropriate or proportionate to continue with the current sanctions process.

Ofcom was minded to reach a provisional view that a financial penalty should be imposed. However, in order to reach a Preliminary View on the appropriate and proportionate amount of the penalty, it was necessary for Ofcom to have regard to, among other things, the size and turnover of the Licensee⁴. We took into account that the service was no longer broadcasting on the digital terrestrial platform and therefore was not generating any revenue. Also according to Companies House records, DTNL was a dormant company and had submitted dormant accounts showing that, as at 30 November 2015, it had no assets.

In these circumstances Ofcom decided, exceptionally, that it was not appropriate or proportionate to proceed further with consideration of a financial penalty in this case, particularly as the central objective of imposing a penalty is deterrence and that any such penalty must be sufficient to ensure that it will act as an effective incentive to compliance.

Ofcom did not consider any of the other sanctions at its disposal were appropriate: the service is no longer broadcasting so it was not appropriate to direct the Licensee

¹ DTNL notified Ofcom in 2015 that it wished to cease broadcasting on Freeview on the UK digital terrestrial television (“DTT”) platform under this Ofcom licence and planned to seek a new licence from another EU jurisdiction. This channel ceased broadcasting on this platform in this platform in the early winter of 2015.

²https://www.ofcom.org.uk/_data/assets/pdf_file/0017/50615/issue_305.pdf

³http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/proceduresjuly2013/Procedures_for_consideration.pdf

⁴ See Ofcom’s Penalty Guidelines: <http://www.ofcom.org.uk/files/2010/06/penguid.pdf>

to broadcast a summary of Ofcom's decision; and despite the seriousness of the breaches, it would have been disproportionate to revoke DTNL's licence.

Broadcast Standards cases

In Breach

Sawal Yeh Hai

ARY News, 7 February 2016, 17:05

Introduction

ARY News provides news and general entertainment programming, in Urdu and English, to the Pakistani community in the UK. The licence for ARY News is held by ARY Network Limited (“ARY” or “the Licensee”).

Ofcom was alerted to this live programme¹ by 10 complainants who objected to various critical statements within the programme about Malala Yousafzai (“Malala”)² and her father Ziauddin Yousafzai. In particular, complainants objected to the programme presenter and programme guests calling Malala: an “*enemy of Islam*”; a “*Jewish and Western agent*”; a “*traitor*” and “*anti-Pakistan*”. Complainants were also concerned about Malala being labelled a “blasphemer”.

Ofcom translated³ the programme from the original Urdu. We viewed the programme, which was broadcast live, in its entirety alongside the relevant translation. We noted that *Sawal Yeh Hai* was a 52 minute political discussion programme presented by Dr Danish, which focused on a discussion of Malala’s book ‘I am Malala...’ and what was described by Dr Danish as a “*rebuttal of this book*” entitled ‘I am not Malala’. Apart from the presenter, Dr Danish, there were three guest contributors featured: Mirza Kashif, the author of ‘I am not Malala’; Fayyaz ul Hasan Chohan, a leader of the Pakistani political party, the Pakistan Tehreek-e-Insaf (“PTI”); and Ajmal Wazir, a politician from the Pakistan Muslim League (“PML(Q)”). Mr Kashif was in the studio with Dr Danish, while Mr Chohan and Mr Wazir were shown speaking via separate video links from two other studios.

During his introduction to the programme, Dr Danish stated:

¹ Ofcom also received a complaint from Ms Shahida Choudhry, made on behalf of Mr Ziauddin Yousafzai, of unjust or unfair treatment in the programme as broadcast. Ofcom’s Adjudication on this complaint is on page 38 of this issue of the Broadcast and On Demand Bulletin.

² Malala is from the Swat valley district of northern Pakistan. Following increasing control of this region by the Taliban, girls were prohibited from attending school, which led to Malala campaigning against this prohibition. In 2012, when Malala was 15, one of the Taliban reportedly fired three shots at her, leaving her seriously wounded. She was flown to the UK to receive treatment. She subsequently published a book ‘I am Malala: The Girl Who Stood Up for Education and Was Shot by the Taliban’. In 2014, Malala was a joint winner of the Nobel Peace prize. She and her father set up the Malala Fund which aims to “to enable girls to complete 12 years of safe, quality education so that they can achieve their potential and be positive change-makers in their families and communities”.

³ As part of our investigation, Ofcom gave ARY an opportunity to comment on the accuracy of the translations in this case and the Licensee did not raise any concerns with these. We therefore relied on these translations for the purposes of this investigation.

“But the question that people raise in Pakistan, and in Swat in particular, is that after Malala was shot and then had to leave the country, the question that people ask is, what is it that she has done that has made her such a revered world figure?”

The presenter Dr Danish then said:

“That same Malala then stands on the world stage making speeches, and writes this book [Dr Danish was shown holding up Malala’s book], in which she discusses the ideology of Pakistan, Islamic laws, Allah, Rasool [the Prophet Muhammad], and atomic energy. Pakistan’s status, and institutions, the Pakistani army, Pakistan’s ISI [Inter-Services Intelligence]”.

Dr Danish stated that Mirza Kashif, in his book, had said:

“Malala has blasphemed the ideology of Pakistan, Islamic laws and even God, Rasool, and has said such things, that according to him, amount to blasphemy”.

Dr Danish continued to make criticisms of Malala’s book, including her views on Pakistan’s blasphemy law. He also made reference to statements that Malala had purportedly made in her book ‘I am Malala’, as follows:

“And this is a reference to the law brought in by General Zia that the requirement is for four witnesses in the case of rape where the victim has to provide four witnesses, which [Malala] has criticised”.

“When referring to secularism and socialism [Malala] then refers to ‘Militant Islam’. She therefore refers to Islam as ‘Militant Islam’”.

“[Malala] says one other major thing on page 72, not sure what we can say about this but here goes. [Quoting Malala from the book] ‘I wrote a letter to God ‘Dear God’ I know. You see everything, but there are so many things that maybe, sometimes, things get missed”. Now as a student myself I am disturbed by this sentence. I will ask him [Mirza Kushif] to give his thoughts on this, and explain how it is possible for God himself to forget something. This is a big statement to make”.

“Then [Malala] goes on to write about 1974 on page 75. In which she says, talks about Ahmadis, and she says that under Pakistan laws, despite the fact that they are Muslims and on page 75 says [they] should be within Islam, and that is what she has written”.

“On page 79 [Malala] has written ‘abolish the law in which a woman has to produce four male witnesses’. So she has criticised this as well, which is in fact a part of Islamic law. On page 173 she says ‘In Pakistan we have sometimes called the Blasphemy Law, which protects the Holy Qur’an from desecration. Under General’s Islamisation...’. This is in reference to General Zia ul Haq, and in this she has criticised the Blasphemy Law”.

Mirza Kashif also made a number of criticisms of Malala’s book ‘I am Malala’, as follows:

“No Muslim has the right to criticise any commandment of Allah, and in this book that is what happens. First is the reference to the requirement for four witnesses in cases of rape. Now this is a clear commandment in the Qur’an and is not a

matter of any debate or discussion, and all [Malala] has done is present the Western point of view that is common amongst our Kaalay Angrez⁴, and our Desi⁵ Liberals. That is the point of view that she has presented. Now the other thing that she talks about is militant Islam. What is this militant Islam that she talks about? That is not the version of Islam that I present to my children – terrorist Islam? By using this term she has attacked our Islamic ideology. Then she talks about a letter that she has written in which, God forbid, and these are her words and I am obliged to mention them. In this she addresses Allah and says to Him, ‘you do so much, but occasionally you miss some things’. This is straight forward blasphemy. We have absolute belief in Allah and that will remain until the end of time, and our absolute faith is in Him and his final Prophet. Anybody who doubts that, is committing Kuf⁶”.

“[Malala] has also indirectly criticised the Blasphemy laws. She has supported Aasia⁷, who has been convicted for blasphemy. Further on she has supported Ahmadis. She complains that our government has declared them non-Muslim. Does she not know that according to Second Amendment of the Constitution [of Pakistan] anyone who does not believe in the finality of prophethood is a non-Muslim?”

“Later [Malala] says that when I was attacked it was in broad daylight. I would pose the question to her, ‘how many of our innocent children have been killed as a result of these drone attacks?’ If you had been killed in a drone attack would we be having these programmes about you? Would you then have been receiving awards like this? She is being used as an organ of the West. In terms of the ideology of Pakistan does she not realise the hundreds of thousands of lives that have been sacrificed in this struggle? Referring to the country that was created [Pakistan], she refers to it so lightly as a piece of real estate! Later on she says that a mother does not deceive its child. Malala ought to know, or her traitorous father should know, that there are millions of children in Pakistan who know how to show respect to their mother”.

Dr Danish then discussed what Malala had written in her book about some of Pakistan’s national institutions. For example, Dr Danish said the following:

“On page 116 [Malala] says ‘The Taliban presence in Swat was not possible without the support of some in the army and the bureaucracy”.

“To denigrate our institutions [Malala] says that either they had weak eyesight or they couldn’t [deliberately] see the Taliban. Then on page 159 she says that ‘my father received a letter from the army alleging that we had allowed the Taliban to control Swat’. ‘We had lost some of our most valuable lives, and this happened because of your [Pakistan army’s] negligence...’The military is no different than the terrorists”.

⁴ Kaalay Angrez translates into English from Urdu as ‘Black English’, and is intended to be used in a jocular way to describe any Asian who adopts western ways or attitudes.

⁵ Desi: A person of Indian, Pakistani, or Bangladeshi birth or descent who lives abroad.

⁶ Kuf^r is the Islamic term for “disbelief”, which is considered a sin.

⁷ Aasia Bibi: A Christian woman who has been sentenced to death for blasphemy in Pakistan.

“On page 171 [Malala] says ‘our army that had a lot of strange side businesses. She says that they have a lot of strange side businesses...’”

An excerpt from an English language documentary was then played which began by showing a room with prayer mats and included a close-up shot of a cigarette butt. (It soon became clear that these pictures were of Malala’s school classroom after the school had been attacked.) In vision Malala said: *“I want to become a doctor”*. As the clip was being played, a caption stated in Urdu:

“Recognise this traitor [Mr Yousafzai], who before the international media, wants to present the Pakistan army as dirty and not worthy of respect. On one chair you can see a prayer mat, and on the floor, you can see the prayer roll laid out. And for the sake of one cigarette butt? Don’t you yourself smoke?”

In the documentary, Malala’s father, Mr Yousafzai, was then shown saying in English that: *“The people who lived here, I don’t know how they lived, but they were very dirty”*. The documentary’s narrator stated: *“It is unclear who infiltrated the school, was it the Taliban or was it the military? It doesn’t really matter”*. Mr Yousafzai was then shown pointing at a shoe print on a chair and commenting that it was: *“The print of a very big shoe”*. The narrator then stated that *“For the past year, Ziauddin [Mr Yousafzai] has felt trapped between both [the Taliban and the Pakistan military]”*.

A caption stated in Urdu: *“Recognise this traitor [Mr Yousafzai] who is using this child to denigrate the Pakistan Army. Is there any room for doubt that he is a traitor?”*

The narration continued: *“The identity of the intruders, then she finds the answer”*.

Malala stated:

“I was very proud of my army, but when I saw my school in this condition, I was very ashamed of my army [Malala was shown pointing out the state of the classroom]. This is my maths class, but it is not a class [anymore], this is a bunker. This is welcome to Pakistan [she was shown pointing at two large shell holes in the classroom wall]”.

Dr Danish and Mirza Kashif then discussed the clip that had been shown.

Mirza Kashif stated:

“[Malala] may be ashamed of the army...The only reason she is alive today is because of that very same army. It is from the very same army from whom they borrowed 1,100,000 rupees via General Athar Abbas, and a further 100,000 from General Qamar. She mentions this in her book. This is the same army that cleared the Taliban terrorists from Swat, and this is her traitorous father who used to go around weeping. Then she says in her book that ‘when my father saw the army in Swat, he burst out crying’. This is the same army about who she uses the term ‘strange businesses’, and refers to their high handed behaviour, and militants...In her whole book, she can’t see anything to feel proud about”.

Dr Danish said: *“Show that clip in which you see her father raising a slogan”*.

Mirza Kashif added:

“It’s really important to understand this point. Because of traitors like this, Pakistan’s image is being tarnished. When that American⁸ made those comments about Pakistan, he wasn’t referring to proud Pakistanis but was in fact referring to traitors like this man [Mr Yousafzai].”

At this point, a caption in Urdu stated:

“Who is this person who is leading and instigating the raising of slogans against Pakistan, in front of the world’s media? Does this not count as treason?”

A film clip was shown of Ziauddin Yousafzai holding banners and shouting slogans. He said: *“What does Pakistan stand for? Bomb explosions and kidnappings!”*

Mr Kashif then stated:

“Now you tell me, is there anyone who is a greater blasphemer of the Prophet and Allah than [Ziauddin Yousafzai]? What is she [Malala] trying to portray? What is he [Mr Yousafzai] trying to portray? And another thing, when she said ‘those who lived here were very dirty’, what was she calling dirty, the prayer mats? That room was being used as a mosque, and she calls that dirty? I ask you, when we have traitors like this, do we stand a chance of becoming united as a nation? These people receive funds. There are 68 billion dollars in the Malala fund. What are they used for?”

Dr Danish said: *“Show us that picture in which they are all sitting with that CIA official”.*

Mirza Kashif commented: *“They are against Pakistan, its ideology, its very existence”.*

A picture was shown of Malala and her father seated at a table with officials. Their faces were circled. A caption read: *“Malala and her father with the US Ambassador and other officials”.*

Dr Danish remarked:

“This is a picture in which we can see a very lowly teacher of a private school and a young girl with Brigadier Martin Jones, a CIA official. Richard Holbrooke, Malala’s father and the US Ambassador seated with other military officials. Just imagine how this lowly teacher from a private school and his daughter managed to associate themselves with such senior [US] government officials. Our Generals and Ministers could not even get an audience at this level”.

