

Ofcom Broadcast Bulletin

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Introduction

Under the Communications Act 2003, Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives¹, Ofcom must include these standards in a code or codes. These are listed below.

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

- a) Ofcom's Broadcasting Code ("the Code"), which, can be found at: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>.
- b) the Code on the Scheduling of Television Advertising ("COSTA") which contains rules on how much advertising and teleshopping may be scheduled in programmes, how many breaks are allowed and when they may be taken. COSTA can be found at: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/advert-code/>.
- c) certain sections of the BCAP Code: the UK Code of Broadcast Advertising, which relate to those areas of the BCAP Code for which Ofcom retains regulatory responsibility. These include:
 - the prohibition on 'political' advertising;
 - sponsorship and product placement on television (see Rules 9.13, 9.16 and 9.17 of the Code) and all commercial communications in radio programming (see Rules 10.6 to 10.8 of the Code);
 - 'participation TV' advertising. This includes long-form advertising predicated on premium rate telephone services – most notably chat (including 'adult' chat), 'psychic' readings and dedicated quiz TV (Call TV quiz services). Ofcom is also responsible for regulating gambling, dating and 'message board' material where these are broadcast as advertising².

The BCAP Code is at: www.bcap.org.uk/The-Codes/BCAP-Code.aspx

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

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

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

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

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

Notice of Sanction

Al Ehya Digital Television Limited *Saturday Night Special, 13 November 2010*

Introduction

Al Ehya Digital Television Limited (“the Licensee”) holds a Television Licensable Content Service (TLCS) licence for the service Noor TV. Noor TV is a general entertainment and Islamic education channel broadcast on the Sky platform. The channel is aimed at Muslims living in Europe. The channel appears in the International section of the Sky EPG and is currently at channel number 819.

Summary of Decision

Saturday Night Special was a programme broadcast on Noor TV on 13 November 2010 between 21:00 and 00:00. The programme mainly consisted of a presenter taking calls from viewers who donated money to the channel in return for prayers for themselves or for their relatives.

In its Finding published in Broadcast Bulletin 184 on 20 June 2011, Ofcom found the programme had breached the following Code rules¹:

- Rule 2.1: (generally accepted standards)
- Rule 2.2: (materially misleading)
- Rule 4.6: (the exploitation of susceptibilities of the audience by religious programmes)
- Rule 10.3: (promotion of products and services)
- Rule 10.15: (appeals for funds)

In Ofcom’s view, the inducements made in this programme – i.e. the receipt of a “special gift” for a donation of £1,000, and the offer of prayers to improve the donor’s health, wealth, success or good fortune – carried the risk that susceptible members of the audience may have been persuaded to donate money to Noor TV when they would not otherwise have done so. In particular, the appeal focused heavily on religious beliefs, which Ofcom considered created an additional risk that susceptible viewers would have been more likely to make donations than they otherwise would have done, in breach of Rules 2.1 and 4.6.

Ofcom found that Noor TV had not separately accounted for the donations viewers had made as a result of the appeal for funds, as required by Rule 10.15.

Ofcom was also extremely concerned that although viewers were told that their donations were for the purpose of funding Noor TV’s programming, the funds donated via the Mohiuddin Trust website, were not in fact received by Noor TV and therefore were not used for their stated purpose, in breach of Rules 2.2 and 10.15.

Ofcom also found the programme in breach of Rule 10.3 of the Code for promoting a DVD during the programme.

¹ The Code in force in September 2010.

After considering all the evidence and all the representations made to it by the Licensee, Ofcom decided that the Code breaches were so serious that a financial penalty should be imposed in accordance with Ofcom's Procedures for the consideration of statutory sanctions in breaches of broadcast licences². Ofcom then also considered the level of the financial penalty to be imposed, in accordance with Ofcom's Penalty Guidelines³.

Having regard to: the serious nature of the breaches; the Licensee's representations; and Ofcom's Penalty Guidelines, Ofcom decided it was appropriate and proportionate in the circumstances to impose a financial penalty of **£75,000** on the Licensee in respect of the Code Breaches (payable to HM Paymaster General).

Ofcom also deemed it appropriate and proportionate, in the circumstances, to consider issuing a Direction requiring the Licensee to establish a separate account for monies received as a result of the broadcast of appeals for funds to make programmes or fund the service, in order to facilitate compliance with Rule 10.15, and to provide Ofcom with evidence of this.

In addition, Ofcom decided to direct the Licensee to broadcast a statement of Ofcom's findings, on a date and in a form to be determined by Ofcom.

The full adjudication is available at:

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

² <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/854750/statutory-sanctions.pdf>

³ <http://www.ofcom.org.uk/files/2010/06/penguid.pdf>

Note to Broadcasters

Publication of new guidance and research

On 30 September 2011, Ofcom published new guidance on the television watershed and music videos, and research into parents' and teenagers' opinions and concerns on pre-watershed television programming.

Ofcom Guidance - Protecting the Under-Eighteens: Observing the Watershed on television and Music Videos

Ofcom has provided this guidance note to assist television broadcasters in their compliance with rules relating to pre-watershed content in Section One of the Code, in particular in relation to:

- material broadcast before and soon after the watershed; and
- the suitability of material in music videos broadcast before the watershed.

The guidance can be found on the Ofcom website at:

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

This guidance note should be read in conjunction with the existing guidance for Section One of the Code, in particular Rule 1.3, which can be found at:
<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section1.pdf>.

Research into parents' and teenagers' opinions and concerns on pre-watershed television programming

Ofcom commissioned quantitative research in July 2011 among parents/carers, and teens (aged 12 to 17) to explore in detail the type of concerns and type of programmes broadcast before the watershed that may generate concerns, in particular, attitudes towards music video content broadcast pre-watershed.

This research helped inform Ofcom's new guidance to Section One of the Code (as above) and can be found on the Ofcom website at:

<http://stakeholders.ofcom.org.uk/binaries/research/tv-research/ofcom-for-parents/prewatershed-tv-programming.pdf>.

Standards cases

In Breach

Aden Live

*27 October 2010, 18:20 (16:20 GMT) to 29 October 2010, 19:00 (17:00 GMT)
15 November 2010, 10:00 (08:00 GMT) to 16 November 2010, 10:00 (08:00 GMT)*

Introduction

Aden Live is a general entertainment service broadcast in Arabic by Dama (Liverpool) Limited (“the Licensee” or “Dama”), a company based in the United Kingdom. The service is aimed at the people of South Yemen and includes programmes based on news, political views, South Yemeni culture and entertainment. It can be received in the Middle East and some parts of Europe by satellite, but it is not on the Sky Electronic Programme Guide and cannot be received in the UK on normal satellite equipment. At the time of the Broadcasts (see below), it was also streamed on the internet.

Background

In 1990 North and South Yemen were united to form the Republic of Yemen (“Yemen”), and Ali Abdullah Saleh became president of Yemen. The capital of Yemen is Sana’a (sometimes spelt “Sana” in this decision). Aden is a city and governorate in the south of Yemen.

Complaint

In October 2010 Ofcom received a complaint made on behalf of the Government of Yemen about the service Aden Live. In summary, the complaint stated that the channel is encouraging Yemeni nationals in southern Yemen to revolt against the Government of Yemen and to divide the nation into separate states. It stated that the channel was spreading hatred and calling for attacks on government regional offices, the police and the national army; and its content was affecting the civil peace and stability of Yemen.

The complaint also raised licensing issues which have been raised separately with the Licensee.

The Broadcasts

To establish if the output of Aden Live raised any potential issues under the Code, Ofcom obtained recordings of broadcasts on Aden Live in Arabic for the following dates and times:

- Wednesday 27 October 2010 at 18:20 (16:20 GMT) to Friday 29 October 2010 at 19:00 (17:00 GMT) (“the October 2010 broadcast”); and
- Monday 15 November 2010 at 10:00 (08:00 GMT) to Tuesday 16 November 2010 at 10:00 (08:00 GMT) (“the November 2010 broadcast”)

(together “the Broadcasts”).

Ofcom contracted an independent translator to view the Broadcasts and provide Ofcom with information regarding their content. The translator also translated extracts from the Broadcasts from Arabic into English, and produced a transcript of certain parts of their content.

The transcripts indicated that the Broadcasts focused on the politics and culture of South Yemen. They included: a substantial number of news and current affairs programmes; phone-in programmes and interviews of a political nature; and, information scrolls containing text messages or news. The Broadcasts also included cultural and entertainment programmes.

Relevant rules

Having viewed the Broadcasts and the transcripts, Ofcom considered that some of the content of the Broadcasts raised potential issues under the Code and warranted investigation. We therefore wrote to the Licensee, requesting its comments on how the content of the Broadcasts complied with the following rules of the Code.

- Rule 2.4 “Programmes must not include material (whether in individual programmes or in programmes taken together) which, taking into account the context, condones or glamorises violent, dangerous or seriously antisocial behaviour and is likely to encourage others to copy such behaviour.”
- Rule 3.1 “Material likely to encourage or incite the commission of crime or to lead to disorder must not be included in television or radio services.”
- Rule 5.4 “Programmes in the services (listed above¹) must exclude all expressions of the views and opinions of the person providing the service on matters of political and industrial controversy and matters relating to current public policy (unless that person is speaking in a legislative forum or in a court of law). Views and opinions relating to the provision of programme services are also excluded from this requirement.”
- Rule 5.11 “In addition to the rules above, 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 (listed above²) 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 appropriately wide range of significant views must be included and given due weight in each programme or in clearly linked and timely programmes. Views and facts must not be misrepresented.”

To assist the Licensee in providing comments we set out, by way of example, extracts from the Broadcasts which we considered raised possible issues under the Code. We informed the Licensee that while its comments were sought in relation to

¹ i.e. television and radio services except restricted services.

² i.e. television programme services, teletext services, national radio and national digital sound programme services.

all of the content in the Broadcasts, we were requesting specifically comments on these examples, and we asked the Licensee to structure its response by reference to the illustrative examples.

It was apparent from the Licensee's response that, more fully translated and in context, some of the examples did not raise potential issues under the Code. Only the material that in Ofcom's opinion continued to raise potential issues under the Code is set out below.

Material under investigation

Rules 2.4 and 3.1 of the Code

Ofcom asked the Licensee for its comments on how the following examples complied with Rules 2.4 and 3.1 of the Code.

Programme date: Aden Live, 27 October 2010 to 29 October 2010

Example one

Poem

"...if we meet then speech is replaced by the sword"

"...your people are racing to martyrdom, irrigate your land with blood until it is set free....we will make the occupier drink and taste the bitter taste of 'the cup of death'"

"... the son of the South with his honourable blood regains his rights".

Example two

Translator's note: Poem by the poet Saleh Ahmed Saleh Al Labin – the first letter of each line begins with the next letter of the alphabet. At the Arabic letter "KH" it says:

"It is best for us to die or be killed, we should set an example, this is the right action of any sensible person".

Example three

Information scroll at the bottom of the screen:

"I bow my head in all humility and respect for each martyr who gave his life to liberate the South [of Yemen]³ and whoever sweated one drop of sweat for the liberation" [by] Abu Asaad.

³ Square brackets indicate where Ofcom has added non-material words to the translation to aid understanding.

Programme date: Aden Live, 15 November 2010 to 16 November 2010

Example four

Information scroll at the bottom of the screen:

“Mr Talal Al Sirhi demands the League of Arab States⁴ to save the people of South Yemen – Mr Naji Jaber asks the people of the South to escalate the activities until the release of Baoum⁵ together with his companions and Sheik Al Mansoori calls for uniting the efforts to pressurise the occupiers”.

Translator’s note: These text messages were shown just before images of a demonstration in support of the leader Mr Baoum and demands for his release. The demonstrators are shown singing and chanting:

“with fire, fire, fire and iron ... no to occupation ... revolt, revolt people of the South, with our spirits and blood we will pay a ransom for the South, with our spirits and blood we will pay a ransom for Baoum”.

Ofcom note: While these text messages were broadcast demonstrators were also shown setting off fireworks.

Example five

Translator’s note: South Yemeni patriotic song:

“I cherish the days of carrying arms ... I cherish the days of carrying arms... the martyr followed my belief... and I entered into the fiercest of struggle/battles with the enemy, the fiercest of struggle/ battles with the enemy, where I set my freedom”.

Translator’s note: An image of the South Yemen flag and of an overturned police/military car, in what appears to be an attack of some sort, is broadcast during the song.

Example six

Song:

“We came to congratulate the mother of the martyr ... we came to chant with her the songs of farewell on the day of saying good bye to him with tears in her eyes ... she raised him with her own hands ...we came to congratulate her ... what a lovely eyes he had ... he never sold you⁶ short[,] he sacrificed his life for you...”.

Song continues: *“... he had his weapon in his hands when he sacrificed his life ... he had his weapon in his hands on his ‘wedding day’...we came to congratulate his mother and salute her ...”.*

⁴ Also known as the ‘Arab League’, this is an association of 22 member countries, including Yemen, whose peoples are mainly Arabic speaking

⁵ Ofcom note: Hasan Baoum, a Southern Movement leader.

⁶ Translator’s note: the mother country.

Ofcom note: As this song was sung, images of people killed in the south of Yemen were shown.

Section Five: Due impartiality

The transcripts indicated that the Broadcasts contained a substantial amount of programming that focused on the contemporaneous political situation in Yemen, including the policies and actions of the Government of Yemen. For the reasons set out under 'Decision' below, Ofcom considers that the political situation in Yemen, including the policies and actions of the Government of Yemen, was at the time of the Broadcasts a matter of major political controversy and a major matter relating to current public policy. Ofcom therefore asked the Licensee for its comments on how the following examples complied with Rules 5.11 and 5.12 of the Code.

Programme date: Aden Live, 27 October 2010 to 29 October 2010

Example seven

Translator's note: Special edition of the programme called "The weekly discussion", which included an interview with Mr Ban Fareed (writer, journalist and political activist)

Mr Ban Fareed:

"We now consider [the] 'Aden Live' Channel, which has provided us with a "bright window" to present our southern case, even with its modest capabilities, through will of steel, patriotic drive of its various crews... who present an honourable patriotic media message... I believe that the role you are playing now is a historical one, a real one which will be mentioned in history with the names of the people who used to run [the] 'Aden Channel' and Allah willing we will be witnesses for you not against you...,"

but, for a channel that fight[s] for a southern cause, a case that wishes to retrieve a country, homeland, is there no one to support it? Do you want to lose your homeland, the homeland needs sacrifice, spending⁷ ... but, there are other people who are able to give,⁸ to help and support.

In all honesty I call upon those in this interview, very much so, those who can and [are] able to sponsor this channel and support the homeland, so as to allow us to develop the channel and transfer it into a stage whereby it will be able to convey part of this message, to fend off this vicious attack that we are facing now...."

Example eight

The programme "The weekly discussion", guest presented by Mr Mumtaz.

Presenter:

"On a daily basis the monstrosity of this retarded enemy is on the increase against the unarmed Arabian southern Yemen, bombarding the villages and

⁷ Translator's note: referring to money.

⁸ Translator's note: give money.

towns of the South and prevent[ing] the daily supplies from reaching its people.

So this enemy is starving the faithful and prevents them from seeking treatment in hospitals, in order to humiliate and insult them because they would not keep quiet about th[ese] crimes and his occupation of their homeland...”

Guest, Ahmed Al-Hasani:

“The unbalanced war waged by the Sana’a regime to bomb the towns, starve the people, in order to dishonour the people of the South and to bring the people of the South to their knees. There are daily bombing raids, sieges and starvation, even medicines are not allowed to be brought in to treat the sick and the wounded.”

“The people of the South are aware of their rights and their Southern identity. They are fighting an unarmed struggle to gain their freedom and independence, while the North uses all sorts of weapons, oppression, bribes, distortion of the facts, ugly and non Islamic conduct. This is only matched by what is happening in occupied Palestine and what the Israeli army does to the Palestinians in Gaza and the West Bank.”

Translator’s note: Images of martyrs are shown.

Example nine

Programme: “Windows on the Events”, presented by Jamal Obadi

Ofcom note: The comments below refer to the introduction of elected Governors in Yemen by President Saleh.

Presenter:

“We as Southerners are not satisfied with this change, we are only satisfied with regaining the independent Southern state and its capital Aden, we are not satisfied with any change in the governing system or any reforms...”

“The purpose of all of this is to halt the progress of the Southern Hirak,⁹ to sabotage us from reaching our goal and to regain the independent southern state. And if we manage to reach our goal then we will get there divided, fighting against one another which is exactly what they want. They work for this.”

Programme date: Aden Live TV, 15 November 2010 to 16 November 2010

Example ten

Translator’s note: The opening ceremony of the headquarters of the Aden Community in Liverpool. Includes an interview with Brigadier General Abdul Hafez Al-Afif.

⁹ The Southern Movement

Brigadier General:

“We have agreed together to take the liberation process to the safety zone and we have [a] duty indeed not to disappoint our people who are fighting without protection to the field of battle, so as to liberate the homeland from the claws of the retarded forces who are gloating nowadays with its victory on 07.07,¹⁰ but, we say to them if the battle is over, then the war will continue until we get our right sooner or later.

And we say to our people, stand your ground and be patient Allah with those who are patient, nowadays, you¹¹ are setting a wonderful example of liberating a homeland, which is the duty of all, and we say mortality to our martyrs and victory, all of the victory is for our people and our southern cause. And the release of our prisoners and the speedy recovery of our wounded.

And we say to the forces of oppression you have nothing but to leave... the victory of Aden is drawing close. We thank [the] Aden channel for its distinguished performance through which our cause was able to reach to the top in terms of media publicity around the world and [to] the people of the South [whether] they are in or outside the South.

We further confirm that it's our duty, we the children of the South, the expatriates in all the various countries, in America and in the Gulf, Britain and all other countries to give all the support¹² to this channel, so as to enable it to perform its duty and tasks appropriately, without this channel we will not be able to show what is going [on] inside the South in terms of siege, killing and infringements of human rights by the occupier against our people.”

Example eleven

Translator's note: A phone-in programme broadcast from London and presented by Al Safia Alamandi.

Presenter:

“Our dear viewers, the occupied south is being exposed to a fierce and savage attack by a regime that does not know but the criminal actions and the styles of oppression, a regime that wants to exterminate the south both in terms of its people and land...

Our dear viewers, the popular Al-Sail market, this market which has been subject to fire more than once, a fire which has fully destroyed all the stalls under the shadow of silence by the regime of Sana'a, who is responsible for these fires which have been caused to this market more than once, in Krater, in the capital Aden?”

¹⁰ Translator's note: On 7 July 1994 Northern forces in Yemen took control of Aden.

¹¹ Translator's note: the people of the South.

¹² Translator's note: financial support.

Caller:

“By Allah, we deplore and condemn the arrest of “Hasan Ahmed Baoam” and we warn the occupation forces of their savagery and tell them it is essential ... it is essential to release Baoam, otherwise we will not be quiet about it...”

Presenter:

“For sure, the people of ... the people of the South will continue their demonstrations, the demonstrations of anger and the activities of protest, these activities which are held to demand the regime to leave, in addition to the release of all our prisoners headed by the leader Hasan Ahmed Baoam. We take another call, please go ahead my dear brother we are live on air.”

Another caller:

“First of all, peace be upon you, you the star of the dawn of the Arabian south, my sister Al Safia Alamandi, secondly I salute my brother the freedom fighters in the fields of battle of the peaceful struggle inside the south. Also we condemn and deplore the heinous crime caused to the market ...”