Mirza Kashif then questioned how Malala had achieved her fame and said:

“The speeches [Malala] made were written by her father...She has admitted that he [her father] wrote the material, and she used to then say the words. In fact in the book, she uses the term that he used to ‘guide her’. It is very clear, in fact that the [Malala] blog was written by Abdul Hay Kakkar, the book is in fact in your

⁸ A reference to Anatol Lieven, who wrote the book ‘Pakistan: A Hard Country’.

hand, and was written by Christina Lamb⁹ who was implicated in the Osama Bin Laden scandal. She is an enemy of Islam, and she wrote this book”.

Both Dr Danish and Mr Kashif then questioned how much money there was in the Malala Fund¹⁰.

Dr Danish then asked for a picture of a boy called Walid Khan, who had also been shot by the Taliban, to be shown. Photographs of Malala and Walid Khan were shown side by side. Below the picture of Malala, a caption stated:

“Was shot by a bullet, and fled the country, received free housing, her father gets a job and [she] a Nobel Prize”.

Below the picture of the boy, was the caption:

“Walid Khan was shot eight times in the face and body, and this prince still returned to the same school. Those who really get shot act like this”.

Dr Danish then stated:

“Now you can see two photographs in which you can see Malala who is now outside of the country and there is a lot of chatter that she took a bullet for the sake of education and yet she now lives overseas, and according to him [Mr Kashif] she has 68 billion dollars in her account, and the world stands beside her. But with this other child, who was shot eight times, nobody stands beside him”.

Dr Danish asked his second guest, Fayyaz Chohan what he thought about this. Mr Chohan responded:

“She is a very naïve girl, and all the controversies surrounding Malala have been recounted by Mr Kashif in his book ‘I am not Malala’, and I salute him for his effort. But I want to point out to you that behind these controversies there are two main characters, one of whom is Christina Lamb and the other is her [Malala’s] father Ziauddin”.

Dr Chohan spoke about Ms Lamb and then went on to discuss Mr Yousafzai:

“The other character is Ziauddin [Mr Yousafzai], who is the most alarming of characters. He is selling the contributions of his child. Look up his history. On 14 August 1997 [Pakistan’s Independence Day] he commemorated that day as a ‘Black Day’. He was charged with wearing a black armband. He has been charged with stealing electricity. He holds the same political opinions of those, who to this day have not recognised the state of Pakistan. I would ask you another thing. When a person is barely touched by a bullet you give her an award, but the children of APS¹¹ who were shot in every part of their bodies, and there is no recognition of them, no prize for them. Did anybody from the international community stand up for the students and teachers of Charsadda who were attacked and killed? Human rights organisations remained silent. I

⁹ Christina Lamb is a British journalist who co-authored with Malala the book ‘I am Malala...’ discussed in the programme.

¹⁰ See the introduction.

¹¹ The Army Public School in the north-western Pakistani city of Peshawar.

would say another thing. The 175 children of the Damadola Madrasa who were only studying the Qur'an and were killed in a drone attack, where were Christina Lamb, Richard Holbrooke, David Cameron, Barack Obama then, did they not see that? As far as I am concerned I have more respect for the children of APS, the students of Charsadda and every single student who returned to their school, and I salute them".

Dr Danish then said:

"I will ask [Ajmal Wazi] about this Malala who was supposedly shot because of her campaign on behalf of education. I will ask him how many Malalas we have in this country who deserve similar awards, and what is it about this Malala [holding up Malala's book] who receives all this recognition, and yet all these others have suffered far greater".

Soon afterwards, Mr Danish said

"Once again I am showing the picture of Malala who was only shot once and Walid who was shot seven times. Who to this day remains at APS school".

The photographs of Malala and Walid Khan which had been shown earlier in the programme were once again shown side by side with the same captions as those set out above.

Ajmal Wazir, the third and final of Dr Danish's guest, then spoke about the many children who had been affected by terrorism and stated "...to this day you will find many Malalas...". He then said:

"So I want to address her father and say to him directly that this agenda you are pursuing was controversial right from the outset. We all knew this. All this talk about the military, had it not been for this very same military, could Malala have gone to the West? They were the ones who rescued her, they were the ones who gave her money, and sent her abroad".

A caption stated: "*Malala's father is a man of an alarming character says Fayyaz Chohan*".

Dr Danish spoke again about the injustice he felt regarding the attention Malala had received. He said:

"I say to Richard Holbrooke, to the USA, to all those international interests conspiring against Pakistan, that you have one Malala, but we have 50,000 Malalas...Malala you have gone very far from us! Malala, you have run away and left us! What are you doing for the sake of education in Pakistan today?"

Dr Danish then asked Mr Kashif what his thoughts were on this. Mr Kashif stated:

"This Malala, whose whole [story] is based on fraud. Her father, who on Pakistan's Independence Day, wears a black armband. Who has a conviction, and was convicted in a case of treason. We have a Prime Minister who gets convicted and he serves a sentence of 30 seconds, and is relieved of his Prime Ministership and then we have the man [Hussan Haqani]¹² who sits in the

¹² This is a reference to Mr Hussan Haqani's term as Pakistan's Ambassador to the United States.

Pakistan embassy and issues orders about Shakil Afridi despite the fact that he was convicted...He [Mr Haqani] tried to blackmail us over Shakil Afridi and he said that we must hand him over to the USA. One traitor siding with another traitor. What a strange thing to say. On the one hand he [Mr Yousafzai] says that she [Malala] was attacked, but as her father, he should have gone to her [in the hospital where she was being treated after being shot]”.

Dr Danish agreed and said that Mr Yousafzai was “*standing elsewhere*”. Mr Kashif stated:

“Yes, she admits that her father made his speech first, and then came over there [to the hospital] and spoke in English”.

Dr Danish said:

“Yes, and when she went abroad for treatment, he went around saying ‘I want a visa, I want a visa for my family’. A father would have been beside her [in the hospital], and would not have been running everywhere. What do you think is their agenda, who are the people behind this?”

Mr Kashif responded:

“The agenda is very clear and the reason that she is being used as a puppet is that where do you think that 68 billion dollars is going to be used. It is going to be used on introducing a secular education policy and secularisation in the country. We want to follow our own ideology and our own constitution and these people want to give us funding for [secularisation]”.

Dr Danish and Mr Kashif questioned again who was behind the book ‘I am Malala’ and what Malala and her father’s agenda was.

Mr Kashif stated:

“The West wants to portray Pakistan as a failed state, and that is why they pursue such agendas. I want to use the platform of your programme to openly challenge Malala and her father. I have challenged them many times before and she has never replied because she knows that if she speaks, she will be exposed. I ask her, if you are a genuine [Muslim], do you condemn the blasphemy sketches, or is she like her father, and thinks it is all about freedom of expression? The Satanic Verses that your father defended as freedom of expression, do you condemn the book? Do you condemn Israeli aggression, do you condemn Indian aggression? Of course she will never do that! Because that is where she is getting her funding from”.

Mr Kashif then said:

“In Pakistan we have millions of daughters. We have the Qur’an and Sunnah protecting us. We have to galvanise the nation. As for you Malala, I say to you and your father, I challenge you again. Come to Pakistan, your legs tremble at the very thought of coming back. You tell me which [country] you feel most secure [in], and I will come over there and expose you Inshallah [God willing]! If not, you should join your hands together and seek forgiveness from the entire nation of Pakistan, otherwise the nation has seen what you are all about”.

Dr Danish thanked his guests and finally stated:

“Finally I would say, that the same Malala, who doesn’t even know the meaning of the word ‘love’, and yet a few days later she writes this book [holding the book up to screen]. In the book there are many things that Mr Kashif has highlighted, and he explained that she is ridiculing Islamic Laws, she is ridiculing institutions, she is ridiculing the ideology of Pakistan. The question is who is behind all of this? It is clear, that it is the same people who have the mindset of Salman Rushdie, and that of Tasleema Nasreen they are the ones behind this. A lowly girl and a lowly teacher, and there is Richard Holbrooke”.

The programme ended.

At the beginning and end of the programme, a caption first in English and then in Urdu stated:

“Disclaimer: It is our responsibility not to present opinion as facts. As long as distinction between fact and opinion is clear. As part of ARY philosophy we bring diverse opinions to enrich and empower our viewers. This programme may contain opinions of host and guest which do not necessarily reflect that of the organization. For more information and give feedback visit our website. www.arynews.tv”.

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

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

We therefore asked the Licensee how the material complied with this rule.

Response

ARY said that *Sawal Yeh Hai*, which means "This is the Question" was a debate programme and the presenter “made clear that he was discussing two books – ‘I am Malala’ and ‘I am not Malala’”. It added that the author of ‘I am not Malala’ took part in the programme and “there was critical debate about Malala, her publicity campaign and comments made in her book about Pakistan”. The Licensee acknowledged that the programme “contained critical comments about Malala and her father which had the potential to offend some viewers”. However, it argued that these comments were “presented in the form of debate not a personal attack”.

ARY said that the programme was “quite a highly charged discussion and did contain critical comment” and the presenter of the programme “is known to be very direct in his approach”. The Licensee set out a number of contextual factors which in its view justified the potential offence. For example, it argued that:

- the content did not go “beyond what viewers would expect in this type of debate”;
- there were “no strong visuals” in the programme;
- the participants in the programme were “exercising their right to freedom of expression by commenting on information in the public domain”; and,

- there was “a clear warning to viewers before and after the programme that ARY has a responsibility NOT to present opinion as facts and that the channel brings diverse opinions to enrich and empower viewers”. ARY added that these warnings were shown “to provide context and a warning to viewers that personal views may be expressed in the show but these were not presented as facts or views held by the channel”.

ARY also made representations on Ofcom’s Preliminary View in this case, which was to record a breach of Rule 2.3 of the Code.

The Licensee said it “struggle[d] to understand why a programme that Ofcom has judged to contain unfair comments about Malala and her father under Section Seven of [the] Code [‘Fairness’]¹³ is simultaneously being investigated under Section Two [‘Harm and Offence’]” of the Code. It added that Ofcom’s Preliminary View focused “on the potential to cause offence where the viewers who complained have objected to what they perceive to be unfair comments about Malala” (Licensee’s emphasis). ARY therefore argued that “it is important to review [whether] the elements highlighted in the” Preliminary View had “the potential to cause offence”. It added that “Many of these elements relate to tone, emphatic expression and how the translation from Urdu has been interpreted and fail to take account of context”.

The Licensee highlighted the following contextual factors as being, in its view, particularly relevant:

- “The presenter’s style is known to be direct and emphatic and regular viewers expect this animated approach to debate.” ARY did not agree that the presenter’s “delivery equated to ‘at times shouting’” as described in Ofcom’s Preliminary View.
- “[T]he programme talked about blasphemy in the context of Malala’s book favouring the approach of Western freedom of expression over deference to the Prophet and sacred references. It was not a personal attack” as suggested in Ofcom’s Preliminary View.
- “The term ‘fled’ was “not used pejoratively” in the programme as “Malala had to [flee] for her security as well as her medical needs”.

ARY also said that the “juxtaposition of images and descriptions of Malala and Walid Khan are highly subjective” and it questioned how, in the Preliminary View, “Ofcom [had] convinced itself that “viewers would have been likely to interpret...Malala being forced to leave Pakistan as a fugitive or showing cowardice”, or that “the images included in the programme were also a contributing factor” to the potential offence in this case.

Finally, the Licensee questioned whether the comments in the programme went further than some of the “scathing comments” you might hear from certain commentators on the mainstream channels.

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,

¹³ See footnote 1.

including that: “generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material”. This duty is reflected in Section Two of the Code.

In reaching a Decision in this case, Ofcom has taken careful account of the broadcaster’s and audience’s right to freedom of expression set out in Article 10 of the European Convention on Human Rights.

Rule 2.3 requires that:

“In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Such material may include, but is not limited to...humiliation, distress [and] violation of human dignity...”

Rule 2.3 requires broadcasters to ensure that the broadcast of potentially offensive material is justified by the context. Context is assessed by reference to a range of factors including the editorial content of the programme, the service on which the material was broadcast, the time of broadcast, what other programmes are scheduled before and after, the degree of harm or offence likely to be caused, likely audience expectations, warnings given to viewers, and the effect on viewers who may come across the material unawares.

Ofcom underlines that the Code does not prohibit any individual from being criticised on television and radio. However, when including criticism about particular individuals, broadcasters must ensure that any potential offence caused by such criticism is justified by the context. In considering relevant context in such circumstances, Ofcom will take into account factors such as: the nature of any critical comments; the manner in which they are delivered; and whether any critical comments are challenged or otherwise mitigated.

In reaching our Decision, we noted the Licensee’s statement that it struggled to understand why Ofcom was considering, simultaneously, the programme under both Sections Two and Seven of the Code. The reason why it was appropriate for Ofcom to consider whether the broadcaster complied with the rules under both these Sections is because we received complaints about two separate issues: first, that the programme was unfair to Mr Yousafzai (Malala’s father), and secondly that viewers were offended by the content of the programme.

In relation to the complaints about the programme being offensive¹⁴, we first assessed whether the material included in the programme had the potential to cause offence.

During this 52 minute programme, both the presenter and his three guests were all heavily critical of Malala and her father. For example, Malala was referred to as: having a “*whole [story]...based on fraud*”; not “*even knowing the meaning of the word ‘love’*”; and being a “*traitor*” to Pakistan. In particular, we considered that significant offence would have been caused by various statements in the programme which appeared to belittle the very serious injuries that Malala had received when she was shot in the head by the Taliban in 2012. For example, one of the programme contributors described the shooting of Malala as her having been “*barely touched by a bullet*”. Twice in the programme, a photograph of Malala was shown on screen next

¹⁴ As set out in footnote 1, Ofcom’s consideration as to whether or not the programme as broadcast resulted in unfairness to Mr Yousafzai is set out on page 38.

to a photograph of a boy called Walid Khan, who had also been shot by the Taliban. Below the picture of Malala, caption stated:

“Was shot by a bullet, and fled the country, received free housing, her father gets a job and [she] a Nobel Prize”.

Below the picture of the boy was the caption:

“Walid Khan was shot eight times in the face and body, and this prince still returned to the same school. Those who really get shot act like this”.

When these photographs were shown, the presenter, Dr Danish, variously described Malala as having taken *“a bullet for the sake of education and yet she now lives overseas”* and having been *“only shot once”* in comparison with Walid Khan.