Presenter:

“My dear brother, are you still with me? ... It appears that we lost the connection. Our dear viewers in continuation to the oppressive practices of the authority, soldiers of the central security of the Sana’a regime arrested the lawyer Arif Al Halmi and [have] taken him away to [an] unknown destination.”

Aden Live website

Ofcom noted the following information provided on Aden Live’s website on 20 October 2010 (www.adenlive.tv):

“the main goal of Aden Live channel is to convey to the World, the struggle of the South Arabia (South Yemen) people that they face daily from the current regime of the dictator Ali Abdullah Saleh”; and

“Aden Live channel started on 12th of June 2006, by a group of enthusiastic young men from South Arabia, broadcasting live from London and will continue to do so until the liberation of South Arabia from the occupation of the Yemenis”.

In the light of this information, and given that the views expressed and material presented on Aden Live appeared to be almost entirely in support of the Southern Movement and opposed to the Government of Yemen, Ofcom also requested the Licensee’s comments on how the Aden Live service as a whole complies with Rule 5.4 of the Code.

Response

Dama stated that Aden Live “was set up in 2009 with a view of filling a gap in the provision of news, views and culture and entertainment to the people of South Yemen”. It said that it is the most popular channel in South Yemen and is widely watched by South Yemenis across the whole Middle East.

Dama said “there has been a substantial degree of discrimination by the Yemeni Government against southerners”. This discrimination “pre-dated and was one of the causes of the 1994 civil war” in which the South had sought to regain its independence. It added that “southerners have no real voice in the media” with the Yemeni domestic channels all controlled by the Government in Sana’a.

Dama cited a UNHCR report as saying that “*President Saleh...strengthened his regime’s already tight control over the media in 2009 by imposing a news blackout on military offensives in the north and south of the country. Journalists and citizens who stray from the official line are routinely arrested, kidnapped or physically attacked. The regime has shut down most of the opposition press and set up a special court to try press offences ...*” (at <http://unhcr.org/refworld/docid/4dc2b5218.html>).

In support of the above point Dama also cited “Reporters with Borders’ 2010 World Press Freedom Index (20 October 2010)” at <http://en.rsf.org/press-freedom-index-2010.1034.html> and “Article 19, the International Federation of Journalists, International Media Support and The World Association of Newspapers and News Publishers” at <http://www.article19.org/pdfs/publications/yemen-critical-state-of-affairs.pdf>.

Dama continued that “the government in Sana has, in essence, an information monopoly when it comes to reporting the affairs of South Yemen”, which it considered a matter “which must be relevant when considering... free speech rights under Article 10 of the European Convention on Human Rights”. Dama added that its broadcasts are only in Arabic and “are unlikely to be viewed by anyone in the European Union”.

Rules 2.4 and 3.1 of the Code

Dama said that “none of the examples raised [by Ofcom] can be described as incitements to crime or disorder”. It said that “some of the extracts may depict or describe violence done to South Yemenis, but the items do not incite the commission of crime or lead to disorder”. It added that “the use of imagery is not an incitement to violence”.

Dama referred to Ofcom’s guidance notes on Section 2 of the Code, which state that “Broadcasters and the public view and listen to material measured against a background of generally accepted standards. Ofcom licenses an increasing number of satellite and cable channels, who broadcast solely to non-UK countries where different standards may apply. The understanding of what is ‘generally accepted standards’ should be underpinned by relevant research.”

Programme date: Aden Live, 27 October 2010 to 29 October 2010

Example one (see above)

Dama stated that the poem must be considered in the context of the material that preceded it, which included: a report about a demonstrator (Fuad Ahmed Nagi) who was beaten until unconscious while in custody; and a film of the “burial of four people who were shot at Al Anad while seeking to bury six of their compatriots”.

The Licensee said that the ‘sword’ referred to “is the sword of justice” and the word “‘martyrdom’ refers to those killed in peaceful demonstrations for their rights, victims – not to ‘armed rebels’ or suicide bombers”. It added that “the term means a victim of calamity, rather than an armed fighter”.

With regard to the words “*we will make the occupier drink and taste the bitter taste of the cup of death*”, Dama said that this is a “widely used phrase to describe resisting something and making the opponent suffer, the suffering need not involve physical suffering, it could involve a severely embarrassing climbdown”.

Example two

Dama stated that “this poem is accompanied by pictures of victims of oppression in South Yemen, including pictures from 1994, queues for food and water and so on”. It said that the particular verse of the poem set out above “conveys, in context, the meaning ‘*either say nothing [and die of hunger etc] or go out and demonstrate and die [that way instead] in order to make an arrogant man see sense*’”. It said that “this sentence is not a call for violence, and the poem as a whole is not inciteful of crime or disorder”.

Example three

Dama stated that the “translation of the message is incomplete, the second line should read ‘*and to every injured person and prisoner and also to whoever sweated one drop of sweat for the liberation*’”. It referred again to the manner in which ‘martyr’ should be understood.

Programme date: Aden Live TV, 15 November 2010 to 16 November 2010

Example four

Dama stated that “these are text messages from viewers... None of them suggest activity which is anything other than peaceful”.

Dama said that “the broadcast shows people demonstrating for the release of Mr Baoam” and “the song referring to fire and iron is an old song from the 1960s”. It said that the material “was probably not appropriate, and it will not be re-broadcast in this context”. It said that “the reference to ‘*spirit and blood*’ is part of a common chant used throughout the Arab world... It refers to struggle and sacrifice, but this in no way denotes the use of violence”.

Example five

Dama said that the song “is a more recent song referring to suffering in the South”. It made the point that “the carrying of arms by tribespeople is common in Yemen. Carrying the curved dagger (jambiyah) is a sign of the noble birth, and there are likely to be far more guns than people in Yemen”.

Dama stated that the overturned police car shown was one accompanying President Saleh’s motorcade, which overturned because it was driving too fast, killing two people. However, Dama accepted that “the juxtaposition of the damaged police vehicle and song were unwise in this case and will not be repeated”.

Example six

Dama said that “this is a song from Lebanon or Palestine” and commented that, in terms of its audience’s expectations, “Yemenis would associate martyrdom with being a victim, not with for example suicide bombing”. It stated that weapons are often carried at weddings.

Dama said in conclusion that it considered that “none of the above material can be said to encourage armed struggle or violent resistance or seriously antisocial behaviour, or condone it”. It stated that “the overwhelming majority of [its] coverage concerns peaceful activity” and emphasised that it has “nothing to do with armed operations in Yemen or anywhere else”.

Rules 5.11 and 5.12 of the Code

Dama stated that “impartiality must be judged in the context of the fact that Aden Live is the only channel devoted to the culture and interests of the people of South Yemen and acts as an essential counterpoint to the other Yemeni channels, which are heavily biased towards the interests of the North of the country and the present policies of the present government of Yemen”. Dama said that “the Government of Yemen does not want to participate in Aden Live TV broadcasts, since its clear desire has always been to close down the channel”. It said that “[r]epeated attempts by Aden Live TV to get the opinions of the Government side in the capital Sanaa – North Yemen or in London have been declined and met with threats of dire consequences.”

Dama referred to an Amnesty International report published in August 2010, “Yemen: Cracking down under pressure”¹³, which it said “further sets out the situation prevailing in the South of Yemen last year (in chapter 5) and the severe restrictions on freedom of expression under which the media operated in Yemen (at chapter 6).”

Dama also referred to Ofcom’s guidance notes on Section Five of the Code, which state that: “[f]or those Ofcom licensees who are not broadcasting to the United Kingdom, the impartiality requirements still apply but the amount due *may* be less depending on the subject matter and the original country of reception”.

Programme date: Aden Live, 27 October 2010 to 29 October 2010

Example seven

Dama said that “it is clear that Mr Ban Fareed was here seeking to link the fate of Aden Live channel with that of Al Ayyam newspaper, which used to be the only newspaper reporting on what was happening in South Yemen, and which was closed down at gunpoint by the Yemeni Government in 2009”. It said that he “does seek to encourage donations for the channel”, which “relies virtually entirely on private funding”. It also said that Mr Ban Fareed “has personal experience of the Yemeni government’s creation of the information monopoly... [referred to above] and we cannot see how the broadcast of his praise for Aden Live TV’s modest effort to redress the balance can be said to exhibit a lack of impartiality”.

Example eight

Dama said that the presenter is “referring to state sponsored violence in South Yemen, in particular [an] attack on the Southern Yemeni village of Al Majalla (in which 41 people died, 21 of them children) and to a siege of Al Habeleen in Al-Dahla Province in September 2010, both of which resulted in significant deaths”. Dama accepted that on this occasion the presenter “may have strayed a little in his role as presenter”.

¹³ <http://www.amnesty.org/en/library/asset/MDE31/010/2010/en/da8bd0cc-37ab-4472-80b3-bcf8a48fc827/mde31010210en.pdf>

However Dama said that the second statement attributed to Mr Al-Hasani (*“The people of the South are aware of their rights... conduct.”*) “has not been accurately translated. Only the last sentence (referring to Palestine) is accurate. In particular Mr Al-Hasani does not refer to *‘ugly and non-Islamic conduct’*”. Dama provided its own translation of this statement (set out below):

“[T]he war continues in occupied South Arabia, on our people in the cities and villages of the South from Al-Mahrah in the East to Al-Sobeegah and Bad el Mandeb in the West and from Aden in the South to Al-Dahla in the North since 1994. But it intensified and took on a more dangerous trend because of the widespread use of all types weapons in recent days, especially after our people went to work to organise peaceful struggle which took its full dimensions after 7 July 2007 and became know[n] at Arabian and international political levels... That has been matched in the world only by what is happening in the occupied Palestine and what the Israeli Army is doing in the different cities of Palestine in Gaza and the West Bank, the same is happening with our people in occupied South Arabia.”

Dama added that the “images shown were of people killed during a peaceful demonstration”.

Example nine

Dama stated that this programme was presented by a guest presenter, Jamal Obadi. His appearance was a one-off. It said that in this example “he was referring to the appointment by President Saleh, following pressure for reform by the US, UK, Saudi Arabia and others of elected Governors”. Dama accepted that the presenter “may have strayed a little from his role as presenter on this occasion”.

Programme date: Aden Live TV, 15 November 2010 to 16 November 2010

Example ten

Dama stated that Brigadier General Abdul Hafez Al-Afif is the “former head of the air force in South Yemen” and in the interview he is “expressing his view that people should watch Aden Live TV to find out what is going on in South Yemen”.

Example eleven

Dama stated that this example was taken from a two hour phone-in programme, in which viewers express their views on a topic usually announced the previous day by the presenter (e.g. education). It said that the presenter “was commenting on a fire at a market in Aden which was believed to have been started by the Government”.

Dama said that the presenter “also noted that... the continued detention of an elderly political prisoner, Hasan Baoum would result in continued protests”. Dama said that “this is best described as a statement of fact rather than a statement of the presenter’s views.”

In addition to its comments about the above examples, Dama stated that “Aden Live TV is receptive to, and regularly airs the views of those who favour a united Yemen”. It provided Ofcom with one example in the October 2010 broadcast: a caller to a programme stated that the Southern “Hirak” Movement is Al Qaeda; there is then a long debate which ends with the caller stating *“unity is here to stay, you are nothing but frogs in the sea”*.

Dama also stated that “much of the broadcast material concerns cultural matters which involve no conceivable political overtones”. It added that it is “now well aware of the need for due impartiality in its broadcasts, and is taking steps to address this going forward”.

Rule 5.4 of the Code

Dama stated that the information on its website “has not been on the website for quite some time and does not accurately reflect [its] intentions”. It explained that it “was posted by a helper and did not appear on any broadcast material”. Dama said that its aim “is to convey to the world the culture, life and daily events in South Yemen, which is not currently adequately reflected in Yemeni media...”.

Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to require the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material. Ofcom also has a duty to set such standards for the content of programmes as appear to it best calculated to secure the standards objectives, including that: “generally accepted standards” are applied so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material; “that material likely to encourage or to incite the commission of crime or to lead to disorder is not included in television and radio services”; and that the special impartiality requirements set out in section 320 of the Act – see further below – are complied with.

These standards are contained in the Code. Broadcasters are required to comply with the rules in: Section Two of the Code so as to provide adequate protection for members of the public from harmful and/or offensive material; Section Three of the Code to ensure that broadcasters do not include material likely to encourage or to incite the commission of crime or to lead to disorder; and Section Five of the Code to ensure that the special impartiality requirements of the Act are complied with, including that due impartiality is preserved on matters of major political or industrial controversy and major matters relating to current public policy (see above for the specific provisions).

In reaching this decision Ofcom has also taken account of the right to freedom of expression, as set out in Article 10 of the European Convention on Human Rights. Article 10 provides for the right to freedom of expression, which includes the freedom to hold opinions and to receive and impart information and ideas without interference from a public body and regardless of frontiers. The exercise of these freedoms may be subject to such restrictions and conditions as are prescribed by law and necessary in a democratic society, in the interests, for example, of national security, territorial integrity or public safety, for the prevention of disorder or crime, or the protection of the rights of others. Applied to broadcasting, Article 10 therefore protects the broadcaster’s right to transmit material, as well as the audience’s right to receive it, as long as the broadcaster ensures compliance with the Code and the requirements of statutory and common law.

In considering the application of Rules 2.4 and 3.1 to the Broadcasts, and when considering whether “due impartiality” has been preserved as required by Section Five of the Code, ‘context’ must be taken into account. Context includes factors such as: the editorial content of the programme; the service on which material is

broadcast; and the likely size and composition of the potential audience and likely expectation of the audience.

In particular, Ofcom has taken into account the fact that the Licensee was directing its broadcast service predominantly to members of a particular group, and accordingly it was to be expected and is understood that the content of the service would have been dominated by issues that concerned and were of interest to the members of that group. Dama directs its service (broadcast in Arabic) to the people of South Yemen. It is therefore unsurprising that it broadcasts programmes about events in South Yemen, and the views and concerns of the people of South Yemen, including of those that seek secession from Yemen.

It is not within Ofcom's remit to question or investigate the validity of the views expressed in this case, but to require the broadcaster to comply with the relevant standards in the Code. The Code does not prohibit broadcasters from discussing any controversial subject or including a particular point of view in a programme. Nor does it preclude broadcast coverage of acts such as demonstrations and protests against established government bodies. To do so would be an unacceptable restriction on a broadcaster's freedom of expression and Ofcom has a specific duty under section 3(4) of the Act to have regard, when performing its general duties, to the need to secure that the application of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material is 'in the manner that best guarantees an appropriate level of freedom of expression'.

Therefore when investigating concerns arising from the broadcast of such content, Ofcom must have regard to the right to freedom of expression of the broadcaster and its audience, taking into account that the exercise of that right is subject to certain restrictions including the need for broadcasters to comply with the standards set out in the Code.

Rule 2.4 of the Code

Ofcom first considered the material in examples one to six above under Rule 2.4 of the Code. The standards set in Section Two are those standards which appear to Ofcom best calculated to secure the following objective: 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.

The relevant test under Rule 2.4 is firstly, that material must not, taking into account the context, condone or glamorise violent, dangerous or seriously antisocial behaviour; and second, that it should not be likely to encourage others to copy such behaviour. This standard applies whether the material is contained in individual programmes or in programmes taken together.

Ofcom's guidance notes on Section Two of the Code state that in considering generally accepted standards, Ofcom recognises that it "licenses an increasing number of satellite and cable channels, who broadcast solely to non-UK countries where different standards may apply", and that generally accepted standards will vary according to the context. In this case, Ofcom noted that Aden Live can be received by satellite in the Middle East and parts of Europe, and that at the time of the Broadcasts it was streamed on the internet and so could be received in the UK.

With regard to the context in which the Broadcasts are made (as set out above), Ofcom took into account that Dama directs its service, which is broadcast in Arabic,

predominantly to the people of South Yemen (those living in South Yemen and South Yemenis living elsewhere). Ofcom noted that Dama states that Aden Live is the most popular channel in South Yemen. In considering whether the material in examples one to six condoned or glamorised violent, dangerous or seriously anti-social behaviour, and was likely to encourage others to copy such behaviour, Ofcom therefore considered in particular the way in which it was likely to be perceived, and the effect it was likely to have, in Yemen.

In doing this, it was necessary for Ofcom to take into account the Yemeni political context.¹⁴ Ofcom understands that there is opposition in South Yemen to the Government of Yemen owing to a perception among South Yemenis that they have been politically and economically marginalised since unification. Ofcom understands that the Southern Movement (“Al Hirak”) is an opposition movement many of whose supporters seek the secession of South Yemen from Yemen. Ofcom was mindful that it has been reported that demonstrations in South Yemen have often met a harsh response from the Government of Yemen, and that there has been violence at some demonstrations and in some cases armed clashes.¹⁵ Ofcom was also mindful that the Southern Movement is perceived by the Government of Yemen as a threat to the stability and unity of Yemen.¹⁶ Ofcom noted Aden Live’s clear support for Al-Hirak and secession, and its regular reports on demonstrations against the Government of Yemen and the Government’s harsh response.

In this context, the material that Ofcom considered which raised potential concerns under the Code included:

- songs and poems;
- information scrolls carrying text messages in support of secession and/or the Southern Movement; and
- images expressing opposition to the Yemeni government, such as footage of demonstrations in support of South Yemeni leaders and images of an overturned police/military car and of South Yemeni people who have been killed.

Examples one, two, four, five and six included songs, chants or poems. By way of illustration of their content, example two included the following poem lyrics:

“It is best for us to die or be killed, we should set an example, this is the right action of any sensible person”.

¹⁴ It should be noted that the programmes Ofcom is considering in this decision were broadcast in October and November 2010, before the political unrest which has taken place in Yemen during 2011.

¹⁵ See, for example, April Longley and Abdul Ghani al-Iryani, “Fighting Brushfires with Batons: An Analysis of the Political Crisis in South Yemen”, The Middle East Institute, *Policy Brief* (February 2008); April Longley Alley and Abdul Ghani al-Iryani, “Southern Aspirations and Salih’s Exasperation: The Looming Threat of Secession in South Yemen”, The Middle East Institute, *Viewpoints*, no. 11 (June 2009); Stephen Day “Yemen: On the Brink: The Political Challenge of Yemen’s Southern Movement”, Carnegie Endowment for International Peace, Middle East Program, No. 108 (March 2010).

¹⁶ As set out in the complaint made to Ofcom about Aden Live on behalf of the Government of Yemen.

Similarly, example six included the song lyrics:

“We came to congratulate the mother of the martyr ...

...we came to congratulate her ... what a lovely eyes he had ... he never sold you¹⁷ short[,] he sacrificed his life for you....

... he had his weapon in his hands when he sacrificed his life ...”

Examples three and four included information scrolls carrying text messages in support of secession and/or the Southern Movement. By way of illustration, example four included the following text messages:

“... Mr Naji Jaber asks the people of the South to escalate the activities until the release of Baoum¹⁸ together with his companions and Sheik Al Mansoori calls for uniting the efforts to pressurise the occupiers”.

Examples four, five and six all included images expressing opposition to the Yemeni government. By way of illustration, the text messages set out directly above in example four were followed by footage of a demonstration in support of Hasan Baoum and demanding his release. The demonstrators were shown setting off fireworks and singing and chanting the following:

“with fire, fire, fire and iron ... no to occupation ...revolt, revolt people of the South, with our spirits and blood we will pay a ransom for the South, with our spirits and blood we will pay a ransom for Baoum”.