Although ARY argued that the “juxtaposition of images and descriptions of Malala and Walid Khan are highly subjective”, and disputed Ofcom’s interpretation of them as set out in the Preliminary View, we considered that the captions and the presenter’s statements had the potential to cause significant offence. This was because they were sharply dismissive of the very serious injuries that Malala had received as a child when she was deliberately targeted, shot and severely injured by a member of a proscribed terrorist organisation.

Further, we did not agree with ARY’s statement that the above use of the term “fled” was “not used pejoratively” in the programme as broadcast. This is because of the particular context in which the term was used. Specifically, the programme expressly compared Malala to Walid Khan, with the caption that appeared beneath Malala’s picture stating that she had *“fled the country”*, while the caption which appeared beneath Walid Khan’s picture describing him as a *“prince”* who *“still returned to the same school”* and as an exemplar, where *“those who really get shot act like this”*.

In Ofcom’s view, offence would have been likely to have been caused by the juxtaposition of the images and descriptions of Malala and Walid Khan. We considered an audience might reasonably have interpreted from this footage that Malala had either been forced to leave Pakistan as a fugitive, or had otherwise acted in a cowardly way, when in fact she had left the country to receive urgent medical treatment. Ofcom also noted the further, relatively dismissive statements that were made about Malala, where, having been *“only shot once”*, she had then: lived *“overseas”*; *“received free housing”* and been awarded *“a Nobel Prize”*. We considered that, taken together, these comments clearly had considerable potential to be offensive.

Ofcom then went on to examine whether the broadcast of these potentially offensive statements was justified by the context. The discussion focused on Malala’s autobiographical book ‘I am Malala...’ and what was described by Dr Danish as a *“rebuttal of this book”* entitled ‘I am not Malala’. The programme contributors took issue with certain passages in Malala’s book. For example, they criticised statements in her book about: the Pakistani Government; the Pakistani armed forces; and, the treatment of the Ahmadi community within Pakistan under the Pakistan Constitution.

Consistent with the right of freedom of expression of the broadcaster, which encompasses the audience’s right to receive information and ideas, in principle any individual, and any book they might have written, can be criticised within programming. We noted the Licensee’s argument that the contributors in this programme were “exercising their right to freedom of expression by commenting on

information in the public domain". However, the right to freedom of expression is not absolute. In reaching a Decision in this case, Ofcom had to seek an appropriate balance between, on the one hand, ensuring members of the public are adequately protected from material which may be considered offensive and, on the other, taking account of the broadcaster's and audience's right to freedom of expression.

We carefully considered the content of the programme overall. We noted the Licensee's description of the programme as being "quite a highly charged discussion [that] did contain critical comment". ARY also argued that many of the "elements" in the programme that were critical of Malala and her father "relate to tone, emphatic expression and how the translation from Urdu has been interpreted and fail to take account of context". We disagreed. In our view, this programme was likely to be perceived by the audience as a sustained, one-sided verbal attack on a young woman who had been the victim of a traumatic and life-threatening terrorist attack. The tone adopted throughout the programme was, either directly or indirectly, highly dismissive and critical of Malala, her opinions, her actions – and importantly – the traumatic and life-threatening attack she had experienced as a teenager. While it was in our view legitimate for a discussion to challenge or question some of the criticisms that Malala had made in her book about various Pakistani institutions, we considered the programme went further than that. It contained a series of highly critical comments about Malala that amounted to personal abuse. In this regard, we did not agree with ARY's argument that the comments included in the programme about Malala were "presented in the form of debate not a personal attack".

The level of offence was likely to have been heightened, in our view, by the fact that the programme did not include content that challenged or otherwise mitigated the various abusive and highly offensive comments made by the contributors about Malala or her father, Ziauddin Yousafzai (who was, for example, described as a "traitor" and the "most alarming of characters"). A further aggravating factor in terms of offence was the fact that two of the programme guests, Mr Chohan and Mr Wazir, delivered their criticisms of Malala and her father direct to camera, at times shouting¹⁵. We considered that this, together with the fact that no challenge or balance was offered to these contributors' comments, emphasised the strength of their criticisms of Malala and her father and correspondingly heightened the potential for offence in this case.

We were particularly concerned that at different times Malala was described as having "*blasphemed the ideology of Pakistan*" and having "*indirectly criticised the Blasphemy laws*" of Pakistan. Malala's father was accused of being "*the greatest blasphemer of the Prophet*".

The Licensee submitted that "the programme talked about blasphemy in the context of Malala's book favouring the approach of Western freedom of expression over deference to the Prophet and sacred references. It was not a personal attack". We disagreed. The above comments were of concern to Ofcom as blasphemy is a potentially sensitive and serious matter within Pakistan. In particular, it is Ofcom's understanding that the Pakistani courts have power to impose the death penalty for blasphemy, and that there have been examples where civilians have resorted to

¹⁵ In its representations on Ofcom's Preliminary View, ARY stated that it did not agree that the presenter, Mr Danish's delivery equated to 'at times shouting'. Ofcom was not, however, referring to Mr Danish, but to Mr Chohan and Mr Wazir.

violence against one another for blasphemy¹⁶. Given these circumstances, the comments made in the programme that Malala and her father had either criticised Pakistan's blasphemy law or had been a "*blasphemer of the Prophet*" were, in Ofcom's view, capable of causing offence. Further, it was our opinion that the potential level of offence in this case was increased by the fact that both Malala and her father were accused of having either blasphemed, or having criticised Pakistan's blasphemy law, without any counter-balance to those accusations, or contextualisation of such statements within the programme.

We also recognised that the programme was broadcast live and that, with such broadcasts, broadcasters need to take particular care to ensure that potentially offensive content is appropriately contextualised. For example, in this case, the various highly critical statements being made about Malala and her father could, potentially, have been challenged, rebutted or otherwise placed into context by the presenter. In this way, it may have been possible for the Licensee to have represented the viewpoint of Malala and her father in response to the criticisms being made against them, and therefore some context may have helped to mitigate the impact of any potentially offensive statements being made about them.

In reaching our Decision, we took account of the various contextual factors that ARY put forward. For example, the Licensee stated that Dr Danish, the presenter of the programme: "is known to be very direct in his approach"; that "regular viewers expect [his] animated approach to debate"; and that the content did not go "beyond what viewers would expect in this type of debate".

We acknowledged that regular viewers may have been used to Dr Danish's presenting style, and that the audience of this programme was likely to be drawn from the Pakistani community in the UK. As such, we considered that the audience may have reasonably expected a programme discussing issues such as the life and actions of Malala and her father to have criticised them in some way. We also took into account that, the Licensee questioned whether the comments in the programme went further than some of the "scathing comments" you might hear from certain commentators on the mainstream channels. However, we considered that the sustained and heavily critical nature of the discussion of Malala and her father was likely to have exceeded the expectations of an audience of a UK-licensed channel broadcasting to an audience based in the UK.

ARY also argued that there were "no strong visuals" in the programme. While we agree that the potential for offence was caused principally by the various comments highlighted above, in our view the images included in the programme were also a contributing factor. For example, a photograph of Malala was shown side by side with that of a boy, Walid Khan, who had also been shot by the Taliban. At the same time, the contributors dismissed the serious and life-threatening attack on Malala when compared to the attack on Walid Khan.

Finally, ARY said that it had broadcast "a clear warning to viewers...to provide context and a warning to viewers that personal views may be expressed in the show but these were not presented as facts or views held by the channel". At the beginning and end of the programme, a caption stated:

¹⁶ For example, Ofcom understands that in 2011 the Punjab governor, Salmaan Taseer, was shot dead by his bodyguard Malik Mumtaz Qadri, for opposing Pakistan's blasphemy law – see: <http://www.bbc.co.uk/news/world-south-asia-12111831>

“Disclaimer: It is our responsibility not to present opinion as facts. As long as distinction between fact and opinion is clear. As part of ARY philosophy we bring diverse opinions to enrich and empower our viewers. This programme may contain opinions of host and guest which do not necessarily reflect that of the organization. For more information and give feedback visit our website. www.arynews.tv”.

However, we considered the above message was not sufficient to justify the broadcast of the offensive content in this case. This was because it contained no content that would have mitigated or challenged the many and repeated comments which criticised and abused Malala and her father.

In light of all the above, we considered that there was clearly insufficient context to justify the offensive content, and Rule 2.3 was breached.

Breach of Rule 2.3

In Breach

The Railway: Keeping Britain on Track

Quest, 28 August 2016, 12:00

Introduction

Quest is a factual, lifestyle and entertainment channel that broadcasts on terrestrial, satellite and cable platforms. The licence for the service is held by Discovery Corporate Services Limited (“Discovery” or “the Licensee”).

The Railway: Keeping Britain on Track was a documentary series on how Britain’s railways work. Ofcom received a complaint that the episode broadcast on Quest on 28 August 2016 at noon contained offensive language.

We noted that at approximately 12:30, during a conversation between two track workers, a male contributor who was off camera said:

“Fuck off knobhead”.

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

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

Response

The Licensee stated that the offensive language was broadcast due to human error which occurred when the programme was edited for pre-watershed transmission. It said that it had taken measures to prevent this happening again. It accepted that this material breached Rule 1.14 and apologised for any offence caused.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure specific standards objectives, one of which is that “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 on television before the watershed. Ofcom’s 2010 research on offensive language¹ noted that the word “fuck” and its variations are considered by audiences to be amongst the most offensive language.

¹ Broadcasters should note that on 30 September 2016 Ofcom published new research on public attitudes to potentially offensive language on TV and radio: <https://www.ofcom.org.uk/research-and-data/tv-radio-and-on-demand/tv-research/offensive-language-2016>; and <https://www.ofcom.org.uk/research-and-data/tv-radio-and-on-demand/tv-research/offensive-language-2016>

Ofcom noted Discovery's submission that this material was broadcast in error. However, in this case the broadcast of the word "fuck" was an example of the most offensive language being used in a programme broadcast before the watershed. This material therefore clearly breached Rule 1.14.

Breach of Rule 1.14

In Breach

Labour Party EU Referendum Debate

BEN TV, 10 June 2016, 18:00

Introduction

BEN TV is an entertainment and news channel that broadcasts to Western Europe and parts of Asia and Northern Africa. The licence for BEN TV is held by Greener Technology Limited (“GTL” or “the Licensee”).

As part of routine monitoring, Ofcom assessed the programme *Labour Party EU Referendum Debate*. This was broadcast on 10 June 2016, 13 days before the vote on the UK’s membership of the European Union (“the EU Referendum”) to be held on 23 June 2016. The programme consisted of recorded footage of a Labour Party Women and Equalities Team press conference. It featured a panel of five individuals, including Labour MPs, Chuka Umunna and Alan Johnson. During the 25-minute-long programme the panel put forward their views regarding how people should vote in the EU Referendum.

The programme began with a still image of a number of individuals, including Labour Party leader Jeremy Corbyn, standing in front of a large banner which read “VOTE REMAIN 23 JUNE” and “LABOUR IN”. This was followed by close up footage of a screen which also featured the slogan “VOTE REMAIN 23 JUNE”. Screens with the same wording were shown in the background of the press conference throughout the remainder of the programme.

At the start of the broadcast the person chairing the press conference stated:

“[INAUDIBLE]...press conference on behalf of the ‘Women and Equalities Team’. I hope it will be an informative morning, setting out clear sensible reasons why we, as black and minority ethnic British politicians, believe we should vote to remain. Also, why we believe this vote matters for each and every one of us now, as well as for our future generations to come. And most importantly, I hope it will encourage as many people as possible from black Asian ethnic minority backgrounds to go out and vote on June the twenty-third. Basically Britain is better off in Europe. Leaving would create huge risks for our economy, our job market and would threaten our protection against workers’ rights. It would encourage racial and maternity discrimination to name just a few. I am proud of these laws and I am proud that Labour is fighting to defend them. This debate is about what we have now, but it is also about our future. Contrary to the false choice argued by the Leave campaign the EU is essential to continuing our strong Commonwealth ties and protecting diverse communities. We need to be thinking of working together and not shutting ourselves off. So I will end by saying: this referendum is important to us as individuals, just as it is important to us as a country which has reaped economic and political benefits from being part of a wider European institution. Thank you”.

The programme continued by covering topics such as the impact of continued membership of the EU on economics, peace, security and stability and immigration. One panel member stated:

"I want to talk a little bit about the economic case for remaining in the European Union, which is the basis on which we should really be looking at casting our vote in two weeks' time. And to say also I think you, just like many others, have started to find the Tory soap opera that really has defined so much of this debate a real turn-off...we have to confront together some of the realities and challenges of globalisation, but there is no logic in saying that we're going to be better at doing that, all the challenges are going to go away, if we leave the European Union. In fact, we'd be weakened in what we can do as a nation and our influence, and we would be turning our back on our neighbours as well and that I don't believe is the spirit of Britain".

Later in the programme another panel member said:

"...because those on the Brexit campaign would like us, and to some extent they're succeeding, in focusing on intolerance, on anti-immigration sentiments, on fear, on division. Those are the things we need to counter and I find it shocking actually that those in our own communities are also falling for those... sentiments...[The] onus is on us to present a positive case for why we need to stay in the European Union".

Chuka Umunna remarked:

"I just wanted to very quickly go through three specific points in a bit more detail. One is this false choice which has been set up between our EU membership and our Commonwealth membership, the second is the specific benefits that your readers, your listeners, your viewers (as different parts of our rich and diverse black and minority ethnic community) – that they get the benefit from when it comes to the European Union. And third I just want to say something about migration with my Home Affairs Select Committee hat on before just closing and saying something about our place in the world".

Alan Johnson said:

"It's a bizarre idea that, if we stay in, that people from Nigeria will be worse off than we are now. We're in the EU now...The idea that those on the Leave side, Nigel Farage and his crew, want Britain to come out of the EU because they want more Nigerians and Asians and West Indians to come to this country is just bizarre. The whole debate...is now focusing on numbers, how many people are coming here. The people who are coming under free movement of the European Union are coming here because you cannot have free movement of goods and capital without free movement of labour, and you do not resolve a problem around migration by... smashing our economy, by putting us back into recession, is point number one. Point number two, there is no plan here to discriminate against Nigerians. In fact, what we've been talking about is the fact that the European Union enshrines...the anti-discrimination legislation and applies it not just to this country, but in other countries that Nigerians might want to go to. So in terms of this false dichotomy that you have, that you have to cut your ties with the market to which we export 250 billion pounds, almost fifty percent of our exports, in order to trade with other countries and bring their citizens into this country as part of that trade is a false dichotomy. You can do both, we have done both and will continue to do both".

At 18:17 the programme included the following question from an individual in the audience:

“So my question is to Chuka Umunna. The problem from our community, especially from the Bangladeshi community, um don’t you think the European people coming in this country taking advantage of the facility of the schools, facility of the NHS, the 36% they are contributing as you said in your speech, but do you think the 30% schools are being made in this country and NHS and our GP is being made in this country when the immigration increases from the European Union? And how the curry industry as we have asked [inaudible] so many times regarding the crisis going on in the curry industry. The curry industry’s suffering the staff crisis, they are not allowing bringing staff from the back home because European Union people are not happy to working in the curry industry the strong smell. How you gonna protect this industry not bringing staff from the, y’know, back home please?”

We considered that Rule 6.1 of the Code applied because this programme clearly dealt with matters relating to the EU Referendum, and was broadcast during the referendum period¹. This rule states:

“The Rules in Section Five, in particular the rules relating to matters of major political or industrial controversy and major matters relating to current public policy, apply to the coverage of elections and referendums”.

In addition, by virtue of Rule 6.1, Rules 5.11 and 5.12 of the Code applied in this case. They state:

Rule 5.11: “...due impartiality must be preserved on matters of major political and industrial controversy and major matters relating to current public policy by the person providing a service...in each programme or in clearly linked and timely programmes”.

Rule 5.12: “In dealing with matters of major political and industrial controversy and major matters relating to current public policy an appropriate wide range of significant views must be included and given due weight in each programme or in clearly linked and timely programmes...”.

We further noted that at 18:11 the programme was interrupted by material, of approximately eight seconds in duration, that featured a pack shot of Tropical Sun Golden Sella Basmati Rice alongside a plate of rice. This image was accompanied by the following voiceover:

“Sponsored by Tropical Sun Golden Sella Basmati Rice, tropicalize your food”.

We therefore also considered that the programme raised issues under Rule 9.15 of the Code, which states:

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

Section Nine of 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”.

We therefore asked GTL how the material complied with these Rules.

¹ The referendum period, as defined under Section Six of the Code began on 15 April 2016.

Response

In its initial comments, the Licensee stated that it is aware of Rules 5.11 and 5.12 of the Code and that every programme dealing with the EU Referendum was broadcast with these rules in mind.

GTL said that the programme was not a debate but a press conference organised by Labour MPs. The Licensee told Ofcom that it was invited to the conference in order to broadcast it in line with its responsibilities as a TV station aimed at the ethnic minority community.

The Licensee explained that it broadcast several debates on the EU Referendum, involving both Leave and Remain campaigners, and that it conducted several 'vox-pop' interviews "sampling people's opinions on the EU Referendum which covered both the Remain and Leave campaigners including the undecided at the time".

The Licensee told Ofcom that it did "reach out" to leaders of both the Leave and Remain EU Referendum campaigns in its community but that it had difficulty bringing in "key and major campaigners", particularly those representing the leave campaign, to feature in programmes on its channel. However, despite these issues, GTL said that it had an "appropriate wide range of significant views from both sides...in the course of different programmes [it] broadcast on the EU Referendum".

In relation to Rule 9.15 of the Code, the Licensee initially said that the material Ofcom identified as a sponsorship credit was an advertisement played within a commercial break. Responding to Ofcom's Preliminary View (that the material was in breach of Rule 9.15), GTL apologised for the broadcast of the sponsorship credits by Tropical Sun. It explained that the material was transmitted in error and without checking the content of the programme. It added that the material was to "air around approved programmes which on that particular date [were] not aired as there was need to broadcast the *Labour Party EU Referendum Debate*". The Licensee concluded by stating that "the advert or sponsored info had nothing whatsoever [to do] with the programme from Labour".

Decision

Rule 6.1 (and Rules 5.11 and 5.12)

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 specific standards objectives. These standards objectives include ensuring compliance with the special impartiality requirements set out in Section 320 of the Act. This objective is reflected in Section Five of the Code whilst Section Six sets out the particular rules that apply to the coverage of referendums.

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. 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 with the requirement in the Code to preserve "due impartiality" on matters relating to political or industrial controversy or matters relating to current public policy.

As stated in Ofcom's Guidance² to Section Six (Elections and Referendums) of the Code, there is no obligation on broadcasters to provide any referendum coverage. However, where a broadcaster does choose to provide such coverage it must comply with the rules set out in Section Six of the Code.

Rule 6.1 helps to ensure that elections and referendums are conducted fairly by ensuring that broadcasters preserve due impartiality in their coverage. In assessing whether due impartiality has been preserved, the term "due" is important. Under the Code, it means adequate or appropriate to the subject and nature of the programme. "Due impartiality" does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented.

Because the EU Referendum was a matter of major political controversy and a major matter relating to current public policy, Rule 5.11 and 5.12 applied in this case. These require due impartiality to be preserved by broadcasters in their coverage of major matters of political or industrial controversy and major matters relating to current public policy. In addition, when dealing with such matters, "an appropriately wide range of significant views must be included and given due weight in each programme or in clearly linked and timely programmes".

In this case, we noted that *Labour Party EU Referendum Debate* began with the panel 'chair' explaining the purpose of the press conference, which was to set out "*clear sensible reasons why we, as black and minority ethnic British politicians, believe we should vote to remain*". The programme then showed the panel putting forward arguments supporting the UK remaining in the EU, covering topics such as economics, peace, security and stability and immigration as shown in the examples above. At approximately 16:50, Chuka Umunna appeared to summarise these arguments, stating: "*do you have a big vision of what our country can achieve, or do you adopt a small vision of a small Britain, lacking in self-confidence sitting in the corner? That is not the Labour view of Britain. We will always think big and always want the most for our people and that's why we want your readers, your listeners and your viewers to back Britain staying in the European Union on the 23rd of June*". As well as confirming the panel's support for the UK remaining in the EU, this statement also confirmed how the panel wanted people to vote and provided information about when they could vote. Taking these points into account Ofcom considered that the programme focused almost exclusively on arguments to vote Remain, and was not a debate between the two sides of the EU Referendum as the title suggested.

Ofcom noted that at 18:17 the programme included a question posed by an individual expressing concerns that EU migrants might be taking advantage of public services in the UK, such as schools and the NHS, and that the curry industry in the UK is suffering as a result of EU membership. However, this was the only instance of the programme reflecting a viewpoint that could be considered in any way supportive of the UK leaving the EU. Given the brevity of this material in comparison to the overwhelming proportion of the programme supporting the UK remaining in the EU, we did not consider the alternative viewpoint was given "due weight".

Ofcom noted the Licensee's statement that it had "appropriate wide range of significant views from both sides...in the course of different programmes [we] broadcast on the EU Referendum". However, GTL provided no evidence of clearly linked and timely programmes reflecting the alternative viewpoint (i.e. one that could be considered supportive of the UK leaving the EU). We therefore considered that

² <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section6.pdf>

Labour Party EU Referendum Debate would have appeared to the viewer to be a standalone broadcast.

Taking account of all these points, we considered that this programme failed to preserve due impartiality and to include “an appropriately wide range of significant views” that were given “due weight”. Therefore, for all the reasons set out above, our Decision is that this material had clearly breached Rule 6.1 (and Rules 5.11 and 5.12).

Rule 9.15

Ofcom also has a statutory duty under the Act to ensure that “the international obligations of the United Kingdom with respect to advertising included in television...services are complied with”. This obligation includes ensuring compliance with the Audiovisual Media Services Directive (“the Directive”). The AVMS Directive explicitly prohibits the sponsorship of news and current affairs programmes.

This prohibition is reflected in Rule 9.15 of the Code. The prohibition on sponsorship of news and current affairs supports the important principle that such content 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.

Ofcom considered that discussion of the EU Referendum in the programme clearly constituted explanation and analysis of current events and issues, which included material dealing with political controversy and/or with current public policy. We therefore concluded that this programme met the Code’s definition of current affairs and, as such, was prohibited from being sponsored.

Ofcom noted the Licensee’s initial submission that the material broadcast at 18:11 was an advertisement, broadcast within a commercial break. We further noted that on receipt of Ofcom’s Preliminary View, GTL referred to the material as “the sponsored credit by Tropical Sun” and stated that this was transmitted in error without “checking the content of the programme”.

Ofcom is concerned that GTL’s response suggests a failure by the Licensee to assess properly the suitability of programmes for sponsorship. Notwithstanding the Licensee’s representations that the content was broadcast in error, Ofcom considered that it was a sponsored current affairs programme, in breach of Rule 9.15.

In light of Ofcom previously recording against GTL breach Findings concerning due impartiality, Ofcom will be requesting the Licensee to attend a meeting at Ofcom to discuss the requirements of Rules 6.1 (and Rules 5.11 and 5.12) under the Code.

Breaches of Rules 6.1 (and 5.11 and 5.12) and 9.15

In Breach

Item for the Islamic Human Rights Commission

Ahlulbayt TV, various dates and times

Introduction

Ahlulbayt TV is a satellite television channel serving the Shi'a Muslim community in the UK. The licence for Ahlulbayt TV is held by Ahlulbayt Television Network Ltd ("ATNL" or "the Licensee").

During routine monitoring, Ofcom noted the broadcast on 14 June 2016 of an item for the Islamic Human Rights Commission ("IHRC")¹. The item was 35 seconds long and promoted the organisation's al-Quds Day rally, which was due to take place in London on 3 July 2016.

Music was broadcast throughout the item, over which a voiceover stated:

"Two thousand Palestinians have been killed; fifteen thousand injured; over two thousand detained – and that's only since last September. While life goes on around us, the struggle continues in Palestine. Once again London stands up against the injustice. Once again London rises for Palestine. Assemble at Duchess Street and rally to the US Embassy".

During the item, the following still images were shown in sequence, with corresponding captioned messages:

- an image of a man carrying and kissing an injured (or dead) child, superimposed on which was the statement, *"200 Killed 15000 Injured"*;
- an image of a man lying on the ground with his arms fixed behind him, superimposed on which was the statement, *"Over 2000 Detained"*;
- an image of London, looking down Whitehall from Trafalgar Square, with the Houses of Parliament in the distance, superimposed on which was the statement, *"As life goes on around us"*;
- an image of a Palestinian woman shouting at an Israeli soldier, superimposed on which was the statement, *"The struggle in Palestine continues"*; and
- an image of a large rally filling the length of a city street, superimposed on which was the statement, *"Rise against the injustice"*.

The following were then broadcast in sequence, with no background images:

- the statement, *"AL QUDS DAY Sunday 3rd July 2016"*;

¹ The IHRC describes itself as "an umbrella group of Islamic organizations in the United Kingdom" (see <http://www.ihrc.org.uk/news/ihrc-in-media/11711-pro-palestinian-activists-march-through-london-to-mark-al-quds-day>).

- the statement, “assemble at DUCHESS STREET rally to the American Embassy”; and
- the IHRC logo.

In addition, the statement, “AL-QUDS DAY 2016 SUNDAY 3rd JULY At 3PM”, and the IHRC’s logo were shown in the bottom left and right hand corners of the screen, respectively, throughout the item.

The 35 second item appeared to Ofcom to be an advertisement, as it was broadcast during a commercial break. We therefore sought the Licensee’s confirmation of the terms under which the item had been included in Ahlulbayt TV’s schedule. ATNL said the item had not been transmitted in return for payment or other valuable consideration and confirmed that it had been broadcast in commercial breaks seven times daily, from 6 June 2016 until the day of the rally it promoted (i.e. 189 times in a four-week period).

Given the Licensee’s assertion that no money had been accepted for the broadcast, Ofcom concluded that the item must be regarded as programme material, which was therefore subject to the Code.

We considered the broadcast material raised issues warranting investigation under the following Code rules:

- Rule 5.5: “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 [television programme] service... This may be achieved within a programme or over a series of programmes taken as a whole”.
- Rule 9.2: “Broadcasters must ensure that editorial content is distinct from advertising”.

We therefore sought ATNL’s view on how the item complied with these rules.

Response

The Licensee said that the item was intended to invite individuals to attend an event and that “[ATNL] did not, at any point, intend the advertisement to reflect the channel’s editorial policy in any sense”, as it had “a stable of programming for editorial content, and this was not used in that manner by the channel”. It added that the item was merely “a way of helping an organisation from within [its] community” and that, “while no payment was made in kind, it [was] a sort of reciprocal help that [ATNL could] offer” to IHRC. The Licensee said that “the status of this broadcast [was] unique, and intended as an advertisement and not as any sort of editorial content”, adding that it took compliance extremely seriously and would welcome guidance from Ofcom on the matter.

In response to Ofcom’s Preliminary View that the Licensee had breached Rules 5.5 and 9.2 of the Code, ATNL said it had always “taken great care to adhere to the standards and procedures established for broadcasts by Ofcom”. However, the Licensee said it understood that Ofcom had taken the view that it had not complied with the Code.

ATNL considered it had demonstrated “the seriousness with which [it took its] compliance duties”, adding that, “following this incidence [it had] appointed a new and independent consultant who [could] further advise and fully audit [its] compliance duties with on-going reviews to ensure something like this [did] not happen again.” ATNL said it had also “scheduled training workshops for all production staff by way of refresher sessions which [would] cover the regulations and compliance to the...Code”.

Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that the special impartiality requirements set out in section 320 of the Act are complied with. This standard is contained in Section Five of the Code. Broadcasters are required 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 (see above for the specific provisions).

Ofcom also has a statutory duty under the Act to ensure that “the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”. Articles 20 and 23 of the EU Audiovisual Media Services Directive (“the AVMS Directive”) set out strict limits on the permitted amount and scheduling of television advertising. The AVMS Directive also requires that advertising is distinguishable from other parts of the programme service: “Television advertising...shall be readily recognisable and distinguishable from editorial content...and...shall be kept quite distinct from other parts of the programme by optical and/or acoustic and/or spatial means”. The purpose of this distinction is to prevent viewers being confused or misled about the status and purpose of the material they are watching and to protect viewers from surreptitious advertising. It also prevents editorial content from being used to circumvent the restrictions on advertising minutage.