In example five, images of the South Yemen flag and of an overturned police car which Dama states was involved in an accident while accompanying President Saleh’s motorcade – an accident killing two people – were broadcast with a South Yemeni patriotic song with the lyrics:

“I cherish the days of carrying arms ... I cherish the days of carrying arms... the martyr followed my belief... and I entered into the fiercest of struggle/battles with the enemy, the fiercest of struggle/ battles with the enemy, where I set my freedom”.

In considering examples one to six, we took into account the Licensee’s comments in respect of each of the examples as set out in the ‘Response’ section. Dama represented that “some of the extracts may depict or describe violence done to South Yemenis” but that “none of the... material can be said to encourage armed struggle or violent resistance or seriously anti-social behaviour, or condone it”. Dama said that “most of the rich imagery of the Arabic language is just that – imagery” and that the “use of imagery is not an incitement to violence”. Dama provided Ofcom with interpretations of language included in the poetry, songs and information scrolls to show that it did not incite crime or encourage violence. For example, Dama stated that the line of the poem in example one “*we will make the occupier drink and taste the bitter taste of ‘the cup of death’*”, “is a widely used phrase to describe resisting something and making the opponent suffer”, and that the suffering need not be physical but could involve an embarrassing climbdown. Dama also stated that the reference to “*spirit and blood*”, chanted by demonstrators in

¹⁷ Translator’s note: the mother country.

¹⁸ Hasan Baoum, a Southern Movement leader.

example four, “is part of a common chant used throughout the Arab world referring to sacrificing everything for the cause. It refers to struggle and sacrifice, but this in no way denotes the use of violence”. Dama also stated that the words “martyr” and “martyrdom” refer to those killed in peaceful demonstrations for their rights, and not to armed rebels or suicide bombers. It added that “Yemenis would associate martyrdom with being a victim”.

As part of our consideration, we took into account that the Licensee accepted that some of the material in examples four and five was “probably not appropriate” and “unwise in this case”, and that Dama has undertaken not to re-broadcast it.

Ofcom was mindful that broadcast content, in lyrical form, may refer to acts of violence, but this does not necessarily mean that there has been a breach of the Code. Ofcom however understands that songs, poetry and chants are used extensively in Arabic culture and can contain influential and powerful messages for viewers and listeners. Ofcom took into account that the songs, poems and chants included in the examples were shown on a service aimed at the people of South Yemen who would have been likely to view this material in this light.

In terms of the use of the word “martyr” in the Broadcasts, Ofcom took into account the context in which it was used. For example, it was used in information scrolls carrying text messages and songs, including: “I bow my head in all humility and respect for each martyr who gave his life to liberate the South” (example three); “I cherish the days of carrying arms... the martyr followed my belief” (example five); and “[w]e came to congratulate the mother of the martyr... he sacrificed his life for you... he had his weapon in his hand when he sacrificed his life” (example six). Ofcom considered that in these examples, “martyr” referred to a person who has died on behalf of a cause (in the context of the Broadcasts, that cause being the rights of South Yemenis and the independence of South Yemen). Ofcom noted Dama’s statement that it has “nothing to do with armed operations in Yemen or anywhere else” and took into account that examples eight and eleven referred to an “unarmed” and “peaceful” struggle, and that Dama commented that the images in example eight “were of people killed during a peaceful demonstration”. However Ofcom considered that the references to the carrying of arms and weapons implied that the martyr may have died in an armed struggle.

Ofcom also noted in considering this material that some of the songs, poems and text messages in examples one to six were juxtaposed with powerful anti-government images: “pictures of victims of oppression in South Yemen, including pictures from 1994,¹⁹ queues for food and water and so on” (see Dama’s representations in relation to example two); footage of a demonstration in support of a leader of the Southern Movement (example four); an image of an overturned police/military car (example five); an image of the flag of South Yemen (example five); and images of people killed in the south of Yemen (example six).

As stated above, the Code does not preclude broadcast coverage of acts such as demonstrations and protests against government bodies. Nor does it prohibit broadcasters reporting on the effect of a government crackdown on demonstrators and protestors. However, in Ofcom’s view, the material in examples one to six, by juxtaposing songs, poems and text messages about resistance to occupation and martyrdom with powerful anti-government images, did not simply report on events but, taken together, condoned and in some cases glorified:

¹⁹ In 1994 there was a civil war between North and South Yemen.

- people dying in support of the southern cause;
- revolt against the government; and
- the carrying of weapons.

It is not within Ofcom's remit to take a view on the legitimacy or otherwise of the policies and actions of the Southern Movement or those opposed to the Yemeni government. However, in Ofcom's view, material which condones or glorifies death in support of a cause, revolt against a government and the carrying of weapons can reasonably be considered material which condones or glamorises violent or dangerous behaviour.

Given that Dama directs its broadcasts predominantly to a South Yemeni audience, many of whose members (given the political context set out above) are likely to support the Southern Movement and oppose the Government of Yemen, Ofcom considered that the material in examples one to six could reasonably be considered as material likely to encourage others to copy violent or dangerous behaviour.

Ofcom noted Dama's comment that "the carrying of arms by tribespeople is common in Yemen ... and there are likely to be far more guns than people in Yemen". Ofcom considers that, while this context may to some extent account for the prevalence of references to arms in the examples, it made it more likely that the material would have encouraged others to carry weapons.

In light of the above, we concluded that the material in examples one to six was in breach of Rule 2.4 for the reasons set out above.

Rule 3.1 of the Code

Ofcom then considered the serious potential issues raised by the complaint in relation to incitement of hatred, violence and disorder. Rule 3.1 states that "material likely to encourage or incite the commission of crime or to lead to disorder must not be included in television or radio services."

Since Rule 3.1 prohibits 'material *likely* [emphasis added] to encourage or incite the commission of crime or to lead to disorder', when considering whether there has been a breach of Rule 3.1 Ofcom has to assess the *likelihood* of the relevant material leading to such an outcome, taking into account the context. When considering potential breaches of this Rule, a key factor that Ofcom takes into account is whether the content, as it was presented, contained a call to action which would be likely to encourage or incite the commission of crime or disorder.

In assessing whether there had been a breach of this Rule, Ofcom considered both the material in examples one to six and the Broadcasts as a whole (as translated and transcribed for Ofcom), taking into account the relevant contextual factors set out above under Rule 2.4. In particular, we considered whether the material contained any call to arms - for example, whether it called on people to engage in violent acts against the Government of Yemen or against North Yemenis.

We concluded that it did not. Accordingly, it was Ofcom's view that it did not contain a call to action which would be 'likely to encourage or incite the commission of crime or to lead to disorder'.

In light of this, Ofcom concluded that the material in examples one to six, and in the Broadcasts as a whole (as translated and transcribed for Ofcom), was not likely to incite the commission of crime or to lead to disorder and so did not breach Rule 3.1.

Rules 5.11 and 5.12 of the Code

Section Five of the Code provides that due impartiality must be preserved by broadcasters in their coverage of matters of political or industrial controversy and matters relating to current public policy. In dealing with matters of major political or industrial controversy and major matters relating to current public policy, “an appropriately wide range of significant views must be included and given due weight in each programme or in clearly linked and timely programmes”.

The Broadcasts contained a substantial amount of programming that focused on the contemporaneous political situation in Yemen, including the policies and actions of the Government of Yemen. At the time of the Broadcasts there was civil unrest in Yemen and there were calls for the secession of South Yemen from Yemen. These matters were of national (Yemeni) and international importance. Ofcom considers that the contemporaneous political situation in Yemen, including the policies and actions of the Government of Yemen, was therefore a matter of major political controversy and a major matter relating to current public policy as defined in Section Five of the Code, and Rules 5.11 and 5.12 applied to the Broadcasts.

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. When considering due impartiality Ofcom has regard to context: such as the service on which material is broadcast, the likely size and composition of the potential audience and the likely expectation of the audience. If a service is broadcast outside the United Kingdom, this may be taken into account. Due impartiality may be preserved in a number of ways and it is an editorial decision for the broadcaster how it ensures due impartiality is maintained.

Ofcom recognises that Section Five of the Code 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 favoured unduly. However, when considering matters under the Code, Ofcom takes into consideration a broadcaster’s right to freedom of expression, which is considered to be at its highest in relation to political matters.

In this case, Rules 5.11 and 5.12 applied to the broadcast content that dealt with the contemporaneous political situation in Yemen, including: current affairs and political discussion-based programmes (“The Weekly Discussion” and “Windows on the Events”); phone-in programmes; interviews; and information scrolls containing text messages or news. Under Rules 5.11 and 5.12, Ofcom therefore assessed whether in examples seven to eleven set out above, and in the content of the Broadcasts as a whole (as translated and transcribed for Ofcom), “due impartiality was preserved” and “an appropriately wide range of significant views” were included and “given due weight”.

Ofcom considered examples seven to eleven in turn. We noted that the content and views expressed in these examples, and in the Broadcasts as a whole (as translated and transcribed for Ofcom), were almost entirely in support of the Southern

Movement and the independence of South Yemen, and critical of the Government of Yemen, its policies and its actions.

Ofcom noted in particular the following content:

Example seven

In the programme “The weekly discussion”, an interviewee Mr Ban Fareed (who is a writer, journalist and political activist) stated that Aden Live “has provided us with a ‘bright window’ to present our southern case”. He also said that the channel “fight[s] for a southern cause” and “wishes to retrieve a country”.

Example eight

Also in “The Weekly Discussion”, the guest presenter referred to the government as “this retarded enemy”, claiming that:

“[o]n a daily basis the monstrosity of this retarded enemy is on the increase against the unarmed Arabian southern Yemen, bombarding the villages and towns of the South and prevent[ing] the daily supplies from reaching its people”.

Example nine

The guest presenter of the programme “Windows on the Events” clearly presented his own views by saying:

“[w]e as Southerners are not satisfied with this change, we are only satisfied with regaining the independent Southern state and its capital Aden, we are not satisfied with any change in the governing system or any reforms...the purpose of all of this is to halt the progress of the Southern Hiraq, to sabotage us from reaching our goal and to regain the independent southern state.”

Example ten

Interviewee, Brigadier General Abdul Hafez Al-Afif said the following:

“We have agreed together to take the liberation process to the safety zone and we have [a] duty indeed not to disappoint our people who are fighting without protection to the field of battle, so as to liberate the homeland from the claws of the retarded forces who are gloating nowadays with its victory on 07.07²⁰, but, we say to them if the battle is over, then the war will continue until we get our right sooner or later.”

Example eleven

During a phone-in programme the presenter, Al Safia Alamandi expressed her views by saying:

“Our dear viewers, the occupied south is being exposed to a fierce and savage attack by a regime that does not know but the criminal actions and the

²⁰ Translator’s note: On 7 July 1994 Northern forces in Yemen took control of Aden

styles of oppression, a regime that wants to exterminate the south both in terms of its people and land...

Then in response to a call condemning the arrest of Hasan Ahmed Baoam, the presenter said:

"For sure, the people of ... the people of the south will continue their demonstrations, the demonstrations of anger and the activities of protest, these activities which are held to demand the regime to leave, in addition to the release of all our prisoners headed by the leader Hasan Ahmed Baoam."

Ofcom noted the Licensee's comments in respect of examples seven to eleven, as set out in the 'Response' section. In particular, we noted that Dama stated that in examples seven and ten, the guests on the programmes were expressing their own opinions. With regard to example eight, Ofcom noted Dama's comment that the second statement attributed to the guest Mr Al-Hasani "has not been accurately translated" and took account of the translation provided by Dama. Ofcom noted that, with regard to example eleven, the Licensee stated that the comments made by the presenter were "best described as a statement of fact rather than a statement of the presenter's views".

Ofcom's guidance on Section Five states that the impartiality requirements apply not only to Ofcom licensees broadcasting to audiences within the United Kingdom and elsewhere, but also to those not broadcasting to the United Kingdom. However the impartiality that is 'due' "may [emphasis in original] be less depending on the subject matter and the original country of reception". As noted above, whilst Aden Live can be received by satellite in the Middle East and parts of Europe, at the time of the Broadcasts it was streamed on the internet and so it could also be received in the UK. However in considering the requirements for due impartiality and what is 'due', Ofcom has taken into account that Dama directs its service, which is broadcast in Arabic, predominantly to the people of South Yemen (those living in South Yemen and South Yemenis living elsewhere).

In reaching its decision on due impartiality, Ofcom has also had due regard to the Licensee's representations that severe restrictions are placed on freedom of expression in South Yemen, as described by the Licensee and in the documents to which the Licensee referred Ofcom, and that Aden Live "acts as an essential counterpoint to the other Yemeni channels, which are heavily biased towards the interests of the North of the country and the present policies of the present government of Yemen".

The Code does not prohibit broadcasters from discussing any controversial subject nor including a particular point of view within a programme. However the Code does require that when "matters of major political controversy" are discussed, not only must an "appropriately wide range of significant views" be represented but these views must be given "due weight". Broadcasters must therefore ensure that, as appropriate and necessary, expressions of alternative "significant views" are presented.

While we note the comment made by Dama that Aden Live "regularly airs the views of those who favour a united Yemen", in relation to the material under investigation, it provided Ofcom with only one such example: a programme in which one caller to the programme states that the Southern "Hirak" Movement is Al Qaeda, a view which is then debated during the programme. The views of the Government of Yemen, its supporters and supporters of a unified Yemen were not presented or referred to with

due weight in examples seven to eleven or in the Broadcasts as a whole (as translated and transcribed for Ofcom). In Ofcom's opinion these views are "significant views" which should have been included and given due weight in each programme or within clearly linked and timely programmes in order to comply with the due impartiality requirements under the Code.

Ofcom has also taken account of the difficulties Dama states it faces in securing broadcast material representing the views of the Government of Yemen. The political situation in Yemen was, however, at the time of the Broadcasts, a matter of major political controversy and a major matter relating to current public policy. Dama was therefore obliged to ensure some coverage of the policies and actions of the Government of Yemen representing its viewpoint, even if it encountered difficulties in obtaining government participation in programmes. Coverage of these views could have been achieved, for example, by referring to public statements made by the government or by putting its opinion forward through presenters' questions to interviewees.

Dama accepted that in relation to the requirement for due impartiality, on two occasions (examples eight and nine) the presenters "may have strayed a little" from their roles as presenter. Presenters may express their own views on matters of political controversy within the limits of the Code. However alternative viewpoints must be appropriately represented.

Accordingly, Ofcom considered that in examples seven to eleven, and in the Broadcasts as a whole (as translated and transcribed for Ofcom), due impartiality was not preserved on matters of major political controversy and major matters relating to current public policy, and an appropriately wide range of significant views was not included and given due weight.

Ofcom therefore considered that for the reasons given above the Broadcasts breached Rules 5.11 and 5.12 of the Code.

Rule 5.4 of the Code

Rule 5.4 states that "Programmes [...] must exclude all expressions of the views and opinions of the person providing the service on matters of political and industrial controversy and matters relating to current public policy...".

In considering the Broadcasts under Rule 5.4, Ofcom first considered what Dama's 'views and opinions' could reasonably be held to be. With regard to the content of Dama's website (referred to above), Ofcom noted Dama's representations, in particular that the content "does not accurately reflect [Dama's] intentions" and "did not appear on any broadcast material". However, the comments were published on Dama's website, which Dama controls, and in Ofcom's view they can reasonably be taken to have set out Dama's views on the channel's nature and purpose - "*to convey to the World, the struggle of the South Arabia (South Yemen) people that they face daily from the current regime of the dictator Ali Abdullah Saleh*" and to broadcast "*until the liberation of South Arabia from the occupation of the Yemenis*" - and by inference Dama's views on the contemporaneous political situation in Yemen.

We also took into account Dama's representations to Ofcom about the nature of the service Aden Live, which stated that Aden Live "is the only channel devoted to the culture and interests of the people of South Yemen and acts as an essential counterpoint to the other Yemeni channels, which are heavily biased towards the interests of the North of the country and the present policies of the present

government of Yemen". The Licensee also said that "there has been a substantial degree of discrimination by the Yemeni Government against southerners". Ofcom considered that such statements may reasonably be taken to indicate Dama's views on the contemporaneous political situation in Yemen, including the policies and actions of the Government of Yemen.

Ofcom therefore considered that for the purposes of considering whether the Licensee had breached Rule 5.4, the views and opinions of the Licensee on the contemporaneous political situation in Yemen, including the policies and actions of the Government of Yemen – that is on a matter of major political controversy and a major matter relating to current public policy – could reasonably be identified from the above material and representations. These views and opinions were in turn expressed in different ways and to varying degrees in the output of the channel, contrary to the requirements of Rule 5.4 – see examples one to eleven above.

Ofcom therefore considered that the relevant material was in breach of Rule 5.4 of the Code.

Next steps

The right to broadcast comes with responsibilities. It is important that broadcasters do not use their licensed service to condone or glamorise violent, dangerous or seriously antisocial behaviour, or fail to maintain due impartiality on matters of major political controversy and major matters relating to current public policy, in contravention of the Code.

Dama has assured Ofcom that it "is now well aware of the need for due impartiality in its broadcasts, and is taking steps to address this going forward". However Ofcom considered Dama's contraventions of the Code to be serious. Dama is therefore put on notice that these contraventions of the Code are being considered by Ofcom for statutory sanction.

Breaches of Rules 2.4, 5.4, 5.11 and 5.12

In Breach

Pro Bull Riders trailer

Extreme Sports, 19 July 2011, 13:00

Introduction

A complainant alerted Ofcom to flashing images featured in a programme trailer on Extreme Sports. The licence for Extreme Sports is held by CBS Chellozone UK ("Chellozone" or "the Licensee").

Certain types of flashing images can trigger seizures in viewers who are susceptible to photosensitive epilepsy ("PSE"). Ofcom therefore carried out a technical assessment of the flashing images in the trailer. One sequence contained blue strobing lighting, during which in a period of just over one second there were ten flashes which exceeded the brightness and screen area limits set out in Ofcom guidance to broadcasters on flashing images¹.

Ofcom considered the material raised issues warranting investigation under Rule 2.12 of the Code, which states:

"Television broadcasters must take precautions to maintain a low level of risk to viewers who have photosensitive epilepsy. Where it is not reasonably practicable to follow the Ofcom guidance, and where broadcasters can demonstrate that the broadcasting of flashing lights and/or patterns is editorially justified, viewers should be given an adequate verbal and also, if appropriate, text warning at the start of the programme or programme item".

Ofcom therefore wrote to the Licensee and asked it to explain how this material complied with Rule 2.12.

Response

The Licensee explained that the material was played out by mistake, because at the time Chellozone was changing the way in which it was delivering material for broadcast, from tape-based to file-based delivery. This trailer had therefore been checked in a format (MPEG) which did not adequately reflect the flashing images. When the broadcast version was seen on-air, however, the transmission and scheduling teams at the Licensee immediately removed the trailer from the schedules.

The Licensee confirmed that compliance of broadcast content is now undertaken only by reference to material with appropriate detail. Additionally, post-production and creative services staff have been trained in identifying sequences of images which could potentially be harmful to viewers with PSE.

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,

¹ <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/812612/section2.pdf>

one of which is that “generally accepted standards are applied to the content of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and / or offensive material”.

Given the significant potential harm that can result in viewers with PSE who are exposed to flashing images, Rule 2.12 makes clear that Ofcom expects broadcasters to maintain a low level of risk in this regard. Further, Ofcom’s Guidance in this area (and the annexed Guidance Note on flashing images which is based on scientific research), are intended to limit the incidence of seizures.