The AVMS Directive requirements are reflected in, among other Code rules, Rule 9.2, which requires that editorial content is kept distinct from advertising.

Ofcom noted that the Licensee contended the broadcast material in question was “unique, and intended as an advertisement and not as any sort of editorial content”. Nevertheless, the BCAP Code², states:

“‘advertisement’ means publicity by advertisers, including spot advertisements and broadcaster promotions with advertisers (outside programme time), that is broadcast in return for payment or other valuable consideration to a broadcaster or that seeks to sell products to viewers...”.

In this instance the broadcast material was neither “broadcast in return for payment or other valuable consideration” nor “[sought] to sell products to viewers”. The short item was therefore a programme, which was broadcast 189 times on Ahlulbayt TV in commercial breaks.

² The UK Code of Broadcast Advertising, which is supervised and reviewed by the Broadcast Committee of Advertising Practice, under a Memorandum of Understanding with Ofcom.

Ofcom therefore considered the item's compliance with Rules 5.5 and 9.2 of the Broadcasting Code.³

Rule 5.5

Rule 5.5 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 [television programme] service...This may be achieved within a programme or over a series of programmes taken as a whole.”

It is not Ofcom's role to question or investigate the validity of any political views portrayed or reflected in this instance, but to require the broadcaster to comply with the relevant standards in the Code. The Code does not prohibit broadcasters from discussing any particular controversial subject or including any particular point of view in a programme. To do so would be an unacceptable restriction on a broadcaster's freedom of expression.

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 with the requirement in the Code to preserve “due impartiality” on matters relating to political or industrial controversy or matters relating to current public policy. Ofcom recognises that Section Five of the Code, which sets out how due impartiality must be preserved, acts to limit, to some extent, freedom of expression. This is because its application necessarily requires broadcasters to ensure that neither side of a debate relating to matters of political or industrial controversy and matters relating to current public policy is unduly favoured. Therefore, while any Ofcom licensee should have the freedom to discuss any controversial subject or include particular points of view in its programming, in doing so broadcasters must always comply with the Code.

In this case, Ofcom firstly had to ascertain whether the requirements of Section Five of the Code should be applied: that is, whether the content in this case was dealing with matters of political or industrial controversy and/or matters relating to current public policy. We noted that the item was a brief statement that invited viewers of Ahlulbait TV to take part in a forthcoming event, the intention of which was to “*stand...up against the injustice*”, “*rise...for Palestine*” and “*rally to the US Embassy*”.

Nevertheless, just because editorial content refers to political matters does not necessarily mean that the rules in Section Five are applicable. Furthermore, in judging the applicability of Section Five in any case, Ofcom will take into account the manner in which political issues are dealt with, and how they are presented within programming.

We noted that this item included a number of references to what it terms “*the injustice*” being caused to the Palestinian people. For example, the item stated that “*Two thousand Palestinians have been killed; fifteen thousand injured; over two thousand detained – and that's only since last September*”. In addition, the item made clear that, in its view, that the Israeli state had been responsible for the “*injustice*” caused to the Palestinian people. For example, the item included an image

³ If the material had been broadcast in return for payment (or other valuable consideration), it would have been an advertisement and therefore considered under Section 7 of the BCAP Code, which reflects the requirements of Sections 319(2)(g) and 321(1), (2), (3) & (7) of the Communications Act 2003.

of a Palestinian woman shouting at an Israeli soldier, superimposed on which was the statement, *“The struggle in Palestine continues”*.

In our view, the cumulative effect of the various statements and images included in this broadcast item was, firstly, to articulate a particular viewpoint on the Israeli-Palestinian conflict, and second, to set out a call to action inviting viewers of Ahlulbayt TV to attend a rally to *“rise against the injustice”* that, in the item’s view, was being caused to the Palestinian people. Ofcom therefore considered that this content dealt with a matter of political controversy and current public policy, namely, the policies and actions of Israel towards the Palestinian people. Rule 5.5 was therefore applicable.

In assessing whether due impartiality has been preserved, the term “due” is important. Under the Code, it means adequate or appropriate to the subject and nature of the programme. Therefore, “due impartiality” does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented. Due impartiality may be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures due impartiality is maintained. The context in which programme material appears, including the particular characteristics of the programme, is important to judgments of what is duly impartial.

Ofcom considered that this broadcast item represented a self-standing expression of a specific viewpoint on a particular matter of political controversy and matter relating to current public policy. The item made clear IHRC’s view in relation to Israel and Palestine – as reflected in: *“While life goes on around us, the struggle continues in Palestine. Once again London stands up against the injustice. Once again London rises for Palestine”* – and did not contain any alternative view that could be reasonably and adequately classed as critical or counter to it. For example, the item did not contain any content which could be described as representing the viewpoint of the Israeli Government, or as countering the implicit criticism being made of the Israeli Government and its armed forces, within the item. We noted that the Licensee did not say in its representations that it had also carried items containing or representing any opposing viewpoint to that of IHRC.

In any event, we doubted that items such as this one could be balanced by other items containing opposing points of view. As an independent and self-standing statement placed in the schedule, without having been commissioned by a broadcaster, it is in Ofcom’s view difficult to see how the repeated broadcast of such an item could be taken in aggregate to be a body of programming planned over time by the broadcaster, unlike conventional, scheduled programming.

Further, we noted that the IHRC item, rather than provide for discussion of the treatment of the Palestinian people by Israel, contained a call to action to attend a rally that aimed to protest at Israel’s policies and actions in relation to the Palestinian people. Consequently, in Ofcom’s opinion, any such item could only be viewed as a self-standing piece intended to promote a particular political interest. By its very nature, therefore, such an item presented no opportunity for duly impartial consideration of a matter of political controversy or current public policy (of the Israeli Government).

In reaching our Decision, we took account of the Licensee’s explanation that the item was “intended to invite individuals to attend an event” and “a way of helping an organisation from within [its] community”. Ofcom recognises that broadcasters serving particular communities will want to provide content that presents issues of

topical interest to their target audience. In Ofcom's view, however, this cannot justify the inclusion of inherently partial items concerning matters of political controversy or matters relating to public policy.

Given the above, Ofcom concluded that the item for IHRC breached Rule 5.5 of the Code.

Rule 9.2

Rule 9.2 states:

“Broadcasters must ensure that editorial content is distinct from advertising”.

The item comprised a short self-standing message and contained a call to action produced by or on behalf of the IHRC. There were no conventional programme elements in the material, such as a presenter, a studio or programme titles. As such, it strongly resembled an advertisement and was, in Ofcom's view, very much more likely to be perceived by viewers as an advertisement than as a programme, especially given the item's position within the Licensee's schedule (i.e. as part of 189 commercial breaks). Ofcom therefore concluded that this editorial content was not distinct from advertising, in breach of Rule 9.2 of the Code.

In reaching our Decision, Ofcom welcomed the steps taken by ATNL to improve compliance. However, the right to broadcast comes with responsibilities. It is important that broadcasters maintain due impartiality and do not use their licensed service as a platform to broadcast inherently partial items on matters of political controversy and matters relating to current public policy.

Breaches of Rules 5.5 and 9.2

Broadcast Licence Conditions cases

Broadcasting licensees' late payment of licence fees

Ofcom is partly funded by the broadcast licence fees it charges television and radio licensees. Ofcom has a statutory duty to ensure that the fees paid by licensees meet the cost of Ofcom's regulation of broadcasting. The approach Ofcom takes to determining licensees' fees is set out in the Statement of Charging Principles¹. Detail on the fees and charges payable by licensees is set out in Ofcom's Tariff Tables².

The payment of a licence fee is a requirement of a broadcasting licence³. Failure by a licensee to pay its licence fee when required represents a significant and fundamental breach of a broadcast licence, as it means that Ofcom may be unable properly to carry out its regulatory duties.

In Breach

The following radio licensee failed to pay its annual licence fees in accordance with the required payment date. This licensee has therefore been found **in breach** of Condition 3(2) of its broadcast licence.

In the specific circumstances of the case, the late payment of the fee was considered by Ofcom to amount to a serious licence breach. **Ofcom is therefore putting this licensee on notice that the breach is being considered for the imposition of a statutory sanction, which may include a financial penalty and/or licence revocation.**

Licensee	Service Name	Licence Number
Mango Vibe Ltd	Mango Vibe	DP101115BA

Breach of Licence Condition 3(2) in Part 2 of the Schedule of the relevant licence

The following television licensees failed to pay their annual licence fees in accordance with the required payment date. These licensees have therefore been found **in breach** of Condition 4(2) of their broadcast licences.

The outstanding payments have now been received by Ofcom. Ofcom will not be taking any further regulatory action in these cases.

Licensee Name	Service Name	Licence Number
NDTV Lifestyle Ltd	NDTV Good Times	TLCS001708BA
New Delhi Television Ltd	NDTV 24x7	TLCS000827BA
Pakistan Television Corporation Ltd	PTV Global	TLCS001348BA

¹ https://www.ofcom.org.uk/__data/assets/pdf_file/0019/51058/charging_principles.pdf

² https://www.ofcom.org.uk/__data/assets/pdf_file/0034/57976/tariff-tables-2016-17.pdf

³ As set out in Licence Condition 3 for radio licensees and Licence Condition 4 for television licensees.

Licensee Name	Service Name	Licence Number
Public Television Company of Armenia CJSC	Armenia 1 TV Satellite	TLCS100451BA
Sportsmax Ltd	Ceen	TLCS101298BA
Wild TV	Wild TV	TLCS001427BA

Breaches of Licence Condition 4(2) in Part 2 of the Schedule of the relevant licences

Broadcast Fairness and Privacy cases

Upheld

Complaint by of Mr Ziauddin Yousafzai (made on his behalf by Ms Shahida Choudhry)

Sawal Yeh Hai, ARY News, 7 February 2016

Summary

Ofcom has upheld Mr Ziauddin Yousafzai's complaint (made on his behalf by Ms Shahida Choudhry), of unjust or unfair treatment in the programme as broadcast.

The programme¹, broadcast live and presented by Dr Danish, focused on a discussion of Ms Malala Yousafzai's (Mr Yousafzai's daughter) book 'I am Malala'. Mr Yousafzai complained that he was treated unjustly or unfairly in the programme as broadcast because false accusations were made against him in the programme without him being given the opportunity to respond.

Ofcom found that:

- The broadcaster did not take reasonable steps to satisfy itself that material facts were not presented, disregarded or omitted in a manner that was unfair to Mr Yousafzai.
- Given the serious allegations made in the programme about Mr Yousafzai, the broadcaster was required to offer him an appropriate and timely opportunity to respond.

Programme summary

On 7 February 2016, ARY News broadcast an edition of *Sawal Yeh Hai*, a discussion programme presented by Dr Danish.

ARY News provided Ofcom with a recording of the programme broadcast. As the programme was broadcast in Urdu, an English translation was obtained by Ofcom and provided to the complainant and broadcaster. Both parties' comments on the translation were then sent to the translator for their views. Having assessed all of the comments made, appropriate amendments were made by Ofcom and the parties were provided with a final version of the translated transcript. The parties were informed that Ofcom would use this transcript to investigate the complaint.

This particular edition of the programme focused on a discussion of Ms Malala Yousafzai's book 'I am Malala: The Girl Who Stood Up for Education and Was Shot by the Taliban'. Dr Danish explained that Malala Yousafzai ("Malala") had become an important world figure and had won many awards, including the Nobel Peace Prize. He said that: "*This is the same Malala who was present in Swat² and whose father had a private school business*". Dr Danish stated:

¹ Ofcom also received 10 complaints about this programme which it considered under Rule 2.3 (offence) of the Code. Ofcom's Decision on these complaints can be found on page 7 of this issue of the Broadcast and On Demand Bulletin.

² A district in Pakistan.

“But the question that people raise in Pakistan, and in Swat in particular, is that after Malala was shot and then had to leave the country, the question that people ask is, what is it that she has done that has made her such a revered world figure?”

Dr Danish then introduced his first guest to the programme, Mr Mirza Kashif, President of the All Pakistan Private Schools Federation, who he explained had written a “*rebuttal of this book*” entitled ‘I am not Malala’. Dr Danish said:

“He says that in this book, Malala has blasphemed the ideology of Pakistan, Islamic laws and even God, Rasool, and has said such things, that according to him, amount to blasphemy. In addition, Pakistan’s army and the ISI [Inter-Services Intelligence], and many other matters. So let’s move on to our guest, and introduce him, and ask him whether all this blasphemy is contained in this book [Dr Danish held up a copy of Malala’s book], and what was the point of writing such material, and who really wrote this book? We will ask him to explain who is behind this book and what is the purpose of writing this book, by a child who up until yesterday, didn’t know [anything], and now writes on such major issues”.

Dr Danish introduced further guests to the programme, Mr Fayyazul Hassan Chohan, a leader of the political party Pakistan Tehreek-I-Insaaf, and Mr Ajmal Wazir, from the political party Pakistan Muslim League.

Dr Danish said he would first show Mr Kashif what Malala had written “...and we will seek his comments and explain how he thinks that this is against Islamic laws”.

Dr Danish and Mr Kashif made critical comments about various aspects of Malala’s book.

Dr Danish later stated:

“After that on [page] 37 she says that ‘when my father was at college, the issue of Rushdie’s³ book came up. Although [he] accepts that the book caused great offence, he says that we should in fact read the book. ‘Our faith Islam is not so weak that we can’t read it and then come up with a critique of the book’. We will ask Mr Kashif about that as well. What was her point of views and why did she say these things?”

Dr Danish continued to make criticisms of Malala’s book, including her views on Pakistan’s blasphemy law. He asked for Mr Kashif’s view, who said that Malala did not write the book ‘I am Malala’, but that the book was written by Ms Christina Lamb⁴, “...the disgraced character who was implicated in the Osama Bin Laden ticket scandal...” and “the enemy of Pakistan”. Mr Kashif then gave his further critical views on the book, accusing the author of committing “Kufr”⁵. He stated:

³ Salman Rushdie is a British Indian novelist. He wrote the novel ‘The Satanic Verses’.

⁴ Christina Lamb is a British journalist who co-authored with Malala the book ‘I am Malala’.

⁵ Kufr is the Islamic term for “disbelief”, which is considered a sin.

“The issue of Salman Rushdie is known throughout the whole Muslim world, and we all have settled opinion on the matter. Now look at the indirect way she [Malala] has defended him by using her father’s example and saying that ‘my father believes that it is a matter of freedom of expression’. Now consider the type of mind-set that thinks along these lines. Fundamentally, Malala and her father are followers of Salman Rushdie’s school of thought. Look at her pictures with Taslima Nasrin⁶. Is there any room for doubt [about her mind-set]? She has also indirectly criticised the blasphemy laws. She has supported Asia, who has been convicted for blasphemy. Further on, she has supported Ahmadis. She complains that our government has declared them non-Muslim. Does she not know that according to the Second Amendment of the Constitution [of Pakistan], anyone who does not believe in the finality of prophethood is a non-Muslim?”

Dr Danish stated “A non-Muslim, absolutely non-Muslim”, to which Mr Kashif agreed “Absolutely, a non-Muslim”.

Later, Dr Danish stated:

“Later on page number 62 she says ‘The pupils of Swat did not always think it was a good idea to be part of Pakistan’. What a thing to say about Pakistan! Later, again on page 116, she says that ‘my father says the problem is that ‘Jinnah⁷ negotiated a piece of real estate for us, but not a State for us”, which shows that she has criticised Qaid I Azam⁸. Further, she says ‘We are told that Swat is being sacrificed for the sake of Pakistan, but no one, nothing should be sacrificed for the State. The State is like a mother, and a mother never deserts or cheats her children’. This is quite a thing to say...”

Dr Danish asked Mr Kashif what he thought about this. Mr Kashif gave further critical views of Malala and her book. He stated:

“In terms of the ideology of Pakistan, does she not realise the hundreds of thousands of lives that have been sacrificed in this struggle? Referring to the country that was created [Pakistan], she refers to it so lightly as a piece of real estate! Later on she says that a mother does not deceive its child. Malala ought to know, or her traitorous father should know, that there are millions of children in Pakistan who know how to show respect to their mother”.

Later Dr Danish discussed what Malala had written in her book about some of Pakistan’s national institutions. For example, he pointed out that Malala had “...compared Pakistan’s army and the terrorist [the Taliban] with a snake and a lion”. He said:

“Then on page 159 she says that ‘my father received a letter from the army alleging that we had allowed the Taliban to control Swat. We had lost some of our most valuable lives, and this happened because of your [Pakistan army’s] negligence...The military is no different than the terrorists’...To sum up she has

⁶ Taslima Nasrin is a Bangladeshi writer who has written articles which some people may consider are critical of Islam.

⁷ Muhammad Ali Jinnah is generally considered to be the founding father of Pakistan.

⁸ ‘Qaid I Azam’ translates in English as ‘Great Leader’ and is only used in reference to Muhammad Ali Jinnah.

said a lot about the army. I will show you a film about what she said about the army”.

An excerpt from an English language documentary was then played which began by showing a room with prayer mats and included a close up shot of a cigarette butt. In the documentary, Malala stated: *“I want to become a doctor”*. As the clip was being played, a caption stated:

“Recognise this traitor [Mr Yousafzai], who before the international media, wants to present the Pakistan army as dirty and not worthy of respect. On one chair you can see a prayer mat, and on the floor, you can see the prayer roll laid out. And for the sake of one cigarette butt? Don't you yourself smoke?”

Malala's father, Mr Yousafzai, was then shown saying that: *“The people who lived here, I don't know how they lived, but they were very dirty”*. The documentary's narrator stated: *“It is unclear who infiltrated the school, was it the Taliban or was it the military? It doesn't really matter”*. Mr Yousafzai was then shown pointing at a shoe print on a chair and commenting that it was: *“The print of a very big shoe”*. The narrator stated: *“For the past year, Ziauddin [Mr Yousafzai] has felt trapped between both [the Taliban and the Pakistan military]”*.

A caption stated: *“Recognise this traitor [Mr Yousafzai] who is using this child to denigrate the Pakistan Army. Is there any room for doubt that he is a traitor?”*

The narration continued: *“The identity of the intruders, then she finds the answer”*.

Malala stated:

“I was very proud of my army, but when I saw my school in this condition, I was very ashamed of my army [Malala was shown pointing out the state of the classroom]. This is my maths class, but it is not a class [anymore], this is a bunker. This is welcome to Pakistan [she was shown pointing at two large shell holes in the classroom wall]”.

The clip ended.

Dr Danish and Mr Kashif then discussed the footage that had been shown.

Mr Kashif stated:

“She may be ashamed of the army...The only reason she is alive today is because of that very same army. It is from the very same army from whom they borrowed 1,100,000 rupees via General Athar Abbas, and a further 100,000 from General Qamar. She mentions this in her book. This is the same army that cleared the Taliban terrorists from Swat, and this is her traitorous father who used to go around weeping. Then she says in her book that ‘when my father saw the army in Swat, he burst out crying’. This is the same army about who she uses the term ‘strange businesses’, and refers to their high handed behaviour, and militants...In her whole book, she can't see anything to feel proud about”.

Dr Danish said: *“Show that clip in which you see her father chanting a slogan”*.

Mr Kashif added:

“It’s really important to understand this point. Because of traitors like this, Pakistan’s image is being tarnished. When that American⁹ made those comments about Pakistan, he wasn’t referring to proud Pakistanis but was in fact referring to traitors like this man [Mr Yousafzai].”

At this point, a caption stated:

“Who is this person who is leading and instigating the raising of slogans against Pakistan, in front of the world’s media? Does this not count as treason?”

Footage was shown of Mr Yousafzai surrounded by people holding banners and shouting slogans. Mr Yousafzai: *“What does Pakistan stand for?” Bomb explosions and kidnappings!”*

Mr Kashif stated:

“Now you tell me, is there anyone who is a greater blasphemer of the Prophet and Allah than him [Mr Yousafzai]?... What is she [Malala] trying to portray? What is he [Mr Yousafzai] trying to portray? And another thing, when she said ‘those who lived here were very dirty’, what was she calling dirty, the prayer mats? That room was being used as a mosque, and she calls that dirty? I ask you, when we have traitors like this, do we stand a chance of becoming united as a nation? These people receive funds. There are 68 billion dollars in the Malala fund. What are they used for?”

Dr Danish said: *“Show us that picture in which they are all sitting with that CIA official”.*

Mr Kashif commented: *“They are against Pakistan, its ideology, its very existence”.*

A picture was shown of Malala and her father seated at a table with officials. Their faces were circled. A caption read: *“Malala and her father with the US Ambassador and other officials”.*

Dr Danish remarked:

“This is a picture in which we can see a very lowly teacher of a private school and a young girl with Brigadier Martin Jones, a CIA official. Richard Holbrooke¹⁰, Malala’s father and the US Ambassador seated with other military officials. Just imagine how this lowly teacher from a private school and his daughter managed to associate themselves with such senior [US] government officials. Our Generals and Ministers could not even get an audience at this level”.

Mr Kashif questioned how Malala had achieved her fame and said:

“The speeches she made were written by her father...She has admitted that he [her father] wrote the material, and she used to then say the words. In fact, in the book, she uses the term that he used to ‘guide her’. It is very clear, in fact that the

⁹ A reference to Anatole Liven, who wrote the book ‘Pakistan: A Hard Country’.

¹⁰ Richard Holbrooke was an American Diplomat.

[Malala] blog was written by Abdul Hay Kakkar, the book is in fact in your hand, and was written by Christina Lamb who was implicated in the Osama Bin Laden scandal. She is an enemy of Islam, and she wrote this book”.

Both Dr Danish and Mr Kashif questioned how much money there was in the ‘Malala Fund’¹¹.

Dr Danish then asked for a picture of a boy called Walid, who had also been shot by the Taliban, to be shown. Photographs of Malala and Walid were shown side by side. Below the picture of Malala, a caption stated:

“Was shot by a bullet, and fled the country, received free housing, her father gets a job and [she] a Nobel Prize”.

Below the picture of the boy, was the caption:

“Walid Khan was shot eight times in the face and body, and this prince still returned to the same school. Those who really get shot act like this”.

Dr Danish stated:

“Now you can see two photographs in which you can see Malala who is now outside of the country and there is a lot of chatter that she took a bullet for the sake of education and yet she now lives overseas, and according to him [Mr Kashif] she has 68 billion dollars in her account, and the world stands beside her. But with this other child, who was shot eight times, nobody stands beside him”.

Dr Danish asked Mr Chohan what he thought about this. Mr Chohan responded:

“She is a very naïve girl, and all the controversies surrounding Malala have been recounted by Mr Kashif in his book ‘I am not Malala’, and I salute him for his effort. But I want to point out to you that behind these controversies there are two main characters, one of whom is Christina Lamb and the other is her [Malala’s] father Ziauddin”.

Mr Chohan spoke about Ms Lamb and then went on to discuss Mr Yousafzai:

“The other character is Ziauddin [Mr Yousafzai], who is the most alarming of characters. He is selling the contributions of his child. Look up his history. On 14 August 1997 [Pakistan’s Independence Day] he commemorated that day as a ‘Black Day’. He was charged with wearing a black armband. He has been charged with stealing electricity. He holds the same political opinions of those, who to this day have not recognised the state of Pakistan”.

Mr Chohan went on to say how unjust it was that Malala who was “barely touched by a bullet” was given an award, whereas other children in Pakistan had been killed and there was no recognition of them. Dr Danish reiterated that he did not believe that Malala deserved the recognition that she had received, and that others were more deserving. The photographs of Malala and Walid were shown again on screen. Dr Danish asked Mr Wazir what his thoughts were on the topic being discussed.

¹¹ Malala and her father set up the ‘Malala Fund’ fund which aims to: “...enable girls to complete 12 years of safe, quality education so that they can achieve their potential and be positive change-makers in their families and communities”. See <https://www.malala.org/about>.

Mr Wazir spoke about the many children who had been affected by terrorism and stated "...to this day you will find many Malalas...". He then said:

"So I want to address her father and say to him directly that this agenda you are pursuing was controversial right from the outset. We all knew this. All this talk about the military, had it not been for this very same military, could Malala have gone to the West? They were the ones who rescued her, they were the ones who gave her money, and sent her abroad".

A caption stated: "Malala's father is a man of an alarming character says Fayyaz Chohan".

Dr Danish spoke again about the injustice he felt regarding the attention Malala had received. He said:

"I say to Richard Holbrooke, to the USA, to all those international interests conspiring against Pakistan, that you have one Malala, but we have 50,000 Malalas...Malala you have gone very far from us! Malala, you have run away and left us! What are you doing for the sake of education in Pakistan today?"

Dr Danish asked Mr Kashif what his thoughts were on this. Mr Kashif stated:

"This Malala, whose whole [story] is based on fraud. Her father, who on Pakistan's Independence Day, wears a black armband. Who has a conviction, and was convicted in a case of treason. We have a Prime Minister [Prime Minister Gilani] who gets convicted and he serves a sentence of 30 seconds, and is relieved of his Prime Ministership and then we have the man [Hussan Haqani] who sits in the Pakistan embassy and issues orders about Shakil Afridi despite the fact that he was convicted...He [Mr Haqani] tried to blackmail us over Shakil Afridi and he said that we must hand him over to the USA. One traitor siding with another traitor. What a strange thing to say. On the one hand he [Mr Yousafzai] says that she [Malala] was attacked, but as her father, he should have gone to her [in the hospital where she was being treated after being shot]"

Dr Danish agreed and said that Mr Yousafzai was "standing elsewhere". Mr Kashif stated:

"Yes, she admits that her father made his speech first, and then came over there [to the hospital]"

Dr Danish said:

"Yes, and when she went abroad for treatment, he went around saying 'I want a visa, I want a visa for my family'. A father would have been beside her [in the hospital], and would not have been running everywhere. What do you think is their agenda, who are the people behind this?"

Mr Kashif responded:

"The agenda is very clear and the reason that she is being used as a puppet is that where do you think that 68 billion dollars is going to be used. It is going to be used on introducing a secular education policy and secularisation in the country. We want to follow our own ideology and our own constitution and these people want to give us funding for [secularisation]"

Dr Danish and Mr Kashif questioned again who was behind the book 'I am Malala' and what Malala and her father's agenda was.

Mr Kashif stated:

"The West wants to portray Pakistan as a failed state, and that is why they pursue such agendas. I want to use the platform of your programme to openly challenge Malala and her father. I have challenged them many times before and she has never replied because she knows that if she speaks, she will be exposed. I ask her, if you are [a] genuine [Muslim], do you condemn the blasphemy sketches, or is she like her father, and thinks it is all about freedom of expression? The Satanic Verses that your father defended as freedom of expression, do you condemn the book? Do you condemn Israeli aggression; do you condemn Indian aggression? Of course she will never do that! Because that is where she is getting her funding from".

Dr Danish said:

"Behind her is Christina Lamb, her father and many other agents. She doesn't even know what love is".

Mr Kashif said:

"In Pakistan we have millions of daughters. We have the Qur'an and Sunnah protecting us. We have to galvanise the nation. As for you Malala, I say to you and your father, I challenge you again. Come to Pakistan, your legs tremble at the very thought of coming back. You tell me which [country] you feel most secure [in], and I will come over there and expose you Inshallah [God willing]! If not, you should join your hands together and seek forgiveness from the entire nation of Pakistan, otherwise the nation has seen what you are all about".

Dr Danish thanked his guests and finally stated:

"In the book there are many things that Mr Kashif has highlighted, and he explained that she is ridiculing Islamic laws, she is ridiculing institutions, she is ridiculing the ideology of Pakistan. The question is who is behind all of this? It is clear, that it is the same people who have the mind-set of Salman Rushdie, and that of Taslima Nasrin, they are the ones behind this. A lowly girl and a lowly teacher, and there is Richard Holbrooke".

The programme ended.