In this case, Ofcom’s test of this material found that it clearly did not comply with the limits set out in our published Guidance concerning PSE. The Licensee had failed to identify correctly the material as problematic in advance of transmission. Ofcom noted the Licensee’s explanation of why this material was played out by mistake on this occasion, and the measures taken to help ensure compliance with the requirements of Rule 2.12 in future. Nonetheless the broadcast was in breach of Rule 2.12 of the Code.

Breach of Rule 2.12

In Breach

Howard Taylor at Breakfast

Total Star – Wiltshire, 20 May 2011, 06:00

This finding was originally published in Broadcast Bulletin 189 on 12 September 2011 but was subsequently withdrawn by Ofcom. The finding has been amended in light of additional information provided to Ofcom and is now here re-published.

Introduction

Total Star – Wiltshire (“Total Star”) provides a local commercial radio music and information service for the Swindon area. The licence is owned by More FM Ltd. (“More FM”).

Howard Taylor at Breakfast is Total Star’s regular weekday breakfast show. On this occasion, at approximately 09:41, it broadcast Outhere Brothers’ single, ‘Boom Boom Boom’.

The music track included the following verses, both of which were repeated:

*“I’ll make you shake it
Till you break it
Caress your body until you’re naked
Bend you over
Grab your shoulder
Slip my peter inside the folder
Make you sweat-er
Get you wetter
Pump it faster to make it better
Dim the the lights then lock the room
Now it’s time for me to hit that boom”*; and

*“Girl your booty is so round
I just wanna lay you down
Let me take you from behind
I won’t cum until it’s time
But if I cannot sleep with you
Maybe I could have a taste
Put your ‘nani’¹ on my tongue
And your booty on my face”*.

The following line, which formed part of the chorus, was repeated eleven times:

“I say boom boom boom, now what the fuck I say ‘way-oh”.

A listener contacted Ofcom, as she considered the material “disgusting”.

Ofcom assessed whether material raised issues warranting investigation under Rule 1.14, which states:

¹ “nani” is an abbreviated version of “Punany” or “punani” – an urban slang word meaning “vagina”.

“The most offensive language must not be broadcast before the watershed (in the case of television) or when children are particularly likely to be listening (in the case of radio).”

While breakfast time is usually a time when children may be particularly likely to be listening to the radio, the broadcast of this song occurred at approximately 9:45 during school term time, and therefore Ofcom considered that this was not a time when children would be particularly likely to be listening.

However, Ofcom did consider that the material raised issues warranting investigation under Rule 2.3 of the Code which states:

“In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context ... Such material may include, but is not limited to, offensive language...”

We therefore asked More FM for its comments under this rule.

Response

The broadcaster said that the wrong version of the track had been broadcast in error and that it had now appointed a programme controller and a head of music, who vetted all music prior to inclusion on its playlist. More FM added that, while it had not intended to broadcast any material that may cause offence or alienate any of its listeners, it noted that it believed this was the only listener complaint concerning the broadcast of the music track, ‘Boom Boom Boom’ on Total Star. The broadcaster said that its general intention was to supply its listeners with “a safe environment” and output they could trust, as its music policy was based on family listening.

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 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”.

Ofcom therefore requires, among other things, that, “in applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context” (Rule 2.3 of the Code).

Ofcom considered that the song undoubtedly contained material capable of causing offence. For example, there were repeated instances of the word “fuck”. Ofcom research on offensive language² has identified that this word is considered by audiences to be an example of the most offensive language. Further, the version of the track broadcast contained repeated and clear descriptions of sexual activity (such as, “*Let me take you from behind*”).

Ofcom therefore went on to assess whether the potential offence was justified by the context. As regards the degree of offence likely to be caused, Ofcom noted that the word “fuck” was repeated eleven times in the chorus. Further, the descriptions of

² Audience attitudes towards offensive language on television and radio, August 2010 (<http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>)

sexual activity were repeated throughout the song and unmistakable – such as “*Put your ’nani on my tongue, and your booty on my face*”. We considered that, unlike many contemporary music tracks broadcast widely on radio – which, for example, occasionally allude to sexual themes or contain brief contextualised sexual references/innuendo – these lyrics were more explicit and unambiguously descriptive of sexual behaviour. In our view, the degree of offence capable of being caused by this content was therefore considerable, especially to listeners who might come across it unawares.

As regards the editorial content of the programme and the service, Ofcom noted that the station’s intention was to supply its listeners with “a safe environment” and output they could trust. As such, we judged that the material was likely to have exceeded listeners’ expectations for a radio track broadcast on a morning show at around 09:45 by a station of this type.

We noted that neither the presenter or production staff acknowledged during the broadcast that the version of the song contained eleven instances of the word “fuck” and inappropriate sexual references or took any action in response – for example, by cutting out of the song early and making an immediate apology.

Ofcom notes and welcomes More FM’s admission that Total Star broadcast this version of the track in error, and that it has taken steps to improve its compliance procedures. Nevertheless, the broadcaster failed to ensure that material which may cause offence was justified by the context. The broadcaster therefore did not apply generally accepted standards and breached Rule 2.3 of the Code.

Breach of Rule 2.3

In Breach

The Baby Borrowers

Really, 2 August 2011, 20:00

Introduction

The Baby Borrowers is a reality television series featuring five teenage couples from different backgrounds. In each episode individuals (ranging from infants to older adults) are placed in the care of each of the couples. The programme explores how each couple manages these situations.

Really is a television service specialising in documentaries and reality programmes, the licence for which is held by UK Channel Management Ltd (“UKTV” or the “Licensee”).

A complainant alerted Ofcom to the use of the word “fuck” in this programme. On viewing the programme, Ofcom noted that it included four uses of the word “fuck” or a derivative.

Ofcom considered the material raised issues warranting investigation under Rule 1.14 of the Code. This rule states:

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

Ofcom requested formal comments from the Licensee on how the programme material complied with Rule 1.14.

Response

UKTV confirmed that there was “unbleeped language” in part two of the programme and said that it intended to air an apology directly before the transmission of the subsequent episode. The Licensee also said that it was conducting a review of the rest of the series to ensure that this compliance failure did not occur in any other programmes.

Decision

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

Rule 1.14 states that “the most offensive language must not be broadcast before the watershed...”. Ofcom research on offensive language¹ clearly notes that the word “fuck” and its derivatives are considered by audiences to be amongst the most offensive language. Such language is unacceptable before the watershed.

Ofcom noted the word fuck and its derivatives were broadcast four times in this programme before the watershed. We took into account the actions taken by the Licensee after it was contacted by Ofcom to improve compliance and its intention to

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

broadcast an apology. However, Rule 1.14 of the Code states unequivocally that “the most offensive language must not be broadcast before the watershed...”. The broadcast of these instances of the most offensive language on four occasions in this programme was therefore a clear breach of Rule 1.14.

Broadcasters have a clear duty to ensure that robust procedures are in place to ensure compliance with the Code. Ofcom does not expect any recurrence of these issues on UKTV services.

Breach of Rule 1.14

In Breach

Music video programming

Brit Asia TV, 11 June 2011

Introduction

Brit Asia TV is broadcast on the Sky platform and describes itself as a channel “aimed at young British Asians”.

A complainant alerted Ofcom that programming on Brit Asia TV appeared to promote concerts by the Indian Punjabi singer Satinder Sartaaj.

Ofcom viewed the material and noted that the following text appeared line by line in rotation in the top left-hand corner of the screen:

*“SATINDER SARTAAJ
A BRIT ASIA TV EXCLUSIVE
MANTOVA, ITALY 25TH JUNE 2011 [telephone number]
CHALKIDA, GREECE 2ND JULY 2011 [telephone number]
FRANKFURT, GERMANY 3RD JULY 2011 [telephone number]”.*

The licence for Brit Asia TV is held by Mr D S Bal (“the Licensee”). Ofcom asked the Licensee to confirm whether or not it or the programme producer, or any person connected with either, received payment or other valuable consideration for the inclusion of the references to Satinder Sartaaj in the programming, i.e. were the references product placed.

In the event that the references to Satinder Sartaaj were not product placed, Ofcom considered the material raised issues warranting investigation under the following Code rule:

Rule 9.4: “Products, services and trade marks must not be promoted in programming.”

Ofcom therefore also sought the broadcaster’s comments under this rule on 6 July 2011, providing ten working days to respond in accordance with Ofcom’s procedures for investigating content standards for television and radio¹.

No response was received by Ofcom.

Ofcom is able to proceed to reaching a decision on a case if the broadcaster chooses not to provide comments, or does not provide them by the specified deadline. However, broadcasters are required as a condition of their licence to provide information requested by Ofcom which it requires in order to assess or investigate a case. In this case, in order for Ofcom to reach a decision on whether or not the content in question was compliant with the Code, it required information from the Licensee about whether or not the references to the Satinder Sartaaj events were product placed.

¹ <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/854750/breaches-content-standards.pdf>

Ofcom considered that the Licensee's failure to date to provide information requested by Ofcom raised issues warranting investigation under Condition 12 of its Television Licensable Content Service (TLCS) licence which states:

"The Licensee shall furnish to Ofcom in such a manner and at such times as Ofcom may reasonably require such documents, accounts, returns, estimates, reports, notices or other information as Ofcom may require for the purpose of exercising the functions assigned to it by or under the 1990 [Broadcasting] Act, the 1996 [Broadcasting] Act, or the Communications Act..."

Therefore on 22 July 2011, Ofcom gave the Licensee a final opportunity of a further ten working days to provide the information requested and any formal comments it wished to make under this licence condition by 5 August 2011.

Response

On 22 July 2011, the Licensee acknowledged Ofcom's second request for information and comments, stating: "I do apologise with holidays and one thing or another overlooked, will action asap". However, the requested information and comments were not received by Ofcom by the deadline of 5 August 2011.

On 13 August 2011, the Licensee emailed Ofcom stating: "Apologies I have not responded within your deadline.... You will receive a full response before Monday 15th August".

On 14 August 2011, the Licensee added further comments. It said that the Satinder Sartaj concerts were "...major events with much of the TV content directed towards this thus there could be said to be a direct connection between the content and the advert promo. Moreover now it is possible for a brand to sponsor an entire channel this is seldom seen and thus it is difficult to find precedents on the correct application."

The Licensee also said that "there has been some confusion for smaller broadcasters with the recent changes made to rules on product placement and the ability now to sponsor an entire TV station."

On 17 August 2011 the Licensee informed Ofcom that Brit Asia TV did not receive any payment or other valuable consideration for inclusion of references to the Satinder Sartaj events.

The Licensee also stated that it had not breached the Code "as there has been zero financial gain with reference to the Satinder Sartaj [sic] events. The logo was placed on the channel to support a community event which was attended by a leading artist namely Satinder Sartaj [sic]. The logo was displayed predominantly when the artist's videos and interviews were aired."

The Licensee also apologised for the delay in responding to Ofcom on this matter, and suggested that Ofcom had sent its correspondence to the wrong contact.

Decision

Rule 9.4

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure specific standards

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

One of the fundamental principles of European broadcasting regulation is that advertising and programming (that is editorial content) must be kept distinct. This is set out in Article 19 of the Audiovisual Media Services (AVMS) Directive which is in turn reflected in the rules in Section Nine (Commercial references in television programming) of the Code. The purpose of this is to prevent programmes becoming vehicles for advertising and to protect viewers from surreptitious advertising.

Rule 9.4 of the Code prohibits the promotion in programming of products, services and trade marks.

In this case, Ofcom was concerned that the Licensee appeared to misinterpret the Code. It stated that it had not breached Rule 9.4 of the Code “as there has been zero financial gain with reference to the Satinder Sartaj [sic] events.” However, Rule 9.4 applies to all commercial references² in programming whether or not the programme producer, or any person connected with either, received payment or other valuable consideration for the inclusion of the references.

In its response, the Licensee appeared to argue that the reference to the Satinder Sartaj events in the programming amounted to programme-related material (PRM), by stating that “the logo was placed on the channel to support a community event which was attended by a leading artist namely Satinder Sartaj [sic]. The logo was displayed predominantly when the artist’s videos and interviews were aired.”

PRM consists of products or services that are both directly derived from a programme and specifically intended to allow viewers to benefit fully from, or to interact with, that programme.

Ofcom could find no evidence that the Satinder Sartaj events were directly derived from the programming in question, or that they were intended to allow viewers to benefit fully from, or to interact with, the programme.

Ofcom noted the Licensee’s comment that “there has been some confusion for smaller broadcasters with the recent changes made to rules on product placement and the ability now to sponsor an entire TV station.” We could not see how this was relevant to the case, as the Licensee has stated that the references to the Satinder Sartaj events were not included in the broadcast content as a result of a commercial arrangement, i.e. this was not a case of product placement or sponsorship.

Ofcom noted that the references to the Satinder Sartaj events included dates and telephone numbers for viewers to book tickets for the event. We therefore concluded that the references therefore promoted the Satinder Sartaj events during programming, in breach of Rule 9.4.

Failure to provide information by deadline set by Ofcom

Ofcom noted that the Licensee did not provide, by the original deadline, the information Ofcom had requested about whether the references to Satinder Sartaj in this broadcast were product placed.

² Meaning of ‘commercial reference’ as stated in the Code: “Any visual or audio reference within programming to a product service or trade mark (whether related to a commercial or non-commercial organisation).”

The Licensee eventually provided the requested information 20 working days after the original deadline.

Ofcom notes that the Licensee suggested that the reason for the delay was that Ofcom had sent its request to the wrong contact. Ofcom does not accept this. Ofcom sent its request to the compliance contact which it had on record and that same contact acknowledged receipt of the Ofcom's letter dated 22 July 2011 stating "I do apologise with holidays and one thing or another overlooked, will action asap". The same contact also emailed Ofcom on 13 August 2011 to state that he would send a response to our letter by 15 August 2011.

In Ofcom's Broadcast Bulletin 185 published on 4 July 2011³, a note to broadcasters was published which made clear Ofcom's policy on deadline extensions.

It stated that Ofcom "expects [all broadcasters] to respect all deadlines set by Ofcom so it is able to meet the new shorter targets for carrying out assessments and investigations. As such, Ofcom will now only grant extensions to deadlines in exceptional circumstances. In those circumstances, Ofcom expects the broadcaster to notify Ofcom as soon as possible if it is unable to meet a deadline, and to provide sufficient reasons why this is the case."

The note also stated that "where a broadcaster fails to meet a deadline for the provision of information to Ofcom of a recording and/or information requested by Ofcom, it is likely to proceed as a matter of course to investigate the matter under the relevant licence condition and record a breach of that licence condition, and if appropriate, consider taking further regulatory action."

Licence Condition 12 (Provision of information to Ofcom) of TLCS licences issued by Ofcom requires the licensee to provide to Ofcom information which it requires in order to carry out its duties. It is imperative that licensees have appropriate compliance procedures in place to deal with all such requests from Ofcom. This information which Ofcom had requested from the Licensee in this case was required in order for Ofcom to reach a decision on whether or not the content in question was compliant with the Code.

Ofcom was extremely concerned by the manner in which the Licensee treated Ofcom's requests for information during this investigation. The Licensee twice failed to provide the information requested by Ofcom by the specified deadline. Ofcom therefore found the Licensee in breach of Condition 12 of its TLCS licence.

The failure by the Licensee in this instance to supply the requested information is a serious and significant breach of Condition 12 (Provision of information) of its licence to broadcast.

Ofcom expects the Licensee to improve its compliance procedures to ensure that it is able to respond to Ofcom within the specified timescales. Should further breaches of Condition 12 occur, Ofcom will consider further regulatory action.

Breaches of Rule 9.4 and Licence Condition 12

³ <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb185/obb185.pdf>

In Breach

Sponsorship of various programmes

B4U Music, 15 June 2011, 21:00 to 22:42

Introduction

B4U Music is an Indian Bollywood Music channel which broadcasts on the Sky and Freesat platforms.

A complainant alerted Ofcom to the broadcast of a sponsorship credit for Cheapest2.com which made the claim, "*cheapest way to travel*".

Ofcom viewed the sponsorship credit broadcast at 21:00 which consisted of the following:

Voiceover: "*Cheapest2.com. The cheapest way to travel*".
On-screen text: "*The Cheapest Way 2 Travel. Cheapest2.com. [telephone number]. Cheapest 2.com*".
Images: Logos for the travel organisations ABTA and ATOL.

Ofcom considered that this material raised issues warranting investigation under Rule 9.22(a) of the Code which states:

"Sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action. Credits must not encourage the purchase or rental of the products or services of the sponsor or a third party. The focus of the credit must be the sponsorship arrangement itself. Such credits may include explicit reference to the sponsor's products, services or trade marks for the sole purpose of helping to identify the sponsor and/or the sponsorship arrangement."

We therefore asked B4U Network (Europe) Limited ("B4U" or "the Licensee") for its comments as to how this content complied with this rule.

In addition Ofcom viewed other sponsorship credits broadcast on the channel on 15 June 2011.

Following a trailer for *Speed* broadcast at 22:00 we noted the following sponsorship credits:

Ginco sponsorship credit

Voiceover: "*Ginco. Finest quality products. Delivering you the best from the rest*".
On-screen text: "*Ginco. Leader in sweets, nuts and snacks! 020 8230 7871
www.Ginco.co.uk*".

East End Lentils sponsorship credit

Voiceover: "*East End Lentils. The 24 carat taste of purity*".

Following a trailer for *A Wednesday* broadcast at 22:11, and a trailer for *Funday Sunday/Dhoondte Reh Jaoge* broadcast at 22:27, we noted the following sponsorship credit:

Southall Travel sponsorship credit

- Voiceover: *"Southall Travel. Thinking of travel, think Southall Travel".*
On-screen text: *"No.1 travel agent to India. Southall Travel. Redefining the Travel Experience. Worldwide flights & holidays. Southall Travel. 0844 855 8000 [text and logos obscured by your superimposed timecode] www.southalltravel.co.uk".*
Images: Logos for the travel organisations ABTA and ATOL. Logo for The Sunday Times Top Track 250¹.

Following a trailer for *Friday Popcorn/Chalo Ishq Ladaaye* broadcast at 22:29 we noted the following sponsorship credit:

Pooja Sweets sponsorship credit

- Voiceover: *"POOJA SWEETS & SAVOURIES. Pure vegetarian food for all occasions. 0208 672 4523 www.poojasweets.com".*
On-screen text: *"Pooja Sweets and Savouries. The taste that you will love. The quality that you can trust".*

Following a trailer for *Sarkar Raj* broadcast at 22:42 we noted the following sponsorship credit:

Dialogvizz sponsorship credit

- Voiceover: *"Dialogvizz. Quality at honest prices"*
On-screen text: *"VIZZMOBILE. www.dialogvizz.co.uk [telephone number]."*

Ofcom considered that this material raised issues warranting investigation under Rule 9.22(a) (set out in full above) and Rule 9.24 of the Code which states:

"Where a sponsorship credit is included in a programme trail, the credit must remain brief and secondary."

We therefore also asked the Licensee for its comments as to how this content complied with these rules.

Response

B4U considered that all of the sponsorship credits complied with the Code. It stated that the credits were clearly separated from advertising as the credits were commissioned specifically as sponsorship credits. It also argued that the credits did not contain any advertising messages or calls to action that encouraged viewers to purchase specific products or services.

The Licensee stated that the same sponsorship credits have been broadcast on other channels and have not been found in breach by Ofcom.

B4U said that the sponsorship credits "did not provide any specific product information and were not linked to the nature and subject matter of the programme." It argued that the voiceover and on-screen text were brief references to the products and were not a call to action or advertisement.

¹ Top Track 250 is the sister publication of Top Track 100, which identifies Britain's 100 private companies with the biggest sales. The league table ranks the 250 next biggest private companies, provided either sales or operating profits have increased in their latest available accounts (<http://www.fasttrack.co.uk/fasttrack/leagues/top250supplement.html>).

The Licensee stated that the telephone numbers or the website addresses included in the sponsorship credits did not constitute calls to action. The Licensee said that sponsorship credits on mainstream channels also contain telephone numbers and website addresses.

With regards to the ABTA and ATOL logos which appeared in both the Southall Travel and Cheapest2.com sponsorship credits, B4U stated that they were included for the sole purpose of helping to identify the sponsor as a travel company.

The broadcaster requested that Ofcom “adjudicate this complaint on the basis of ‘intention of the sponsor’ and not on the strictest sense of the Rule 9.22(a)”.

With regards to Rule 9.24, the broadcaster stated that the sponsorship credits “were quite brief and did not exceed more than 8 seconds and they do not distract the viewers”. It gave as evidence of this the fact that it had not received any complaints from its viewers about these credits.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that “the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”.

The EU Audiovisual Media Services (AVMS) Directive limits the amount of advertising a broadcaster can transmit and requires that advertising is distinguishable from other parts of the programme service. Sponsorship credits are treated as part of the sponsored content and do not count towards the amount of airtime a broadcaster is allowed to use for advertising. To prevent credits effectively becoming advertisements, and therefore increasing the amount of advertising transmitted, broadcasters are required to ensure that sponsorship credits do not contain advertising messages.

Rule 9.22(a)

Rule 9.22(a) of the Code therefore requires that sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action, and that credits must not encourage the purchase or rental of the products or services of the sponsor or a third party.

Cheapest2.com sponsorship credit

Ofcom considered the on-screen text and voiceover “*Cheapest to travel*” to be a claim capable of objective substantiation. In addition, Ofcom could find no editorial justification for the inclusion in the credit of the logos for the travel organisations ABTA and ATOL which are standard in advertising for companies within the travel industry. The inclusion of such logos is not subject to any mandatory requirement and, in Ofcom’s view, served only to promote the impression of the sponsor being a reputable company. Ofcom therefore considered that the sponsorship credit breached Rule 9.22(a) of the Code.

Ginco sponsorship credit

Ofcom noted that in Broadcast Bulletin 146² it found another Ginco sponsorship credit broadcast on B4U Movies (which shares common ownership with B4U Music), to be in breach of the Code for containing advertising messages. In that case, the credit had contained pricing information, and Ofcom had stated in its decision that “Ofcom went on to consider the overall focus of the credits and took into account the combination of the pricing information with the voiceover, *“wholesalers of finest quality products”*, and the lack of emphasis on the sponsorship arrangement. Ofcom considered that the overall effect of these elements was to focus on the sponsor’s business, rather than on the sponsorship arrangement. Ofcom therefore found the sponsorship credit in breach of the Code.”

The credit in this case was similar. Although the credit did not contain pricing information, Ofcom considered that the voiceover: *“Finest quality products. Delivering you the best from the rest”* contained superlative and promotional language about the quality of the products. In addition, the on-screen text: *“Leader in sweets, nuts and snacks”* was a claim about market leadership of the sponsor. The sponsorship credit therefore clearly contained advertising messages in breach of Rule 9.22(a).

East End Lentils sponsorship credit

Ofcom considered that this sponsorship credit focused on the quality of the sponsor’s product i.e. *“The 24 carat taste of purity”* and went beyond a brief description of the product for the purpose of identifying the sponsor and/or the sponsorship arrangement. Ofcom therefore considered the credit to have breached Rule 9.22(a) of the Code.

Southall Travel sponsorship credit

Ofcom considered the on-screen text *“No.1 travel agent to India”* to be a market leadership claim capable of objective substantiation. In addition, Ofcom could find no editorial justification for the inclusion in the credit of the logos for the travel organisations ABTA and ATOL which are standard in advertising for companies within the travel industry. The inclusion of such logos is not subject to any mandatory requirement and, in Ofcom’s view, served only to promote the impression of the sponsor being a reputable company. Similarly, Ofcom could find no editorial justification for the inclusion of The Sunday Times Top Track 250 logo which again served only to promote the impression of the sponsor being a reputable company. Ofcom therefore considered that the sponsorship credit had breached Rule 9.22(a) of the Code.

Pooja Sweets sponsorship credit

Ofcom judged that the used of promotional language to describe the sponsor’s products i.e. *“The taste that you will love. The quality that you can trust”* went beyond a brief description of the sponsor’s products for the purpose of identifying the sponsor and/or the sponsorship arrangement and amounted to an advertising message. The sponsorship credit was therefore in breach of Rule 9.22(a) of the Code.

Dialogvizz sponsorship credit

Ofcom considered that the voiceover *“Quality at honest prices”* to be promotional language which went beyond a brief description of the sponsor’s product for the purpose of identifying the sponsor and/or the sponsorship arrangement and

² Available at:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb146/Issue146.pdf>

amounted to an advertising message. The sponsorship credit was therefore in breach of Rule 9.22(a) of the Code.

Rule 9.24

Rule 9.24 of the Code requires that where a sponsorship credit is included in a programme trail, the credit must remain brief and secondary.

Each of the sponsorship credits viewed, with the exception of the Cheapest2.com credit, appeared in full after a programme trailer.

Ofcom's published guidance to Rule 9.24 states that "the purpose of a programme trail is to alert viewers to a forthcoming programme. References to a programme sponsor should not distract from this purpose and generally should be limited to a brief on-screen reference to the sponsorship arrangement."³

Ofcom noted the broadcaster's argument that the sponsorship credits "were quite brief and did not exceed more than 8 seconds and they do not distract the viewers"

However, in Ofcom's view, the sponsorship credits were simply attached to programme trails rather than being a brief and secondary credit within or alongside a programme trail. Ofcom considered that showing a full-length sponsorship credit after a programme trail could not be deemed to be a brief and secondary reference to the sponsor in a programme trail. Ofcom therefore found the Ginco; East End Lentils; Southall Travel; Pooja Sweets; and Dialogvizz sponsorship credits in breach of Rule 9.24 of the Code.

Ofcom notes that the broadcaster used the sponsorship credits broadcast on other channels as a guide for complying with these credits. As stated in a note to broadcasters published in Ofcom's Broadcast Bulletin 130⁴ "Compliance decisions should not be based on material previously broadcast – by the licensee or any other licensee – which Ofcom has not considered" and that we "strongly advise broadcasters not to make assumptions about the compliance of their material on the basis that similar content may have already been broadcast."

Ofcom has published a number of findings in relation to sponsorship credits in recent years, and has made clear the need for broadcasters to exercise care to ensure that credits do not contain advertising messages.

In this case, Ofcom noted the previous breach it has recorded of the sponsorship rules in relation to material broadcast on another channel owned by the Licensee. It was therefore of particular concern that the Licensee considered the material in this case to be compliant with the Code. Ofcom is requiring the Licensee to attend a meeting to ensure that it fully understands its obligations under the Code. Ofcom is putting B4U on notice that it expects improvements to its compliance procedures in this area.

Breaches of Rules 9.22(a) and 9.24

³ <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>

⁴ <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb130/issue130.pdf>

Resolved

Station promotion

106 Jack FM, 2 August 2011, 10:30

Introduction

106 Jack FM is a local commercial radio station covering the Solent region in the south of England. The station is aimed at listeners aged over 40 and its output focuses on classic and contemporary rock music. The licence for the service is held by Celador Radio Ltd (“Jack FM” or the “Licensee”).

A listener alerted Ofcom to potentially offensive material in a station promotion, which contained the following phrase:

“Never buy a dwarf with learning difficulties. It’s not big and it’s not clever. 106 Jack FM.”

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

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

We therefore sought comments from the Licensee as to how this broadcast material complied with this rule.

Response

Jack FM said that “the pieces of production between the songs on Jack FM between 9am and 6am the following day are comedy ‘one liners’ – a mixture of classic and more topical jokes” which “reflect the irreverent style of the station and rock music that we play”. The Licensee said it broadcasts at least two jokes in between songs during every 30 minute period and “this makes the context clear that people who listen can always expect a mixture of jokes and rock music.”

The Licensee said that it also had received a complaint about this material and Jack FM had apologised directly to the person concerned, explaining that the joke was not “specifically intended to target anybody with disabilities”. The broadcaster said that whilst it aimed “to push boundaries and get people talking”, it recognised that on this occasion, the joke had offended people. Therefore, Jack FM decided to withdraw this material from its playout schedule. Jack FM pointed out that it took the decision voluntarily to withdraw this material from further broadcast prior to receiving Ofcom’s initial correspondence about this issue.

Decision

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

Ofcom therefore requires, among other things, that, “in applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context” (Rule 2.3 of the Code).

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

Ofcom noted that the phrase “it’s not big and it’s not clever” is often used in a light hearted context and is not in itself potentially offensive. However, in this instance, the intention seemed to be to derive humour from linking “*dwarf*” with “*not big*” and “*learning difficulties*” with “*not clever*”. While we note the Licensee said it had not “specifically intended to target anybody with disabilities”, Ofcom considered that listeners were likely to understand the joke as being directed at people with dwarfism and learning difficulties. It therefore had potential to offend.

Ofcom noted Jack FM’s explanation that the jokes the service broadcasts on air seek to reflect the style of music it plays, and it acknowledges that broadcasters should always be able to use humour to entertain their listeners or viewers. Nevertheless, we did not consider there were sufficient contextual factors to justify the broadcast of this potentially offensive material on this occasion.

We took account of Jack FM’s apology made directly to the person who complained to it about this material, and of its decision to withdraw this material prior to receiving Ofcom’s initial correspondence about this issue. Ofcom therefore considers the matter resolved.

Resolved

Fairness and Privacy Cases

Upheld

Complaint by Mr David Gemmell

Grimefighters, ITV1, 12 April 2011

Summary: Ofcom has upheld this complaint by Mr David Gemmell of unwarranted infringement of privacy in the programme as broadcast.

The programme followed the work of environmental service employees in Leicester tasked with tackling the everyday waste created by the general public. One of the issues highlighted in the programme was the extra resources required to deal with the amount of rubbish dumped around the recycling areas in the car parks. Footage of Mr Gemmell clearing some of the rubbish was shown in the programme.

Mr Gemmell complained to Ofcom that footage of him was broadcast in the programme without his consent.

Ofcom found that Mr Gemmell had a legitimate expectation of privacy and that there was no public interest justification for the intrusion into Mr Gemmell's privacy by the inclusion of the unobscured footage of him in the programme as broadcast. Ofcom therefore found that Mr Gemmell's privacy was unwarrantably infringed in the programme as broadcast.

Introduction

On 12 April, 2011, ITV1 broadcast an edition of *Grimefighters*, a series of programmes that follows the work of refuse and environmental service workers in tackling everyday waste created by the general public.

Part of the programme followed environmental workers in Leicester who were cleaning up rubbish left around recycle bins in a supermarket car park. Mr Gemmell was shown along with other environmental workers clearing the rubbish. His face was not obscured in the footage and he was identifiable.

Following the broadcast of the programme, Mr Gemmell complained to Ofcom that his privacy was unwarrantably infringed in the programme as broadcast.

The Complaint

Mr Gemmell's case

Mr Gemmell complained that his privacy was unwarrantably infringed in the programme as broadcast in that he was told by the programme makers that he would be removed from all footage, however he was still shown in the programme.

ITV's case

In summary, ITV responded to Mr Gemmell's complaint by acknowledging that the programme contained brief footage of Mr Gemmell although he had asked programme makers not to show him in the programme.

ITV stated that *Grimefighters* was produced for ITV by independent programme makers and ITV was not aware of Mr Gemmell's request not to be shown in the programme until after its first transmission. ITV said that Mr Gemmell's employer, Leicester City Council, had contacted the programme makers to request that footage of the cleansing team (of which Mr Gemmell was a member) be excluded from the programme. The programme makers had responded to that email by stating that anyone who did not want to be included would not be shown. However, when the programme was edited and delivered to ITV for transmission it did include shots of the cleansing team, including Mr Gemmell. ITV said that the programme makers did not make it aware of the correspondence that had taken place between the Council and the programme makers and therefore it did not know that Mr Gemmell had not given his consent to appear in the programme.

ITV stated that on 14 April 2011, two days after the programme was broadcast, it had been contacted by the programme makers who in turn had been contacted by Mr Gemmell who objected to having been included in the programme. The programme makers, for various reasons, at that time could not provide ITV with background information to the objection. As a result of this, ITV said that as there was some doubt as to Mr Gemmell's consent, the programme was withdrawn from ITV's on demand service the same day and re-edited.

ITV said that there were a combination of factors that contributed to the error by the programme makers which included: the six month gap between filming and editing of the footage, the fact that in the unedited footage Mr Gemmell did not appear to object to being filmed, the departure of relevant members of the production team who had originally been dealing with the issue and the heavy workload of the programme makers.

ITV said that the programme makers fully accepted that Mr Gemmell should not have appeared in the programme, having previously agreed that he should not. ITV and the programme makers therefore apologised to Mr Gemmell for the fact that the agreement made by the production company, was not honoured in the programme. ITV said that Mr Gemmell's appearance in the programme arose out of human error, and such an error was uncharacteristic of the programme makers.

ITV stated that Mr Gemmell's appearance in the programme was fleeting (he was visible for no more than five seconds) and he did not speak at all. ITV stated that the activities that he was filmed doing were not of a private nature and were in a public place, and therefore in ITV's view Mr Gemmell did not have a reasonable expectation of privacy. However ITV accepted that given the earlier agreement between programme makers and the Council, Mr Gemmell did have a reasonable expectation that his request not to be shown in the programme would be honoured by the programme makers and ITV apologised for the fact that Mr Gemmell was shown in the programme.

Decision

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

In carrying out its duties, Ofcom has regard to the need to secure that the application of these standards is in the manner that best guarantees an appropriate level of freedom of expression. Ofcom is also obliged to have regard, in all cases, to the

principles under which regulatory activities should be transparent, accountable, proportionate and consistent and targeted only at cases in which action is needed.

In Ofcom's view, the individual's right to privacy has to be balanced against the competing rights of the broadcaster to freedom of expression. Neither right as such has precedence over the other and where there is a conflict between the two, it is necessary to focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate.

This is reflected in how Ofcom applies Rule 8.1 of the Ofcom's Broadcasting Code ("the Code"), which states that any infringement of privacy in programmes or in connection with obtaining material included in programmes must be warranted.

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

Ofcom first considered Mr Gemmell's complaint that his privacy was unwarrantably infringed in the programme as broadcast in that footage of him was shown in the programme without his consent.

In considering whether or not Mr Gemmell's privacy was unwarrantably infringed in the programme as broadcast, Ofcom first considered the extent to which he could have legitimately expected that footage of him would not be included in the programme when his employer expressly requested that it be excluded and the programme maker had agreed to do so.

Rule 8 of the Code states, "*Legitimate expectations of privacy will vary according to the place and nature of the information, activity or condition in question, the extent to which it is in the public domain (if at all) and whether the individual concerned is already in the public eye. There may be circumstances where people can reasonably expect privacy even in a public place. Some activities and conditions may be of such a private nature that filming or recording, even in a public place, could involve an infringement of privacy.*"

Ofcom noted that Mr Gemmell appeared very briefly in the programme and was shown with other workers, assisting in the clearing up of waste that had accumulated around the recycle bins area. While the footage was brief and Mr Gemmell was not the focus of the footage, Mr Gemmell's face was still clearly visible. In Ofcom's view, Mr Gemmell was identifiable from the footage included in the programme.

Ofcom considered that the footage of Mr Gemmell did not reveal any conduct or action that in itself could be regarded as being private or sensitive in nature. However, Ofcom also noted that email correspondence between Mr Gemmell's employers and the programme makers made it clear that Mr Gemmell did not want to be in the broadcast. The programme makers agreed to this request by stating in correspondence that anyone who did not want to be included in the programme would not be shown. Clearly from his complaint to Ofcom Mr Gemmell therefore did not expect to be shown on television in this programme. Ofcom considered that Mr Gemmell had not given his consent for unobscured footage of him to be included in the programme as broadcast. Therefore, in the circumstances of this case as a result of the assurances given by the programme makers that footage of the cleansing team of which Mr Gemmell was part would not be broadcast, we considered that Mr

Gemmell had a legitimate expectation of privacy in relation to the broadcast of unobscured footage of him in a television programme without his consent.

Having found that Mr Gemmell had a legitimate expectation of privacy in relation to the broadcast of the unobscured footage of him in the programme without his consent, Ofcom went on to consider ITV's competing right to freedom of expression and the need for broadcasters to have the freedom to broadcast matters of genuine public interest without undue interference. In this respect, Ofcom considered whether there was sufficient public interest to justify the intrusion into Mr Gemmell's privacy in the programme.

Ofcom considered that there was a genuine public interest in the programme's examination of how the public's actions impacted on the environment and the work of a local council. However, Ofcom considered that the broadcaster's right to freedom of expression to include the unobscured footage of Mr Gemmell without his consent and in the particular circumstances of this case, did not outweigh Mr Gemmell's right to privacy.

Therefore, Ofcom concluded that there was no public interest justification for the intrusion into Mr Gemmell's privacy by the inclusion of the unobscured footage of him in the programme as broadcast. Ofcom therefore found that Mr Gemmell's privacy was unwarrantably infringed in the programme as broadcast. We note however that including unobscured footage of Mr Gemmell in the programme resulted from human error on the part of the programme makers, that the broadcaster re-edited the programme immediately once it was informed of the issue, and that both the programme makers and the broadcaster apologised to Mr Gemmell for the error.

Accordingly, Ofcom has upheld Mr Gemmell's complaint that his privacy was unwarrantably infringed in the programme as broadcast.

Not Upheld

Complaint by Dr Saeb Erakat on his own behalf and on behalf of the Palestine Liberation Organisation

The Palestine Papers, Al Jazeera English¹, 23-26 January 2011

Summary: Ofcom has not upheld this complaint of unfair treatment in the programme as broadcast made by Dr Saeb Erakat on his own behalf and on behalf of the Palestine Liberation Organisation.

This four part documentary series on Al Jazeera English channel (“Al Jazeera”) examined leaked diplomatic documents, known as the “Palestine Papers”, that related to various aspects of the Middle East peace process. The series included a number of criticisms of the role played by Dr Saeb Erakat, the Chief Negotiator of the PLO, in the negotiations.

In summary, Ofcom found the following:

- Material facts in relation to the negotiation meetings looked at in the programmes were not presented or omitted in a way that resulted in unfairness to Dr Erakat.
- The use of dramatic reconstructions of negotiation meetings was not inappropriate and did not result in an unfair portrayal of Dr Erakat.
- Dr Erakat was given an appropriate and timely opportunity to respond to the criticisms of him in the programmes. Although he did not participate, his position (and that of the PLO) was included in the programmes.
- To the extent there was an infringement of privacy in relation to obtaining and using documents, the infringement was warranted, given the significant public interest, both in the Middle East and globally, in the issues looked at in the programmes.

Introduction

The Palestine Papers was a four part documentary series broadcast in English on Al Jazeera English (“Al Jazeera”). It examined diplomatic documents relating to the Middle East peace process which had been “leaked”. It did so by using dramatic reconstructions of negotiations, analysis from a panel of experts and asking the views of Palestinian citizens.