At the beginning and end of the programme, a caption first in English and then in Urdu stated:

"Disclaimer: It is our responsibility not to present opinion as facts. As long as distinction between fact and opinion is clear. As part of ARY philosophy we bring diverse opinions to enrich and empower our viewers. This programme may contain opinions of host and guest which do not necessarily reflect that of the organization. For more information and give feedback visit our website. www.arynews.tv".

Summary of the complaint and the broadcaster's response

Complaint

Mr Yousafzai complained that he was treated unjustly or unfairly in the programme as broadcast because false accusations were made against him without him being given the opportunity to respond. For instance, the programme accused Mr Yousafzai of: being a traitor of Pakistan; an electricity thief; and, having committed blasphemy by insulting Islam.

By way of background, Mr Yousafzai said that due to the nature of the accusations made in the programme, the broadcast had put him and his family "at risk of retribution" and had left them "fearing for our personal safety".

Broadcaster's response

ARY News explained that the intention of the programme had been to review two books – 'I am Malala' by Malala and 'I am not Malala' by Mr Kashif – which "presented opposing accounts". The broadcaster said that the presenter, Dr Danish, had been "...under strict instructions from the Production Team to provide a balancing view whilst asking probing questions that would stimulate debate". It further stated that:

"We accept that, in this live broadcast, Dr Danish went further than our procedures allow and did not explain to viewers that Mr Yousafzai was not present to put his side of the argument to the guests. At times he appeared to get drawn in to the comments made by the guests and forgot his role as channel anchor and impartial host which we viewed as a serious breach of his position".

ARY News explained that it had launched disciplinary action against Dr Danish for not adhering to its company procedures. It said that this had resulted in Dr Danish being dismissed from the channel on 21 February 2016.

ARY News said that since the programme had been broadcast, it had tried to resolve the complaint with Mr Yousafzai by offering him the opportunity to give his point of view on air, but that Mr Yousafzai had declined this offer.

Ofcom's Preliminary View

Ofcom prepared a Preliminary View on this case that the complaint should be upheld. Both ARY News and the complainant were given the opportunity to make representations on the Preliminary View. In addition, given the broadcaster's comments about Dr Danish (as reflected above), Ofcom gave him an opportunity to comment on the Preliminary View¹².

The complainant did not submit any representations on the Preliminary View itself.

ARY News made the following representations:

¹² This is in line with Ofcom's published procedures, under which individuals who may be directly affected by the outcome of an Ofcom investigation may be invited to make representations.

“We have reviewed the Preliminary View and have formally reminded the Production team of the need for advance briefings to all guests and contributors on the fairness requirements and to make sure allegations do not go unchallenged. We have also reminded the team of the need to make contact with anyone subject to allegations and to keep a log of their efforts to contact them and to make viewers aware of their response”.

Dr Danish did not make any representations specifically in relation to the broadcaster’s comments about him. He did, however, reiterate certain points made by the broadcaster about the programme generally, first that it was “not a political based programme, but a book review”, and that Mr Yousafzai had been offered the opportunity to respond to the comments made about him but had not accepted this offer.

Both the broadcaster and the complainant were given the opportunity to comment on Dr Danish’s representations. In summary, Mr Yousafzai commented that the Electronic Programme Guide for the programme stated that *Sawal Yeh Hai* was “A programme that debates and discusses various current political issues in Pakistan”, and there was no reference to it being a book review programme. He further stated that Dr Danish had failed to maintain an impartial role in hosting the programme. ARY News responded that it stood by its previous submissions and had no further comments to make about Dr Danish.

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 its decision, Ofcom carefully considered all the relevant material. This included a recording of the programme as broadcast and translated transcript, both parties’ written submissions, and supporting documentation. Ofcom also took account of the representations made by the complainant, ARY News and Dr Danish in relation to Ofcom’s Preliminary View on this complaint.

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

In assessing whether Mr Yousafzai had been treated unjustly or unfairly, we had particular regard to Practice 7.9 of the Code. This states that before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation. Whether a broadcaster has taken reasonable care to present material facts in a way that is not unfair to an individual or organisation will depend on all the particular facts and circumstances of the case

including, for example, the seriousness of any allegations and the context in which they are made. We also 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.

Having carefully watched the programme and examined the translated transcript of it, we noted that in relation to Mr Yousafzai, numerous and repeated allegations were made against him throughout the 52 minute programme. While the full extent of these allegations are set out in the “Programme summary” section above, we noted in particular that the programme accused Mr Yousafzai of: being a traitor of Pakistan – for example, Mr Kashif referred to Mr Yousafzai as Malala’s “*traitorous father*”; an electricity thief – Mr Chohan stated that Mr Yousafzai had been “*charged with stealing electricity*”; and, having committed blasphemy by insulting Islam – Mr Kashif stated “*Now you tell me, is there anyone who is a greater blasphemer of the Prophet and Allah than him [Mr Yousafzai]*”.

Ofcom considered that the allegations made in the programme against Mr Yousafzai were very serious in nature and had the clear potential to materially and adversely affect viewers’ opinions of him. In particular, we were concerned that Mr Yousafzai was accused of blasphemy in the programme, which is a potentially sensitive and serious matter within Pakistan. We understand from the complainant that, in addition to the Pakistani courts having power to impose the death penalty for blasphemy, civilians sometimes take the law into their own hands; in particular, the complainant has stated that since 1990, “at least 65 people in Pakistan have been killed in cases linked to blasphemy”¹³. Given the complainant’s representations (which the broadcaster has not sought to correct), it is Ofcom’s decision that referring to Mr Yousafzai as a “*blasphemer of the Prophet*”, raised the potential for significant unfairness to him.

We then considered whether the inclusion of the presenter and his three guests’ comments in the programme as broadcast resulted in unfairness to Mr Yousafzai. Ofcom acknowledged the broadcaster’s right to freedom of expression and that it must be able to broadcast programmes of matters of interest to viewers freely, including the ability to express views and critical opinions without undue constraints. However, this freedom comes with responsibility and an obligation on broadcasters to comply with the Code and, with particular reference to this case, to avoid unjust or unfair treatment of individuals or organisations in programmes.

Ofcom understands from the broadcaster that this particular programme was broadcast live and that, with such broadcasts, broadcasters need to take particular care. Given the nature of this type of programming, contributors can sometimes make unexpected comments which have the potential to cause unfairness to an individual or organisation. It is Ofcom’s view therefore, that, for live broadcasts, it is not always possible for the broadcaster to obtain responses from others prior to or during the broadcast. However, in such circumstances, Ofcom considers that when including material that has the potential to amount to a significant allegation, reasonable care must be taken by the broadcaster that the broadcast material is consistent with the requirements of the Code and that it does not mislead viewers or portray individuals or organisations in a way that is unfair. This may include briefing

¹³ The complainant further refers to an example in 2011 where the Punjab governor, Salman Taser, was shot dead by his bodyguard Malik Muma Adri, after his comments in support of a Christian woman, Asia Bibi, were considered to be blasphemous.

any studio guests about fairness requirements in advance of the programme, as well as ensuring that any allegations made during the programme are properly tested or challenged. This could be, for example, by pointing out any contradictory argument or evidence or by representing the viewpoint of the person or organisation that is the subject of the allegation.

Given this, Ofcom assessed what steps, if any, the broadcaster took to satisfy itself that material facts were not presented, disregarded or omitted in a way that was unfair to Mr Yousafzai. Ofcom considered that ARY News provided no evidence that it had taken reasonable steps before the live broadcast in this regard, for example, by advising the guests who appeared on the programme to take care about any allegations they might make. More significantly, during the programme itself, Ofcom noted that the presenter did not attempt to place his own highly critical comments, or the comments of his guests, in any form of context by explaining, for instance, that the information was unverified or that their comments only reflected personal views, nor did he appear to challenge any of the allegations made. In its response to the complaint, we noted that ARY News stated that:

“The host, Dr Danish, was under strict instructions from the Production Team to provide a balancing view whilst asking probing questions that would stimulate debate”.

However, ARY News also accepted that:

“...Dr Danish went further than our procedures allow and did not explain to viewers that Mr Yousafzai was not present to put his side of the argument to the guests. At times he appeared to get drawn in to the comments made by the guests and forgot his role as channel anchor and impartial host which we viewed as a serious breach of his position”.

Further, Ofcom was not provided with any evidence by the broadcaster to show that the programme makers had made any attempt to contact Mr Yousafzai before, during or immediately after the broadcast to seek his comments on the various criticisms and allegations directed against him in the programme. We did, however, acknowledge that in its response to the complaint, ARY News said that it had since tried to resolve the complaint with Mr Yousafzai by offering him the opportunity to give his point of view on air, but that Mr Yousafzai had declined this offer.

Given the above factors, and, in particular, the fact that nowhere in the programme was anything said to balance or place into context the comments made by the presenter and his three guests, we considered that the comments amounted to significant allegations about Mr Yousafzai, which had the potential to materially and adversely affect viewers' opinions of him and which were presented in the programme in a way that was unfair.

Taking all of the above into account, Ofcom considered that, in the circumstances of this case, the broadcaster did not take reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Mr Yousafzai and that, given the serious allegations made in the programme about Mr Yousafzai, the broadcaster was required to offer him an appropriate and timely opportunity to respond.

Ofcom has upheld Mr Yousafzai's complaint of unjust and unfair treatment in the programme as broadcast.

Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed between 3 and 16 October 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
Frightfest 2016 (trailer)	Horror Channel	24/08/2016	Generally accepted standards
Celebrity Big Brother	Channel 5	01/08/2016	Sexual orientation discrimination
British Forces News	Forces TV	07/01/2016	Due impartiality / Preservation of editorial independence.

For more information about how Ofcom conducts investigations about content standards on television and radio programmes, go to: https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55109/breaches-content-standards.pdf

Investigations conducted under the General Procedures for investigating breaches of broadcast licences

Licensee	Licensed service	Categories
99 Media Org Limited	TV99	Retention and production of recordings

For more information about how Ofcom conducts investigations about broadcast licences, go to: https://www.ofcom.org.uk/_data/assets/pdf_file/0019/31942/general-procedures.pdf

Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 3 and 16 October 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:

https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55109/breaches-content-standards.pdf