Episode 1 – Jerusalem

On 23 January 2011, Al Jazeera broadcast the first episode of *The Palestine Papers*. In introducing the series, the programme said:

“The Palestine Papers, an Al Jazeera investigation, giving up the Holy City, diplomatic papers reveal just how much the Palestinian Authority was willing to trade away. And, drawing up a new state on a napkin, the details of

¹ Al Jazeera English is an English language satellite channel owned by Al Jazeera International Limited. It is part of the Al Jazeera television network and is the ‘sister channel’ to ‘Al Jazeera’ an Arabic language news channel.

conversations you were never meant to hear. The largest leak of confidential documents in the history of the Israeli – Palestinian conflict, obtained by Al Jazeera the papers provide the inside view on negotiations between the Palestinian Authority, Israel and the United States”.

This programme focused on the negotiations relating to Jerusalem involving the Palestinian Authority² (the “PA”) and Israel. During a reconstruction of one of the negotiations, an actor playing Dr Saeb Erakat, the Chief Negotiator for the Palestine Liberation Organisation (“PLO”) until 12 February 2011, said:

“Israelis want a two state solution, they don’t trust, they want it more than you think, sometimes more than Palestinians, what is in that proposal gives the biggest Yerushalayim in Jewish History: symbolic number of refugees return, demilitarised state, what more can I give?”

The programme also described how during one negotiation Dr Erakat’s team drew the Israeli settlement offer “*on a napkin*”. The programme then showed a pre-recorded interview with Dr Erakat in which he confirmed this story to be true.

The programme discussed information that revealed the Palestinians’ offer regarding the Haram Al-Sharif³. Finally, the programme showed an interview Dr Erakat recorded with the Al Jazeera’s sister network in Cairo. Dr Erakat said (translated from Arabic):

“I have come on Al Jazeera because I have nothing to hide. On several occasions I have said on Al Jazeera that we, the Palestinian Authority, would never give up any of our rights. If we did indeed offer Israel the Jewish and Armenian quarters of Jerusalem and the biggest Yerushalem [the Jewish word for Jerusalem] and they claim, then why did Israel not sign a status agreement? Is it not strange that he would not offer all these concessions Israel demands and there is still no peace deal?”

Episode 2 – Refugees

On 24 January 2011, Al Jazeera broadcast the second episode of *The Palestine Papers*. It discussed whether the Israelis were willing to give its Palestinian citizens to Palestine, whether there would be a referendum, and what impact the change of the U.S. Presidency, from George W Bush to Barack Obama, would have. The programme also discussed how the broadcaster had approached the PA and put questions to Mr Nabil Shaath, a senior PLO official. The programme's presenter said:

“Twenty four hours ago we found it difficult to get any comment at all from the Palestinian Authority, we had Saeb Erakat speaking on our Arabic sister network. He was very, very angry at the time. And then nothing, no one wanted to say anything, they were in complete denial it seems”.

The programme then showed an interview given by Dr Erakat alongside the Arab League Secretary General in a street side press conference, in which he said:

² The administrative organisation established to govern parts of the West Bank and Gaza Strip. It is also referred to as the Palestinian National Authority.

³ Also known as Temple Mount. Amongst Sunni Muslims it is regarded as third holiest site in Islam.

“We have nothing to hide. We urge everyone to fully remember that we have deposited the documents relating to the issues such as Jerusalem, borders, the refugees, water and the prisoners of Mr Amr Moussa. We have always consulted with him and his legal teams. We have deposited all our documents with all our Arab brothers regarding what happened yesterday. I did not study the documents yet the documents were linked to my office. We will have an investigation into what happened and I will be subject to the force of law. Regarding the content I noticed the selectivity and mixing up of issues”.

The programme then included excerpts of a press conference conducted by a senior PLO official, Mr Yasser Abed Rabbo, who said that the PLO would conduct an investigation into the authenticity of the leaked documents, that some sentences used by Al Jazeera were taken out of context and that some were quoted in an ironic way. Mr Abed Rabbo said that Al Jazeera was running the story in a bid to rival WikiLeaks after its failed attempt to take it over.

Episode 3 – Security

On 25 January 2011, Al Jazeera broadcast the third episode of *The Palestine Papers*. This edition focused on the collaboration between the Israeli and Palestinian Security Forces. The programme said that this was such that on one occasion the PA was informed about Israel’s plans in November 2005 to kill Mr Hassan Madhoun, a Palestinian who was known to oppose any collaboration with the Israelis. It also alleged that the British foreign intelligence service, MI6, plotted to help both Israel and Palestine undermine Hamas⁴ by abducting key Hamas figures in 2003.

General Adnan Al-Damiri of the Palestinian Security Force appeared in the programme and refuted the allegations relating to the killing of the Mr Madhoun.

The programme then examined what reaction there had been to the *“The Palestine Papers”* programmes. It reported that President Mahmoud Abbas (President of the PA), who had been in Egypt when the Papers were first released, had returned to Palestine to a *“hero’s welcome”* because Palestinians were protesting against what they felt was a smear campaign by Al Jazeera. President Abbas told supporters that Al Jazeera had used fake documents to try and discredit his government. The programme said that Dr Erakat arrived at his home town of Jericho to a hero’s welcome and that he also *“questioned the integrity of the documents”*. In an interview given to camera on the streets during his return Dr Erakat said:

“We are facing the most severe smear campaign in the history of journalism. Al Jazeera is saying that we are guilty until we get executed, and after our execution, we should get an unfair trial. That’s called neutral journalism 2011 Jazeera style. I challenge Al Jazeera to publish the Palestinian official papers and positions on Jerusalem, borders, settlement, refugees and other issues”.

Episode 4 – Gaza

On 25 January 2011, Al Jazeera broadcast the final episode of *The Palestine Papers*. This edition focused on the Israeli invasion of Gaza and said that the leaked documents *“hint”* that the Israelis warned the PA that the Israeli military incursion was coming and *“prove”* that the PA stalled a UN vote on the endorsement of The

⁴ A Palestinian Islamist political party that has governed the Gaza Strip since 2006. It also has a military wing which some classify as a terrorist organisation.

Goldstone Report⁵, under pressure from the US. It also revealed that Dr Erakat brokered a deal to secure funding from a Palestinian businessman for the Iranian opposition to help them set up a radio station.

The programme revealed how the PA and Israel often spoke about undermining Hamas, rather than the “*core issues*”. The programme said that in a meeting Dr Erakat gave the impression that he could offer the Israelis the opportunity to reoccupy areas of the Gaza strip that the Palestinians had only recently reclaimed from Israel. The programme suggested that this was in a bid to undermine Hamas.

The programme then included an interview given by Dr Erakat that same day, in which he said (in Arabic, translated):

“I’ll admit that some of the papers you published are authentic, but some are fake such as ‘the biggest Yerushalem’. But I challenge Al Jazeera to publish the official positions of the PA which are in my possession so that Palestinians around the world know the facts and so that they can keep their head above the sand. You’ve taken all documents out of context, you’re destroying our aspirations”.

The programme then revealed that the PA feared Hamas was getting support from Qatar. Negotiators on both sides complained about Qatar’s role.

The programme said that, in response to the allegations made by the PA, the Al Jazeera network had issued a statement, which said:

“Al Jazeera is a global news organisation that devotes a great deal of its resources and airtime to covering the conflict in the Middle East. At all times the channel adheres to the highest editorial standards and offers viewers impartial, balanced and in-depth coverage of events in the region and beyond. To underline our commitment to transparency and accountability we are publishing all of the documents in the Palestine Papers online, including allegations made against Al Jazeera”.

In response to Dr Erakat’s challenge to publish all the “*official documents and positions*”, the programme said that this was a challenge it was “*happy to accept*”, and that the full 10 years of documents were now put online.

Dr Erakat’s case

Unjust or unfair treatment

In summary, Dr Erakat complained that he was treated unjustly or unfairly in the programme as broadcast in that:

- a) It deliberately omitted important contextual information that would have permitted viewers to properly understand the subjects discussed during the negotiation sessions they presented and that the programme focused solely on individual discussions and specific excerpts taken out of context from informal minutes of the meetings. Dr Erakat said that these minutes were often taken in shorthand by the participants themselves and sometimes contained inaccuracies.

⁵ The United Nations Fact Finding Mission on the Gaza Conflict which was established on 3 April 2009 during the Gaza War as an independent international fact-finding mission to investigate war crimes in connection with the conflict.

By way of example, Dr Erakat said that Al Jazeera quoted him as saying during negotiations, that he had offered “*the biggest Yerushalem in history.*” Dr Erakat said that this quote was inaccurately attributed to him and that Al Jazeera should have verified such quotes before broadcasting them.

- b) The dramatisation of excerpts of informal minutes of highly sensitive meetings was inappropriate. Dr Erakat said that this was done without consulting anyone who had actually participated in these discussions, and therefore the broadcaster had decided itself on how to portray individuals and conversations of which they had no accurate knowledge. Dr Erakat said that the broadcaster took liberty with voice intonations, dramatic music and character portrayals that were deliberately meant to affect the viewer’s perception in a negative manner.
- c) Dr Erakat said that, given the size and scope of the documents (1,600) and the allegations presented in the programme, he should have been given the time necessary to verify the veracity of these documents and formulate an informative response.

By way of background, Dr Erakat said that he was never informed in advance by Al Jazeera about these documents. He said he was first informed by Al Jazeera Arabic on the evening of the first broadcast (there was a simultaneous broadcast on Al Jazeera Arabic). Dr Erakat said he enquired as to the subject of the programme but Al Jazeera Arabic refused to inform him and he declined to participate. He said that Al Jazeera Arabic called him back and told him that it was for comment on negotiation documents and he consented to appear on that evening’s programme.

Dr Erakat said he was ambushed with a substantial cache of unverified documents of which he had no previous knowledge that the broadcaster would be presenting, particularly from Al Jazeera. Furthermore, he said, all the other commentators that evening had before them the full collection of documents and had obviously had access to them for some time, as they were quoting directly from them during the programme about statements that he had allegedly made. Dr Erakat said that this was unfair to him as he was forced to respond “on the spot” to serious allegations that he had not been fairly prepared for.

Unwarranted infringement of privacy

In summary, Dr Erakat complained that his privacy and that of the PLO was unwarrantably infringed during the making and broadcast of the programme in that:

- d) It broadcast details of confidential documents that were stolen from his office in full and total breach of confidentiality. This unauthorised publication was thus without consent from him or the PLO

By way of background, Dr Erakat said that this had damaged the opportunity to reach a negotiated agreement in the Middle East and had done a disservice to the Palestinian people.

Al Jazeera’s case

By way of background, Al Jazeera said that the issues looked at in the programmes were of the greatest public interest and importance, not only within Palestine and Israel, but throughout the Middle East region and globally. The programmes reported

on matters arising from the Palestine Papers, over 1,600 documents relating to negotiations between high-level American, Israeli and PA officials over the future of Palestine and Israel. Dr Erakat was the Chief Palestinian negotiator of the PLO and, with the PLO, he represented the PA in negotiations with Israel and the US over the future of Palestine.

- a) Al Jazeera first responded to the complaint that the programmes deliberately omitted important contextual information that would have permitted viewers to properly understand the subjects discussed during the negotiation sessions presented in the programmes.

Al Jazeera said that the programme makers took reasonable care to ensure that all material facts were presented fairly, following considerable research, analysis, verification and fact-checking conducted in advance of broadcast.

Al Jazeera said that in August 2010 its journalist, Mr Clayton Swisher, met with the original source of the Palestine Papers. Five separate sources from within the PA were involved in the making of the series and the programme makers verified the accuracy of material facts and the authenticity of the documents with each of these sources independently of each other. Al Jazeera said that the programme makers also confirmed the authenticity and accuracy of the documents with Americans who attended the meetings and representatives and former members of the CIA and the British Intelligence Services. Representatives of the Israeli delegation also confirmed the accuracy of some of the details and facts.

Al Jazeera said that Dr Erakat and others within the PLO knew about the potential story prior to broadcast, as the programme makers had contacted a number of people within the PLO, all of whom had refused to participate. In late October 2010 Dr Erakat contacted one of the five PA sources assisting Al Jazeera and accused that source of being behind the leaks. In response to this Mr Swisher arranged an interview with Dr Erakat on 5 November 2010 in Washington DC and sent Dr Erakat a transcript of the interview on 9 November 2010. Dr Erakat told Mr Swisher that he would get back to him soon, but did not do so.

As regards the complaint that Al Jazeera “deliberately omitted important contextual information that would have permitted viewers to properly understand the subjects discussed during the negotiation sessions they presented”, Al Jazeera said that the series did not omit any material information and permitted viewers to access all of the Palestine Papers so that they could fully understand the issues and form their own views. Al Jazeera said that the programme makers had uploaded every one of the Palestine Papers onto its website (www.transparency.aljazeera.net), where they were still available, and that the presenters had frequently informed viewers that that the Palestine Papers were available in full on the Al Jazeera website. Captions appeared on the screen on 39 occasions during the series informing viewers that the documents were online and giving the website address. Al Jazeera also noted that, during an interview on the BBC’s *Hard Talk* programme a few days after the broadcast of the series, Dr Erakat had urged viewers to view all the documents on the Al Jazeera website.

Al Jazeera said that Mr Mark Perry, a foreign policy analyst in Washington DC, who was wholly independent of Al Jazeera, had said in episode four that it was possible to criticise Al Jazeera for not focusing on the US role and the “*abandonment of American principles*” and that:

“You don’t have to agree with Al Jazeera. Any of your viewers, any of your listeners, can go online and read the Papers for themselves. Make up your own mind, that’s what democracy is all about”.

Al Jazeera then said that Dr Erakat and other senior members of the PLO had been offered numerous opportunities to contribute to the series, as set out in Al Jazeera’s response at head c) below.

Al Jazeera said that, notwithstanding the intransigent position initially adopted by Dr Erakat and the PLO, important contextual information was included in the series, including a number of live interviews, recorded interviews, statements and reports of written and oral statements by Dr Erakat, by other members of the PLO and by the PLO itself, as set out under the response at head c) below. The programmes also made clear to viewers Dr Erakat’s position and that of the PLO in response to the issues and allegations raised in the series. In episode two Al Jazeera broadcast footage of a press conference that Dr Erakat convened in response to the series, in which he said:

“We have deposited all our documents with all our Arab brothers...The documents were linked to my office. We will have an investigation to what happened and I will be subject to the force of law. Regarding the content, I notice the selectivity and mixing up of issues”.

In the same episode, Mr Swisher had explained that the PA had dismissed the Palestine Papers as *“mindless sensationalism”*. Footage was included of a press conference given by senior PLO official, Mr Rabbo, who said he was asking researchers to:

“...to study the extent to which Al Jazeera has taken certain sentences out of context in quotes which were said sometimes in an ironic way”.

In episode three, the presenter, Mr Adrian Finighan told viewers that *“Top Palestinian officials say they’re the victims of a smear campaign”* and the programme included footage of protests against Al Jazeera in Ramallah during a visit by President Mahmoud Abbas. Mr Finighan said:

“Abbas told his supporters, Al Jazeera had used fake documents to try to discredit his Government”.

Footage was also shown of President Abbas responding to the issues raised in the programmes, in particular that the PLO offered Israel *“the biggest Yerushalem in history”*.

Mr Finighan then stated:

“Meanwhile the two leading Palestinian negotiators have also questioned the integrity of Al Jazeera’s coverage. Saeb Erakat and Ahmed Qurei both feature strongly in the Palestine Papers. Supporters in Erakat’s hometown of Jericho gave him a warm welcome on his return from Cairo, where he was accompanying Abbas. Erakat, along with Qurei has accused Al Jazeera of dirty tactics”.

Al Jazeera said that, in episode three, viewers were also presented with details of the PA's denial that it had sanctioned an Israeli assassination of a Fatah-affiliated fighter.

Al Jazeera said that episode four included footage of protests against Al Jazeera as a result of the issues raised in the series and broadcast a press conference given by Mr Ahmed Qurei, the PLO Chief Negotiator, who questioned what Al Jazeera's interests were in relation to the story. A statement by Dr Erakat was then shown, in which he said:

"Al Jazeera think that we are guilty until we get executed, and after our execution we should get an unfair trial. That's called neutral journalism 2011 Jazeera style. I challenge Al Jazeera to publish the Palestinian official papers and positions on Jerusalem, borders, settlement, refugees and all other issues".

Al Jazeera said that each expression of Dr Erakat's position or that of the PLO, no matter how critical of or hostile towards Al Jazeera, was broadcast without any adverse comment or attempt to persuade viewers that it ought not be accepted.

Al Jazeera then said that the care taken to present the facts and issues in a fair manner was illustrated by the in-depth analysis provided by a variety of independent experts and observers in each episode. These experts presented contextual information and independent analysis so that viewers could understand the subject matter and the implications of the issues raised.

Al Jazeera said that episode one included contributions from Mr Ali Abunimah, the Co-Founder of the Electronic Intifada, Dr Daud Abdullah, Director of the Middle East Monitor, and Mr Shlomo Ben Ami, the former Israeli Foreign Minister and Minister of Internal Security. The time given to interviews with experts during this episode was 27 minutes. Episode two included contributions from Mr Shlomo Ben Ami, Mr Ali Abunimah, Mr Rami Khouri, Director of Issam Fares Institute of Public Policy and International Affairs, American University of Beirut, and Mr Robert Grenier⁶, former Director of the CIA Counter Terrorism Centre. The time given to interviews with experts during this episode was 19 minutes.

Episode three included footage of Mr Abdel Bari Atwan, Editor-in-Chief of Al-Quds Al-Arabi Newspaper, Alastair Croke, a former European Union mediator in the Middle East, former intelligence officer and expert on British intelligence, Mr Mark Perry, foreign policy analyst, Washington DC, Mr Akiva Elder, the Chief Political Columnist at the Israel national daily newspaper, Haaretz, and Mr PJ Dermer, a retired United States Army Colonel who dealt directly with Israeli and Palestinian Security Forces. In this episode 19 minutes were given to interviews with experts. Al Jazeera said that episode four included contributions from Mr Ali Abunimah, Mr Patrick Theros, former US Ambassador to Qatar, Dr Daud Abdullah, Mr Karma Nabulsi, former PLO Representative and now Fellow in Politics at Oxford University, and Mr Mark Perry, with 23 minutes being given to interviews with experts.

Al Jazeera said that the programmes did not single out either Dr Erakat or the PLO in its coverage, but simply reported its analysis of the material within the

⁶ Robert Grenier is Chairman of ERG Partners, a financial advisory and consulting firm. He retired from the CIA in 2006, following a 27 year career in the CIA's clandestine service.

Palestine Papers and was entirely even-handed when it dealt with the various organisations, individuals and states referred to in the Palestine Papers and involved in the Palestinian-Israeli negotiations. For example the series considered with a critical eye the position taken by Israel in the negotiations. Episode one addressed what might be seen as Israel's arrogance, stubbornness and inflexibility over Jerusalem despite the PA's apparent willingness to make concessions in respect of the city. Episode two dealt with Israel's proposal to "barter" thousands of its citizens in return for more land.

Al Jazeera said that the series had also reported criticisms of the United States and that episode two had referred to the proposal made by Ms Condoleezza Rice (the then United States' then Secretary of State) that Palestinian refugees should be sent to Chile and Argentina. Episode two had dealt with the refusal of President Barack Obama's administration to recognise the 1967 line of disengagement as the basis for the two state solution and its refusal to stand by the positions previously adopted by the administration of President George W Bush. The series' coverage of this issue clearly showed the PA's understandable frustration at the US. Episode four also reported criticism of the US over unwarranted pressure it appeared to have exerted on the PA to delay the vote on the Goldstone Report.