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
The Voice Kids India	&TV	04/09/2016	Race discrimination/offence	1
Topping in the Morning	102 & 107 FM Isle of Wight Radio	19/09/2016	Competitions	2
Trending Live! Afternoon Hitlist	4Music	22/09/2016	Race discrimination/offence	1
Derren Brown: Miracle	4seven	12/10/2016	Religious/Beliefs discrimination/offence	2
Sex Pod	5 Star	05/10/2016	Sexual material	1
Wentworth Prison	5 Star	06/09/2016	Information/Warnings	1
Emmy Awards 2016	5 USA	19/09/2016	Gender discrimination/offence	1
Jonotar Moncho	Bangla TV	06/08/2016	Due impartiality/bias	1
Anne Robinson's Britain	BBC 1	06/10/2016	Generally accepted standards	1
Antiques Roadshow	BBC 1	18/09/2016	Generally accepted standards	1
Breakfast	BBC 1	07/10/2016	Disability discrimination/offence	1
Casualty	BBC 1	24/09/2016	Sexual material	1
Countryfile	BBC 1	02/10/2016	Generally accepted standards	1
Eastenders	BBC 1	02/09/2016	Sexual orientation discrimination/offence	1
Have I Got News for You	BBC 1	07/10/2016	Generally accepted standards	1
Still Game	BBC 1	07/10/2016	Generally accepted standards	1
Strictly Come Dancing	BBC 1	23/09/2016	Offensive language	1
Strictly Come Dancing	BBC 1	24/09/2016	Gender discrimination/offence	1
Strictly Come Dancing	BBC 1	24/09/2016	Generally accepted standards	1
Strictly Come Dancing	BBC 1	02/10/2016	Fairness	6
Strictly Come Dancing	BBC 1	08/10/2016	Generally accepted standards	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Strictly Come Dancing	BBC 1	09/10/2016	Voting	1
The Apprentice	BBC 1	06/10/2016	Generally accepted standards	1
The Apprentice (trailer)	BBC 1	05/10/2016	Offensive language	2
The Apprentice (trailer)	BBC 1	06/10/2016	Offensive language	1
The Graham Norton Show	BBC 1	07/10/2016	Generally accepted standards	1
The Missing (trailer)	BBC 1	12/10/2016	Scheduling	1
BBC News	BBC 1 / BBC Radio 4	06/08/2016	Race discrimination/offence	1
South East Today	BBC 1 South East	05/10/2016	Scheduling	1
BBC News Special	BBC 2	24/09/2016	Sexual orientation discrimination/offence	1
Flog It	BBC 2	09/10/2016	Crime and disorder	1
Witness	BBC News Channel	01/10/2016	Race discrimination/offence	1
BBC News	BBC Radio 2	05/10/2016	Scheduling	1
Jo Whiley	BBC Radio 2	28/09/2016	Disability discrimination/offence	1
Ken Bruce	BBC Radio 2	21/09/2016	Offensive language	1
Deborah Frances-White Rolls the Dice	BBC Radio 4	16/09/2016	Religious/Beliefs discrimination/offence	1
Mark Steel's In Town	BBC Radio 4	28/09/2016	Scheduling	1
Today	BBC Radio 4	24/09/2016	Generally accepted standards	1
Woman's Hour	BBC Radio 4	10/10/2016	Gender discrimination/offence	1
Presentation announcement	Blaze TV	01/10/2016	Race discrimination/offence	1
Station ident	Bob FM	09/10/2016	Crime and disorder	1
Programming	Castle FM Online	06/10/2016	Commercial communications on radio	1
Newsround	CBBC	12/10/2016	Scheduling	1
Do You Know?	CBeebies	04/10/2016	Scheduling	1
999: What's Your Emergency?	Channel 4	03/10/2016	Generally accepted standards	4
A Place in the Sun: Home or Away	Channel 4	20/09/2016	Materially misleading	1
Channel 4 News	Channel 4	16/08/2016	Gender discrimination/offence	1
Channel 4 News	Channel 4	21/09/2016	Due impartiality/bias	1
Channel 4 News	Channel 4	06/10/2016	Generally accepted standards	1
Channel 4 News	Channel 4	11/10/2016	Due impartiality/bias	1
Damned (trailer)	Channel 4	03/10/2016	Scheduling	1
Derren Brown: Miracle	Channel 4	10/10/2016	Generally accepted standards	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Derren Brown: Miracle	Channel 4	10/10/2016	Religious/Beliefs discrimination/offence	4
Gogglebox	Channel 4	02/10/2016	Race discrimination/offence	1
Hollyoaks	Channel 4	13/10/2016	Materially misleading	1
Humans / Persona Synthetics (trailer)	Channel 4	28/09/2016	Materially misleading	1
Humans / Persona Synthetics (trailer)	Channel 4	01/10/2016	Generally accepted standards	1
Humans / Persona Synthetics (trailer)	Channel 4	Various	Materially misleading	1
Hunted	Channel 4	22/09/2016	Materially misleading	1
Hunted	Channel 4	29/09/2016	Crime and disorder	1
Hunted	Channel 4	06/10/2016	Crime and disorder	1
Hunted	Channel 4	06/10/2016	Generally accepted standards	1
Inbetweeners 2	Channel 4	09/10/2016	Disability discrimination/offence	1
Paralympics 2016	Channel 4	16/09/2016	Advertising minutage	1
Paralympics 2016	Channel 4	17/09/2016	Generally accepted standards	1
Paralympics 2016	Channel 4	17/09/2016	Generally accepted standards	1
Speed with Guy Martin	Channel 4	25/09/2016	Offensive language	1
Stand Up to Cancer (trailer)	Channel 4 +1	27/09/2016	Generally accepted standards	1
Benefits programming	Channel 5	18/09/2016	Generally accepted standards	2
Celebrity Big Brother	Channel 5	06/08/2016	Sexual orientation discrimination/offence	1
Channel 5 News	Channel 5	03/10/2016	Due impartiality/bias	1
Home and Away: Crash Landing (trailer)	Channel 5	11/09/2016	Generally accepted standards	1
On Benefits: and a Baby on the Way	Channel 5	06/10/2016	Offensive language	2
Peppa Pig	Channel 5	03/10/2016	Generally accepted standards	1
Ryanair sponsorship of daytime on 5	Channel 5	26/09/2016	Generally accepted standards	1
The Boy With No Brain: Extraordinary People (trailer)	Channel 5	Various	Materially misleading	4
The Boy With No Face (trailer)	Channel 5	02/10/2016	Scheduling	1
The Hotel Inspector	Channel 5	25/09/2016	Offensive language	8
The Illusionist	Channel 5	25/09/2016	Scheduling	1
The Secrets of the SAS	Channel 5	26/09/2016	Materially misleading	1
The Wright Stuff	Channel 5	03/10/2016	Due impartiality/bias	1
The Wright Stuff	Channel 5	07/10/2016	Generally accepted standards	3
The Yorkshire Vet	Channel 5	04/10/2016	Offensive language	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Super Scoreboard	Clyde 1	23/09/2016	Generally accepted standards	2
Forty Days and Forty Nights (trailer)	Comedy Central	12/09/2016	Sexual material	1
Impractical Jokers	Comedy Central	03/10/2016	Age discrimination/offence	1
Russell Howard's Stand Up Central	Comedy Central	20/07/2016	Generally accepted standards	2
Betsafe's sponsorship of primetime on Dave	Dave	28/09/2016	Sponsorship	3
PJ Masks	Disney Junior	22/08/2016	Dangerous behaviour	1
Body Fixers	E4	20/09/2016	Sexual orientation discrimination/offence	1
Made in Chelsea	E4	10/10/2016	Race discrimination/offence	2
Nymphomaniac Vol 1	Film4	03/10/2016	Under 18s in programmes	1
Water for Elephants	Film4	26/09/2016	Animal welfare	1
Creature Comforts	Gold	06/10/2016	Offensive language	1
Saw 3	Horror Channel	17/09/2016	Generally accepted standards	1
Coronation Street	ITV	05/09/2016	Generally accepted standards	2
Coronation Street	ITV	30/09/2016	Generally accepted standards	3
Coronation Street	ITV	03/10/2016	Violence	2
Emmerdale	ITV	26/09/2016	Crime and disorder	4
Emmerdale	ITV	27/09/2016	Crime and disorder	2
Emmerdale	ITV	10/10/2016	Offensive language	1
Emmerdale	ITV	10/10/2016	Violence	1
Go For It	ITV	24/09/2016	Dangerous behaviour	1
Go For It (trailer)	ITV	26/08/2016	Generally accepted standards	1
Good Morning Britain	ITV	26/09/2016	Due impartiality/bias	1
Good Morning Britain	ITV	04/10/2016	Gender discrimination/offence	1
Good Morning Britain	ITV	11/10/2016	Generally accepted standards	1
Good Morning Britain	ITV	11/10/2016	Scheduling	1
HSL's sponsorship of Tipping Point	ITV	23/09/2016	Sponsorship credits	1
ITV Evening News	ITV	19/09/2016	Due impartiality/bias	1
ITV Hub promotions	ITV	01/10/2016	Other	1
ITV News	ITV	20/09/2016	Due impartiality/bias	1
ITV News	ITV	13/10/2016	Violence	1
Jeremy Kyle's Emergency Room	ITV	26/09/2016	Scheduling	2
Jeremy Kyle's Emergency Room	ITV	28/09/2016	Generally accepted standards	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Loose Women	ITV	20/09/2016	Generally accepted standards	1
Loose Women	ITV	29/09/2016	Generally accepted standards	1
Lorraine	ITV	26/09/2016	Gender discrimination/offence	1
Lorraine	ITV	03/10/2016	Gender discrimination/offence	1
Nationwide's sponsorship of ITV Documentaries	ITV	15/09/2016	Sponsorship credits	1
Newzoids	ITV	23/09/2016	Due impartiality/bias	1
Newzoids	ITV	01/10/2016	Generally accepted standards	1
Parking Wars	ITV	04/10/2016	Offensive language	4
Peston On Sunday	ITV	02/10/2016	Race discrimination/offence	2
Scrambled	ITV	09/10/2016	Dangerous behaviour	1
The Jeremy Kyle Show	ITV	06/10/2016	Generally accepted standards	1
The Jeremy Kyle Show	ITV	11/10/2016	Generally accepted standards	1
The Jonathan Ross Show	ITV	08/10/2016	Generally accepted standards	1
The Jonathan Ross Show	ITV	08/10/2016	Race discrimination/offence	1
The X Factor	ITV	01/10/2016	Drugs, smoking, solvents or alcohol	1
The X Factor	ITV	01/10/2016	Gender discrimination/offence	6
The X Factor	ITV	01/10/2016	Generally accepted standards	3
The X Factor	ITV	01/10/2016	Other	3
The X Factor	ITV	02/10/2016	Gender discrimination/offence	1
The X Factor	ITV	02/10/2016	Generally accepted standards	1
The X Factor	ITV	02/10/2016	Other	17
The X Factor	ITV	08/10/2016	Generally accepted standards	2
The X Factor	ITV	08/10/2016	Nudity	1
The X Factor	ITV	08/10/2016	Offensive language	1
The X Factor	ITV	09/10/2016	Generally accepted standards	1
This Morning	ITV	21/09/2016	Undue prominence	1
This Morning	ITV	03/10/2016	Generally accepted standards	1
This Morning	ITV	03/10/2016	Materially misleading	2
This Morning	ITV	10/10/2016	Generally accepted standards	1
This Morning	ITV	10/10/2016	Other	1
Toyota's sponsorship of ITV Movies	ITV	17/09/2016	Sponsorship credits	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Toyota's sponsorship of ITV Movies	ITV	23/09/2016	Sponsorship credits	1
Victoria	ITV	28/08/2016	Materially misleading	1
ITV Granada News	ITV Granada	03/10/2016	Scheduling	1
The X Factor	ITV2	09/10/2016	Materially misleading	1
Botched	ITVBe	28/09/2016	Race discrimination/offence	1
Diet Coke's sponsorship of Dinner Date	ITVBe	04/10/2016	Sponsorship credits	1
Dinner Date	ITVBe	30/09/2016	Other	1
The Real Housewives of Potomac	ITVBe	02/10/2016	Race discrimination/offence	1
Outsiders	Kanal 5	04/09/2016	Scheduling	1
Breaking News	Kanal 5 (Sweden)	27/09/2016	Generally accepted standards	1
DJ Jasmine	Kemet FM	24/08/2016	Scheduling	1
Andrew Castle	LBC 97.3 FM	24/09/2016	Religious/Beliefs discrimination/offence	1
Andrew Castle	LBC 97.3 FM	09/10/2016	Generally accepted standards	1
James O'Brien	LBC 97.3 FM	30/08/2016	Due accuracy	1
Maajid Nawaz	LBC 97.3 FM	24/09/2016	Generally accepted standards	1
Abducted Fugitive For Love	Movie Mix	03/10/2016	Scheduling	1
News	News 18	26/09/2016	Race discrimination/offence	1
Q Breakfast with Stephen & Cate	Q Radio 96.7/102.5 FM	12/08/2016	Competitions	1
Delta Taxi's sponsorship of Radio City 97.3FM	Radio City 96.7 FM	Various	Commercial communications on radio	1
World Tour Competition	Radio Essex	Various	Competitions	1
Chris Moyles	Radio X	01/10/2016	Sexual orientation discrimination/offence	1
The Walking Dead (trailer)	Sky Atlantic	18/09/2016	Violence	1
A League of Their Own (trailer)	Sky Living	12/10/2016	Generally accepted standards	1
Labour Leadership Debate	Sky News	14/09/2016	Due accuracy	1
Labour Leadership Debate	Sky News	14/09/2016	Generally accepted standards	1
Press Preview	Sky News	08/10/2016	Due impartiality/bias	2
Sky News	Sky News	07/10/2016	Due accuracy	1
Sky News	Sky News	13/10/2016	Generally accepted standards	1
Sky News	Sky News	13/10/2016	Materially misleading	1
Z Nation (trailer)	Sky News	04/10/2016	Violence	2

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Live SPFL Aberdeen vs Rangers	Sky Sports 1	25/09/2016	Religious/Beliefs discrimination/offence	1
Soccer AM	Sky Sports 1	24/09/2016	Drugs, smoking, solvents or alcohol	1
World Grand Prix Darts	Sky Sports 1	03/10/2016	Generally accepted standards	1
Royal London's sponsorship of Sky Sports News Weather	Sky Sports News	21/09/2016	Sponsorship credits	1
A League of Their Own	Sky1	22/09/2016	Race discrimination/offence	1
Duck Quacks Don't Echo	Sky1	24/09/2016	Religious/Beliefs discrimination/offence	1
The Great American Songbook: Private Dancer music track	Smooth Radio	18/09/2016	Gender discrimination/offence	1
Oxfordshire News Now	That's Oxfordshire	02/10/2016	Other	1
Women Talk	Ummah Channel	19/08/2016	Gender discrimination/offence	1
The Bourne Supremacy / The Bourne Ultimatum	Universal Channel	28/08/2016	Advertising placement	1
The Official UK Download Chart	Viva	29/09/2016	Scheduling	1

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

For more information about how Ofcom assesses complaints about broadcast licences, go to: https://www.ofcom.org.uk/data/assets/pdf_file/0019/31942/general-procedures.pdf

Licensee	Licensed service	Categories
<i>To be added</i>		

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:

https://www.ofcom.org.uk/data/assets/pdf_file/0020/55109/breaches-content-standards.pdf

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Advertisement	4seven	30/09/2016	Advertising content	1
Advertisement	BT Sport 1	02/10/2016	Advertising content	2
Advertisement	Capital FM (Liverpool)	10/10/2016	Advertising content	1
Advertisement	Channel 4	01/10/2016	Advertising content	1
Advertisement	Dave	07/10/2016	Advertising content	1
Advertisement	Film4	01/10/2016	Advertising content	1
Advertisement	ITV	08/10/2016	Advertising content	4
Advertisement	ITV	10/10/2016	Advertising content	1
Advertisement	Sky News	28/09/2016	Materially misleading	1
Advertisement	Sky TV	19/08/2016	Advertisement	1
Advertisement	Syfy	30/09/2016	Advertising content	1
Antiques Roadshow	BBC 1	09/10/2016	Materially misleading	1
Still Game	BBC 1	07/10/2016	Product placement	1
Landward	BBC 1 Scotland	30/09/2016	Materially misleading	1
The Today Programme	BBC Radio 4	10/10/2016	Due accuracy	1
World at One	BBC Radio 4	05/10/2016	Due impartiality/bias	1

Complaints about broadcast licences

For more information about how Ofcom assesses complaints about broadcast licences, go to: https://www.ofcom.org.uk/data/assets/pdf_file/0019/31942/general-procedures.pdf

Licensed service	Licensee	Categories
DM Global	DM Global Media Limited	Other
Zack FM	Forest Heath Public Radio Limited	Other

Licensed service	Licensee	Categories
MATV	Middlesex Broadcasting Corporation Limited	Other
Various UKTV channels	UKTV Media Limited	Television Access Services
Venus TV	Venus TV Global Limited	Other
Venus TV	Venus TV Global Limited	Other

Complaints about on demand services

Programme	Service name	Accessed date	Categories	Number of complaints
Benidorm	Netflix	5 October 2016	Other	1

For more information about how Ofcom assesses complaints about on demand services, go to: http://stakeholders.ofcom.org.uk/binaries/broadcast/on-demand/rules-guidance/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 3 and 16 October 2016.

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

Programme	Broadcaster	Transmission date
Ariana News	Ariana International	10 July 2016
DIY SOS: The Big Build	BBC 1	29 September 2016
Ryanair's sponsorship of daytime programmes	Channel 5	4 October 2016
Hannity	Fox News	Various
Good Morning Britain	ITV	15 September 2016
Kajal (Broadcast competition)	Lyca Dil Se Radio 1035	28 July 2016
Qu'ran	Safeer TV	14 August 2016
Sky News	Sky News	7 August 2016
Tell Me Another	Talking Pictures TV	24 August 2016
Playing It Cool	Universal Channel	10 September 2016
Advertising	Venus TV	Various

For more information about how Ofcom assesses complaints and conducts investigations about content standards on television and radio programmes, go to: https://www.ofcom.org.uk/data/assets/pdf_file/0020/55109/breaches-content-standards.pdf