Al Jazeera said that the series also dealt with aspects of the Palestine Papers that showed the United Kingdom in a critical light. In episode three, Al Jazeera considered the "revelation" in the Palestine Papers that MI6 funded Palestinian Police Training Centres and the General Intelligence and Preventative Security Services. The programme also looked at the suggestion that MI6 supported the detention of key Hamas members and was complicit in torture.

Al Jazeera said that, in episode four, the series included criticisms both of itself and of Qatar (where it is headquartered). For example, Mr Swisher said:

"Negotiators on both the Israeli and Palestinian side complain about Qatar's role time and time again...Now turning to this channel now, in August 2008, Ahmed Qurei accuses Al Jazeera of quote "praising Hamas victories" and in September says, "Al Jazeera is not our friend, they are with Hamas"."

As regards Dr Erakat's complaint relating to the excerpt from the Palestine Papers that said he had offered the Israelis "the biggest Yerushalem in history", Al Jazeera said that Dr Erakat's position in relation to this was inconsistent. He had stated in a letter to Ofcom that the quotation was "inaccurately attributed to him" and in an interview with Al Jazeera Arabic that the quotation was "fake". However, Dr Erakat had also stated in his complaint that his comment "may have been in response to an Israeli comment that the Palestinian presentation for lands swaps in Jerusalem is insufficient". Al Jazeera said that, in these circumstances, it was unclear whether Dr Erakat accepted that he had used the words in question but that, in any event, the relevant documentation recorded him as using those words.

As regards Dr Erakat's statement that the minutes of meetings were "shorthand" and "sometimes contained inaccuracies", Al Jazeera said that the minutes appeared extremely full, detailed, official, formal and verbatim and that Al Jazeera had therefore acted entirely responsibly in proceeding on that basis. The excerpt quoted during the reconstruction broadcast in episode one was taken word for word from the official minutes, which showed that Dr Erakat said:

“Israelis want the two state solution but they don’t trust. They want it more than you think, sometimes more than Palestinians. What is in that paper gives them the biggest Yerushalaym in Jewish history, symbolic number of refugees return, demilitarized state...What more can I give?”

Al Jazeera said that the background to Dr Erakat’s comments was the negotiation over the two state solution and Israel’s intransigence and that the series had explained that Dr Erakat and the PLO were prepared to make concessions over Jerusalem to achieve a two state solution. Al Jazeera said that the minutes cited by Dr Erakat in his complaint supported that position and that the programme’s reconstruction of the meeting presented Dr Erakat in a fair and even-handed manner, even illustrating his natural and understandable irritation at Israeli’s inflexibility over Jerusalem.

- b) Al Jazeera then responded to the complaint that the dramatised excerpts of informal minutes of highly sensitive meetings was inappropriate and was done without consulting anyone whom actually participated in these discussions.

Al Jazeera said that this complaint did not refer to particular reconstructions or extracts of the programme but was generic. The broadcaster said that it was appropriate to reconstruct parts of the highly important negotiation meetings between the PA, Israel and the United States over the future of Palestine and Israel.

Al Jazeera said that each of the relevant sequences was captioned “*Reconstruction*”, so viewers would have understood that they were watching dramatised sequences and concluded that voice intonations and character portrayal would not have represented exactly how the individuals spoke or gesticulated at the meetings being reconstructed. The broadcaster said that nothing in the sequences, in terms of voice intonations, music or character portrayals, was intended to portray Dr Erakat or any other member of the PLO in a negative manner. It also said that the same dramatic treatment and portrayal was given to all the individuals involved in the negotiations and represented in the reconstructions, whether Israeli, Palestinian or American. The dialogue in the reconstructions was based on the actual minutes of the meetings in question and was not the product of artistic licence.

Al Jazeera said that the short reconstructions represented only a very minor part of the programmes’ coverage on the Palestine Papers, with the vast majority of each programme being devoted to reports from reporters in Palestine and Israel, interviews with representatives of the PA and the PLO and interviews with expert analysts. Furthermore, all the documents from the Palestine Papers, including the minutes from the meetings that were the subject of the reconstructions, were available on the Al Jazeera website. Viewers therefore had a wealth of sources, over and above the few short reconstructions, in order to inform their opinion on the events in question.

- c) Al Jazeera then responded to the complaint that Dr Erakat should have been given the time necessary to verify the veracity of the documents referred to in the programmes and formulate an informative response. Al Jazeera said first that it had had legitimate safety fears if the PLO was informed in advance of the full extent of the issues to be discussed in the series, in view of the violent attacks on the Al Jazeera Ramallah bureau which in fact occurred after the broadcast of the first programme.

Al Jazeera said that, notwithstanding this concern, Dr Erakat was afforded ample and appropriate opportunities to respond to the issues in question in advance of the broadcasts. The programme makers tried to contact Dr Erakat on a number of occasions before the broadcast, but were unable to get hold of him. However, a programme maker at Al Jazeera's sister channel, Al Jazeera Arabic, spoke to Dr Erakat on his mobile telephone at 14:00 hours (GMT) on 23 January 2011 to invite him on to the programme that day. Dr Erakat was told the subject of the interview, including that it would be regarding the minutes of meetings in the Palestine-Israeli negotiation rounds. Dr Erakat had declined to participate, but at around 17:30 hours he had telephoned the interview desk, wanting to know more about the proposed interview. The producer read Dr Erakat extracts from one of the documents and told him he could review the whole contents of the Palestine Papers while he was at Al Jazeera's office and then decide if he wished to participate in the interview. Dr Erakat had agreed to interviews with both Al Jazeera Arabic and Al Jazeera. Al Jazeera's presenter explained at the outset of the first programme that Al Jazeera had invited Dr Erakat to appear on the programmes and said *"He will hopefully be joining us a little later"*. However, after the Al Jazeera Arabic interview, Dr Erakat had stormed off the set and refused to participate in the planned interview with Al Jazeera. The programme makers attempted to contact Dr Erakat on numerous other occasions on 23 and 24 January 2011 to offer him an opportunity to respond to the issues raised in the series, but when they tried to call him, his telephone was engaged, there was no answer or he hung up. In addition to these attempts to involve Dr Erakat in the programmes, Al Jazeera said that one of the programme makers had also telephoned the PA and PLO representative Ms Hanan Ashrawi, who had refused to participate, on the basis that the PLO was going to boycott the series. In spite of the difficulties posed by this decision, Al Jazeera said that the programme makers had made what efforts they could to use extracts from Dr Erakat's Al Jazeera Arabic interview to ensure they included his perspective on the issues raised in the programmes. Al Jazeera said that, as on Dr Erakat's own admission at least some of the documents emanated from his office, he would have been very familiar with them before the broadcast. Al Jazeera said that the programmes included a number of live interviews, recorded interviews statements and reports of written and oral statements by Dr Erakat, by other members of the PLO and by the PLO itself.

Al Jazeera said that in the first episode the presenter had explained that Dr Erakat had been invited to appear and included an extract from his interview on Al Jazeera Arabic. The presenter said that Dr Erakat had denied making concessions and offers with regard to Jerusalem. The programme had also included extracts from a pre-recorded interview with Dr Erakat, which had been conducted a few weeks prior to broadcast, in which he had confirmed as true the account of a negotiation in which his team drew the Israeli settlement offer *"on a napkin"*.

Al Jazeera said that the second programme included an interview with a senior PLO official, Mr Shaath, in which he had been given every opportunity to respond to the issues and present his views and those of the PLO. Mr Shaath was provided with an opportunity to respond to a question posed by a Palestinian refugee in Lebanon, who asked when the PA would pack up and let the Palestinians determine their own future. Mr Shaath had also been given an opportunity to respond to criticisms over the legitimacy of the PA and to provide his views and those of the PLO in respect of whether the Palestine Papers were genuine. Mr Shaath had also provided the PLO's position regarding the context of the Palestine Papers, as presented by Al Jazeera, and responded to an excerpt

attributed to Dr Erakat in the previous day's programme. He had responded to questions as to what the long term impact of the Palestine Papers would be on the PA, whether it was the right body to be negotiating on behalf of Palestinians and whether it still had legitimacy.

Al Jazeera said that the third programme had included an interview with General Al Damiri, spokesperson for the Palestinian Security Services, and had asked him whether the PA Security Services planned any role in the killing of Mr Madhoun. General Al Damiri was also given an opportunity to respond to the excerpt from the Palestine Papers ascribed to Dr Erakat, which stated that: "We have had to kill Palestinians to establish one authority, one gun and the rule of law. We continue to perform our obligations".

Al Jazeera said that, in the final episode, there was an interview with Mr Hammad, an adviser to the PLO leader and Palestinian President Abbas, who had responded to the suggestion that the PA had bowed to American pressure when it delayed the Goldstone Report. This programme had also included an excerpt from the interview with Dr Erakat on Al Jazeera Arabic, in which he was given an opportunity to respond to the allegations within the Palestine Papers and the issues raised in the programmes.

Unwarranted infringement of privacy

Al Jazeera then responded to the complaint that Dr Erakat's privacy and that of the PLO were unwarrantably infringed during the making and broadcast of the programme.

- d) In response to the complaint that the programme included details of confidential documents that were stolen from Dr Erakat's office in breach of confidentiality and without consent from him or the PLO, Al Jazeera said that the provisions of Ofcom's Broadcasting Code ("the Code") were clearly intended to protect the privacy of an individual's private and family life. The broadcaster said that the subject matter of the programmes had nothing to do with the private lives of Dr Erakat or any other individual within the PLO and that there was nothing in the programmes over which Dr Erakat or the PLO could reasonably expect a right to privacy.

Al Jazeera said that the programme dealt with public affairs of great political and international importance, namely the future of Palestine and Israel and the potential for stability in the region. It also said that Dr Erakat and the other senior members and negotiators of the PLO were all in the international public eye at the time of broadcast. Their decisions and actions had a huge impact on the future and security of the Palestinian people and there could be no doubt about the importance of investigating and casting a critical eye over such decisions and actions, revealing the documentary record and presenting Dr Erakat and the PLO as the programmes did. Al Jazeera said that, in the circumstances, any alleged infringement of Dr Erakat's privacy or that of the PLO was warranted and that therefore no consent was required from Dr Erakat or any other individual within the PLO prior to broadcast. Al Jazeera also said that prior to broadcast of the programmes, the programme makers had redacted from the material within the Palestine Papers any personal contact information, such as email addresses and telephone numbers, so as to protect the privacy of the individuals involved.

Decision

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

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

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included recordings of the programmes as broadcast and transcripts and both parties' written submissions.

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

- a) Ofcom first considered the complaint that Dr Erakat was treated unjustly or unfairly in that the programme deliberately omitted important contextual information that would have permitted viewers to properly understand the subjects discussed during the negotiation sessions they presented, and instead focused solely on individual discussions and specific excerpts taken out of context from informal minutes of the meetings. Dr Erakat said that these minutes were often taken in shorthand by the participants themselves and sometimes contained inaccuracies.

In considering this part of the complaint, Ofcom had 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.

Ofcom assessed the programmes as a whole and considered that during the course of the four programmes, a number of issues relating to the Middle East peace process were covered in detail, with the Palestine Papers being used to illustrate some of the points being made. These issues included the extent of concessions offered by the PLO in negotiations, in particular negotiations regarding Jerusalem, how Palestinian refugees were dealt with, the role of Israeli and Palestinian security forces, reactions to the Palestine Papers, the Israeli invasion of Gaza and the delay in publishing the Goldstone Report. Ofcom considered that the programmes contained a great deal of detailed analysis of the issues, both by the presenters and reporters involved and during the course of lengthy discussions between a wide range of guests on the programme.

Ofcom considered that, having received the Palestine Papers from an unnamed source, the programme makers took extensive steps to authenticate the documents. Ofcom noted that the programme makers said that five separate sources from within the PA were involved in the making of the series and that they verified the authenticity of the documents with each of these sources

independently of each other. There was a former PA negotiator involved in this process and the programme makers also spoke to Americans who had been in attendance at some of the meetings referred to in the papers. The programme makers also spoke to representatives of the CIA and the British intelligence services. However, the entertained complaint was specifically about the alleged omission of important contextual information and not directly about the steps taken to verify broadcast information.

Ofcom recognised that the Palestine Papers included a substantial number of documents. In themselves they represented only a part of a highly complex negotiating process. Condensing this material into a four part series of programmes inevitably meant omitting a significant volume of material. The issue for Ofcom was to consider whether the omissions were such that, taken as a whole, they resulted in unfairness to Dr Erakat and the PLO.

In this context, Ofcom noted that all the Palestine Papers were made available on the Al Jazeera website and that this was brought to the attention of viewers on a number of occasions during the four programmes. Ofcom noted that Rule 7.1 of the Code relates specifically to unfairness within programmes as broadcast and took the view that merely directing viewers to a large volume of published information that only a minority were likely to review in any detail would not in itself justify omission from the actual broadcast of material facts in a way that results in unfairness. However, Ofcom considered that, given that a large volume of material existed, online publication was a useful way to bring detail to viewers' attention in the context of broadcast material.

In considering this head of complaint, Ofcom also took into account the steps taken to seek Dr Erakat's participation in the programme and, in the absence of such participation, the steps taken to include his position in relation to criticisms made of him and/or the PLO. These are set out under decision head c) below.

Ofcom also considered the wide range and variety of independent commentators who contributed to the four programmes and gave their opinions on the issues raised. Ofcom noted that, although the programmes included a number of criticisms of Dr Erakat, it also included criticisms of others involved in the Middle East peace process, including Israel, the US and the UK. Episode four also made reference to criticisms that had been made of Al Jazeera itself. Ofcom acknowledged that presenting a large volume of material inevitably meant omitting some detail, but noted that it had not been provided with specific examples of material which Al Jazeera had available and which, if broadcast, would have placed the material that was broadcast material in a very different light.

Taking all these factors into account, in particular the inclusion of Dr Erakat's position on the criticisms that were made of him and the PLO, the fact that the programmes looked at the Middle East peace process from a number of different perspectives and included contributions from a range of expert commentators, Ofcom took the view that Al Jazeera took a reasonable care to satisfy itself that the material facts were not presented, disregarded or omitted in a way that was unfair to Dr Erakat and the PLO.

As regards the particular example of unfairness referred to by Dr Erakat in this respect, namely the reference to him saying during negotiations that he had offered "*the biggest Yerushalem in history*", Ofcom noted that Dr Erakat had claimed that this quotation was both wrongly attributed to him. Ofcom is not in a

position to determine whether Dr Erakat in fact said the words attributed to him or whether they correctly summarise his position. However, the Palestine Papers recorded him as having made this statement in a meeting on 15 January 2010 and, as set out above, the programme makers took a number of reasonable steps to verify the authenticity of the documents. Having verified the authenticity of documents which were diplomatic records which were in the possession of the PLO, it was not unfair to use them in the way Al Jazeera did. In any event, Ofcom noted that the programme included interview footage from Al Jazeera Arabic, in which Dr Erakat stated that the quotation was “fake”, so viewers were made aware that Dr Erakat disputed that he had said the words attributed to him.

Ofcom noted that Dr Erakat also said that the minutes of the negotiation meetings were “shorthand” and sometimes contained “inaccuracies”. Ofcom recognised that, while minutes are not a verbatim record of meetings and mistakes do occur, they are nonetheless diplomatic records held by the PLO, and considered that, given the steps taken to check the authenticity of the papers, the programme makers were entitled to rely on the content of the documents. Additionally, Ofcom considered that it was made clear in the programme that they were relying on documentary records rather than accounts by individuals actually in attendance (which could indeed also have included inaccuracies).

Ofcom therefore found no unfairness to Dr Erakat in this respect.

- b) Ofcom then considered the complaint that the dramatisation of excerpts of informal minutes of highly sensitive meetings was inappropriate.

In considering this part of the complaint, Ofcom had regard to Practice 7.9, as set out under decision head a) above, and Practice 7.10, which states that programmes – such as dramas and factually-based dramas – should not portray facts, events, individuals or organisations in a way which is unfair to an individual or organisation.

Ofcom noted that Dr Erakat said that this was done without consulting anyone who had actually participated in these discussions and that the broadcaster took liberty with voice intonations, dramatic music, and character portrayals that were deliberately meant to affect the viewer’s perception in a negative manner.

Ofcom noted that Dr Erakat had not referred to any particular reconstructions in his complaint. However it also noted that the series included a number of dramatic reconstructions of negotiation meetings between the PA, Israel and the United States over the future of Palestine and Israel. Each of these sequences was clearly captioned as a reconstruction and Ofcom considered that viewers would have been in no doubt that this is what they were.

Ofcom considered whether, in this context, it was inappropriate to use excerpts from minutes as a basis for dramatisation and, if so, whether consultation with individuals personally involved in the discussions was necessary as Dr Erakat suggested. Ofcom took the view that, although minutes are not a verbatim account of meetings, they are diplomatic records held by the PLO and, with adequate steps to verify authenticity as occurred in this case, are capable of forming the basis for reconstruction. Ofcom considered that, although input from individuals present may be helpful in dramatic reconstructions, such input is not a necessary requirement of avoiding unfairness. To require it in all cases would be a disproportionate interference with freedom of expression.

In Ofcom's view, nothing in the way Dr Erakat was presented in these reconstructions was likely to have adversely effected viewers' perceptions of him. Rather, it considered that viewers were likely to form their opinions on the basis of the words the actor portraying him said, which in turn were drawn from the minutes of meetings. For the reasons set out under decision head a) above, Ofcom was satisfied that material facts were not presented in or omitted from the programmes in a way that was unfair to Dr Erakat. In these circumstances, Ofcom considered that there was no unfairness to Dr Erakat as a result of the inclusion in the programmes of the dramatic reconstructions of negotiation meetings.

Ofcom therefore found no unfairness to Dr Erakat in this respect.

- c) Ofcom then considered the complaint that, given the size and scope of the documents and the allegations, Dr Erakat should have been given the time necessary to verify the veracity of the documents and formulate an informative response.

In considering this part of the complaint, Ofcom had regard to 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.

Ofcom noted that Dr Erakat said he was not informed in advance by the programme makers about the documents, which were first mentioned by Al Jazeera Arabic on the evening of the first broadcast. When Dr Erakat enquired as to the subject of the programme, Al Jazeera Arabic had refused to inform him and he declined to participate. When the programme makers called him back and told him they wanted his comment on negotiation documents, he had consented to appear on that evening's programme. Ofcom also noted that Dr Erakat said he was ambushed with a substantial cache of unverified documents of which he had no previous knowledge, whereas all the other commentators that evening had before them the full collection of documents and had obviously had access to them for some time (because they were quoting directly from them during the programme about statements that Dr Erakat had allegedly made).

Ofcom noted that the programmes included a number of serious allegations regarding Dr Erakat and the PLO and the role they played during the Middle East peace process. In particular, the programmes included serious allegations in relation to the extent of concessions made by Dr Erakat and the PLO during negotiations with Israel and the US. It was therefore incumbent on the broadcaster to offer Dr Erakat an appropriate and timely opportunity to respond.

Ofcom noted that Al Jazeera said that it had safety concerns if the programme makers informed the PLO in advance of the full extent of the issues to be discussed in the series, as demonstrated by the attacks that took place on the Al Jazeera Ramallah bureau after the broadcast of the first programme. However, Ofcom noted that despite these concerns, the programme makers made a number of attempts to contact Dr Erakat before the broadcast, but were unable to secure his participation.

It also noted that a programme maker with Al Jazeera Arabic had spoken to Dr Erakat on 23 January 2011 and invited him on to a programme that day. After initially declining the invitation, Ofcom noted that Dr Erakat had agreed to interviews with both Al Jazeera Arabic and Al Jazeera English. Before taking part

in an interview, Dr Erakat had reviewed the Palestine Papers at Al Jazeera's office. However, after his interview broadcast on Al Jazeera Arabic, Dr Erakat had refused to participate in the planned interview with Al Jazeera.

Ofcom also took into account that the programme makers had attempted to contact Dr Erakat on a number of other occasions on 23 and 24 January 2011 to offer him an opportunity to respond to the issues raised in the series, but were unable to make contact with him.

Ofcom considered that there was a great deal of material under consideration in relation to the series and acknowledged that Dr Erakat and the PLO might have preferred a lengthier period of time than was offered in order to prepare their response. There may be circumstances in which it is appropriate to allow access to documents where the veracity of the documents is disputed as part of a broadcaster taking reasonable steps to ensure facts are not presented, disregarded or omitted in a way which is unfair. However, we noted in relation to head (a) the steps Al Jazeera took to verify material and considered them reasonable in this case. Practice 7.11 primarily relates to the substance of allegations and 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."* The issue is therefore whether Dr Erakat had an appropriate and timely opportunity to respond to the substance of allegations.

Ofcom took the view that, given that it was acknowledged that the documents emanated from Dr Erakat's office, he would have been familiar with the nature of the material prior to the programme makers contacting him. Taking into account the events set out above, and given Dr Erakat's refusal to participate in the series, Ofcom took the view that Al Jazeera had made sufficient attempts to offer Dr Erakat personally an opportunity to participate and respond to the criticisms to be made in the programme.

Ofcom also noted that the programme makers had attempted to secure the participation of the PLO in the series, but were informed that the PLO was going to boycott the series.

Ofcom then considered whether, despite the decision by Dr Erakat not to participate, the programmes took steps to include Dr Erakat's position and that of the PLO on the significant allegations included in the programmes.

Ofcom noted that in the first episode the presenter had explained at the outset that Dr Erakat had been invited to appear and included an extract from the interview he had given to Al Jazeera Arabic. The presenter had said that Dr Erakat:

"...denies making the kind of concessions that we've been hearing about here, or offers with regards to Jerusalem. Here's what he [Dr Erakat] had to say earlier: 'I have come on Al Jazeera because I have nothing to hide. On several occasions, I have said on Al Jazeera that we, the Palestinian Authority, would never give up any of our rights. If we did indeed offer Israel the Jewish and Armenian quarters of Jerusalem and the biggest Yerushalayim, as they clam, then why did Israel not sign a final status agreement? Is it not strange that we would offer all these concessions which Israel demands, yet there is still no peace deal'"

The programme had also included extracts from an earlier pre-recorded interview with Dr Erakat, in which he had confirmed as true the account of a negotiation in which his team had drawn the Israeli settlement offer “*on a napkin*”.

Ofcom noted that the fourth episode included an excerpt from the interview with Dr Erakat on Al Jazeera Arabic, in which he said in response to the allegations in the Palestine Papers and the issues raised in the programmes:

“I’ll admit that some of the papers you published are authentic, but some are fake, such as the one about the biggest Yerushalem, but I challenge Al Jazeera to publish the official positions of the PA, which are in my possession, so that Palestinians around the world know the facts and so that they can keep a head above the sand. You’ve taken all documents out of context. You’re destroying our aspirations”.

In addition to the inclusion of Dr Erakat’s position, Ofcom noted that the series also included footage of PLO representatives, who expressed opinions on behalf of the PLO and to some extent on behalf of Dr Erakat. For example: in the second programme Mr Shaath, a senior PLO official, gave his views and those of the PLO on a number of issues (e.g. he denied that the PLO had lost its legitimacy, he gave his view that the Palestine Papers were “*probably*” genuine but gave examples to demonstrate his view that the Palestine Papers had been read out of context); and in the third programme the presenter had interviewed General Al Damiri, spokesperson for the Palestinian Security Services, who expressed the opinion that Dr Erakat would not have said: “We have had to kill Palestinians to establish one authority, one gun and the rule of law. We continue to perform our obligations”.

Having considered all the above extracts from the programmes, Ofcom took the view that, despite Dr Erakat’s decision not to participate in the programmes and the PLO’s decision the series, Dr Erakat’s position (and that of the PLO) was sufficiently conveyed to viewers as a result of the inclusion of footage of Dr Erakat from other sources and footage of other interviewees.

In the light of the above, Ofcom considers that Dr Erakat was given an appropriate and timely opportunity to respond to allegations in the programme. Ofcom does not consider it necessary, in view of this conclusion, to reach a view on whether Al Jazeera’s stated safety concerns were justified.

Ofcom therefore found no unfairness to Dr Erakat in this respect.

Unwarranted infringement of privacy

In Ofcom’s view, the individual’s right to privacy has to be balanced against the competing rights of the broadcasters to freedom of expression. Neither right as such has precedence over the other and where there is a conflict between the two, it is necessary to intensely focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate.

This is reflected in how Ofcom applies Rule 8.1 of the Code which states that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.

- d) Ofcom considered the complaint that Dr Erakat's privacy and that of the PLO was unwarrantably infringed in the making and the broadcast of the programme in that the broadcast gave details of confidential documents that were stolen from Dr Erakat's office in full and total breach of confidentiality. This unauthorised publication was thus without consent from him or the PLO.

In considering this part of the complaint, Ofcom had regard to Practices 8.5 and 8.6 the Code. Practice 8.5 states that any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted. Practice 8.6 of the Code states that if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

In considering whether Dr Erakat's privacy or that of the PLO was unwarrantably infringed in the making or the broadcast of the programme, Ofcom first considered the extent to which Dr Erakat or the PLO had a legitimate expectation of privacy.

Ofcom noted that Al Jazeera's response did not explain how they obtained the papers, but it was clear to Ofcom that they came from Dr Erakat's office, that neither Dr Erakat nor the PLO had given the papers to or authorised their provision to the broadcaster, and that they considered the material to be confidential. However, it is also clear that the papers related solely to Dr Erakat's activities as Chief Negotiator for the PLO, that is as the public face of an organisation seeking to speak on behalf of the Palestinian people generally, rather than some aspect of his private life. There are strategic reasons why negotiations are often held behind closed doors and why negotiators do not wish to reveal their negotiating position or strategy, but the subject matter of negotiations is often very much a public matter.

However, even to the extent there was legitimate expectation of privacy in relation to the obtaining and broadcast of the material, and that question is finely balanced in this case, it is necessary for Ofcom to go on to consider whether any potential infringement of privacy was warranted, and to weigh the broadcaster's competing right to freedom of expression and the audience's right to receive information and ideas without unnecessary interference.

Ofcom considered that the issues considered in the series, namely the manner in which the Middle East peace process was conducted and the roles of the many participants in the process, were of significant public interest both in the Middle East and globally. The part played by Dr Erakat and the PLO was an important element of that process, and the documents obtained from Dr Erakat's office were clearly important and useful in informing viewers' understanding of their part in the peace process. In these circumstances, even to the extent that Dr Erakat's and the PLO's expectations of privacy were engaged, Ofcom took the view that the public interest outweighed this expectation and considered that the obtaining and use of the material was warranted.

Ofcom therefore found that there was no unwarranted infringement of Dr Erakat's privacy or that of the PLO in the making or the broadcast of the programme.

Accordingly, Ofcom has not upheld Dr Erakat's complaint, made on his own behalf and on behalf of the PLO, of unfair treatment and unwarranted infringement of privacy in the making and broadcast of the programme.

Other programmes Not in Breach

Up to 19 September 2011

Programme	Broadcaster	Transmission Date	Categories
Punjab Radio	Punjab Radio	18/07/2011	Harm
Lorraine	ITV1	25/05/2011	Materially misleading
Little Howard's Big Question	BBC 2	29/06/2011	Generally accepted standards
BBC News	BBC News Channel	08/09/2011	Flashing images/risk to viewers who have PSE

Complaints Assessed, Not Investigated

Between 6 and 19 September 2011

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
118 118's sponsorship of ITV Movies	ITV2	03/09/2011	Crime	1
118 118's sponsorship of ITV Movies	ITV2	04/09/2011	Crime	1
9/11: Conspiracy Road Trip	BBC 3	09/09/2011	Due impartiality/bias	1
All Time UK Singles Sales Chart	Channel 4	n/a	Outside of remit / other	1
America Remembers September 11th	BBC 2	11/09/2011	Generally accepted standards	1
Ancient Aliens	History Channel	18/09/2011	Materially misleading	1
Angry Boys	BBC 3	n/a	Race discrimination/offence	1
Appropriate Adult	ITV1	11/09/2011	Generally accepted standards	1
Athletics	Channel 4	28/08/2011	Advertising scheduling	1
Athletics	Channel 4	29/08/2011	Advertising scheduling	1
Athletics	Channel 4	01/09/2011	Advertising minutage	1
Back From the Dead	Channel 4	11/09/2011	Due impartiality/bias	1
Back From the Dead	Channel 4	18/09/2011	Due impartiality/bias	1
BBC News at Ten	BBC 1	15/09/2011	Outside of remit / other	1
BBC Proms	BBC 2	27/08/2011	Generally accepted standards	1
BBC World	BBC World	12/09/2011	Product placement	1
Big Brother	Channel 5	09/09/2011	Animal welfare	1
Big Brother	Channel 5	09/09/2011	Materially misleading	1
Big Brother	Channel 5	09/09/2011	Race discrimination/offence	1
Big Brother	Channel 5	11/09/2011	Generally accepted standards	1
Big Brother	Channel 5	14/09/2011	Nudity	1
Big Brother's Bit on the Side	Channel 5	12/09/2011	Generally accepted standards	1
Big Brother's Bit on the Side	Channel 5	15/09/2011	Nudity	1
Big Brother's Bit on the Side (trailer)	5*	03/09/2011	Scheduling	1
Big Brother's Bit on the Side (trailer)	Channel 5	31/08/2011	Scheduling	1
Blue Bird Channel 900	Blue Bird	13/09/2011	Crime	1
Body of Proof	Alibi	30/08/2011	Advertising minutage	1
Braniac	Pick TV	10/09/2011	Materially misleading	1
BT Vision's sponsorship of drama on 4	Channel 4	01/09/2011	Materially misleading	1

Bulging Brides	Sky Livingit	29/08/2011	Offensive language	1
Capital Breakfast	Capital FM	23/08/2011	Sexual material	1
Capital Radio	Capital Radio Birmingham	22/08/2011	Sexual material	1
Celebrity Big Brother	Channel 5	07/09/2011	Generally accepted standards	1
Celebrity Big Brother	Channel 5	08/09/2011	Harm	1
Celebrity Big Brother	Channel 5	08/09/2011	Sexual material	1
Celebrity Juice	ITV2	Dec-10	Outside of time limit/deadline	1
Celebrity Juice	ITV2	08/09/2011	Disability discrimination/offence	1
Celebrity Juice (trailer)	ITV2	08/09/2011	Offensive language	1
Coach Trip	More 4	08/09/2011	Animal welfare	1
Comedy Central	Comedy Central	n/a	Hypnotic and other techniques	1
Competition	Signal 1	02/09/2011	Offensive language	1
Competitions (General)	ITV1	n/a	Competitions	1
Coronation Street	ITV1	16/09/2011	Product placement	1
Crusaders: Back from the Dead	Channel 4	11/09/2011	Generally accepted standards	1
Curious George	Disney Junior	06/09/2011	Offensive language	1
Daybreak	ITV1	05/09/2011	Under 18s in programmes	1
Daybreak	ITV1	08/09/2011	Violence and dangerous behaviour	1
Deadline Day	Sky Sports News	31/08/2011	Offensive language	1
Doctor Who	BBC 1	27/08/2011	Offensive language	1
Don't Tell the Bride	BBC 3	08/09/2011	Offensive language	1
Don't Tell the Bride	BBC 3	13/09/2011	Undue prominence	1
Doris Day Night	BBC 4	11/09/2011	Outside of remit / other	1
Drivetime	Peak FM	11/08/2011	Race discrimination/offence	1
EastEnders	BBC 1	12/09/2011	Offensive language	1
Emmerdale	ITV1	25/08/2011	Violence and dangerous behaviour	1
Emmerdale	ITV1	15/09/2011	Advertising minutage	1
Emmerdale	ITV1	15/09/2011	Offensive language	1
Emmerdale	ITV1	15/09/2011	Suicide and self harm	8
Euro 2012 Qualifiers	ITV1	06/09/2011	Offensive language	1
Everybody Hates Chris	5*	01/09/2011	Offensive language	1
Four Lions	Channel 4	04/09/2011	Generally accepted standards	1
French Connection Advertisement	ITV1	10/09/2011	Advertising content	1
Glee (trailer)	E4 / E4 HD	n/a	Race discrimination/offence	1
Glee (trailer)	ITV1	16/09/2011	Race discrimination/offence	1
Glee (trailer)	Pick TV	04/09/2011	Race discrimination/offence	1
Glee (trailer)	Pick TV	08/09/2011	Race	1

			discrimination/offence	
Glee (trailer)	Sky 1	04/09/2011	Race discrimination/offence	1
Glee (trailer)	Sky 1	08/09/2011	Race discrimination/offence	1
Glee (trailer)	Sky 1	10/09/2011	Race discrimination/offence	1
Glee (trailer)	Sky 1	n/a	Race discrimination/offence	1
Glee (trailer)	Sky 2	05/09/2011	Race discrimination/offence	1
Glee (trailer)	Sky Living	07/09/2011	Race discrimination/offence	1
Glee (trailer)	Sky Living + 1	08/09/2011	Race discrimination/offence	1
Glee (trailer)	Sky Living Loves	08/09/2011	Race discrimination/offence	1
Glee (trailer)	Sky Sports 2	03/09/2011	Race discrimination/offence	1
Glory TV	Glory TV	07/09/2011	Religious/Beliefs discrimination/offence	1
Heart Drivetime with Adam Ball	Heart FM	14/09/2011	Offensive language	1
Hollyoaks	Channel 4	01/09/2011	Religious/Beliefs discrimination/offence	1
Hollyoaks	Channel 4	13/09/2011	Outside of remit / other	1
Hollyoaks Later	E4	09/09/2011	Generally accepted standards	2
Horizon	BBC 2	07/09/2011	Race discrimination/offence	1
Huw Stephens	BBC Radio 1	11/09/2011	Drugs, smoking, solvents or alcohol	1
Iain Lee	Absolute Radio	01/09/2011	Generally accepted standards	1
Iain Lee	Absolute Radio	08/09/2011	Materially misleading	2
iCarly	Nickelodeon	28/08/2011	Violence and dangerous behaviour	1
Inspector George Gently	BBC 1	04/09/2011	Drugs, smoking, solvents or alcohol	1
International Twenty20 Cricket	Sky Sports 1	31/08/2011	Generally accepted standards	1
Internet Advertising	n/a	n/a	Outside of remit / other	1
James Barr Show	Capital FM	13/09/2011	Offensive language	1
James Barr Show	Capital FM	14/09/2011	Offensive language	1
James O' Brien	LBC 97.3FM	05/09/2011	Generally accepted standards	1
Jeremy Kyle	ITV2+1	12/09/2011	Generally accepted standards	1
Jeremy Kyle Show	ITV1	n/a	Materially misleading	1
JLS feat DEV - "She Makes Me Wanna"	n/a	n/a	Offensive language	1
Julia Hartley Brewer	LBC 97.3FM	09/09/2011	Religious/Beliefs discrimination/offence	1
Lee Nelson's Well Good Show	BBC 3	08/09/2011	Generally accepted standards	1
Lee Nelson's Well Good Show	BBC Three	10/09/2011	Generally accepted standards	1

Let's Do Lunch... With Gino and Mel	ITV1	24/08/2011	Sexual material	1
Live International Boxing	Channel 5	17/09/2011	Outside of remit / other	1
Live With Harjap	MATV	n/a	Generally accepted standards	1
London Tonight	ITV1	09/09/2011	Due impartiality/bias	1
Lynx Advertising	Various	n/a	Outside of remit / other	1
Marbella Belles	ITV2	04/09/2011	Generally accepted standards	1
Midsomer Murders	ITV1	n/a	Generally accepted standards	1
Mike Graham	Talksport	n/a	Generally accepted standards	1
Mock the Week	BBC 2	08/09/2011	Race discrimination/offence	1
Mount Pleasant	Sky 1	24/08/2011	Offensive language	1
Mount Pleasant (trailer)	Pick TV	08/09/2011	Offensive language	1
Mount Pleasant (trailer)	Sky 1	07/09/2011	Sexual material	1
Mount Pleasant (trailer)	Sky 1	11/09/2011	Offensive language	1
News Broadcasts	Various	n/a	Outside of remit / other	1
News on the Hour	Sky News	07/09/2011	Generally accepted standards	1
News, Sport, Weather	Sky News	02/09/2011	Under 18s in programmes	1
Newsnight	BBC 2	13/09/2011	Religious/Beliefs discrimination/offence	1
Nick Ferrari radio show	LBC Radio	March 2007	Outside of time limit/deadline	1
Numberjacks	CBeebies	09/09/2011	Generally accepted standards	1
OK! TV	Channel 5	13/09/2011	Disability discrimination/offence	1
Psychic TV	Big Deal	n/a	Participation TV - Harm	1
Punjab Radio	Punjab Radio	18/07/2011	Harm	1
Queens Palaces	BBC 1	12/09/2011	Generally accepted standards	1
Reality TV	Various	n/a	Outside of remit / other	1
Rugby World Cup	ITV1	09/09/2011	Generally accepted standards	1
Rugby World Cup	Talksport	10/09/2011	Violence and dangerous behaviour	1
Rugby World Cup 2011	ITV1	09/09/2011	Advertising scheduling	5
Rugby World Cup 2011	ITV1	09/09/2011	Due impartiality/bias	1
Rugby World Cup 2011	ITV1	10/09/2011	Age discrimination/offence	1
Rugby World Cup 2011	ITV1	10/09/2011	Race discrimination/offence	3
Rugby World Cup 2011	ITV1	10/09/2011	Offensive language	5
Rugby: England v Argentina	ITV HD	10/09/2011	Race discrimination/offence	1
Shooting Stars	BBC 2	29/08/2011	Outside of remit / other	1
Silent Library	5*	14/09/2011	Animal welfare	1
Simon Mayo	BBC Radio 5	12/10/2009	Race	1

	Live		discrimination/offence	
Simon Mayo	BBC Radio 5 Live	12/10/2009	Race discrimination/offence	1
Sky Customer Complaint	BSkyB	n/a	Outside of remit / other	1
Sky News	Sky News	08/09/2011	Violence and dangerous behaviour	1
Sky News	Sky News	09/09/2011	Due impartiality/bias	1
Sky News with Gillian Joseph	Sky News	16/09/2011	Generally accepted standards	1
Spooks	BBC 1	18/09/2011	Product placement	1
Strictly Come Dancing	BBC 1	10/09/2011	Offensive language	1
The Alan Brazil Sports Breakfast	Talksport	31/08/2011	Sexual material	1
The Alan Titchmarsh Show	ITV1	08/09/2011	Undue prominence	1
The Bourne Ultimatum	UTV	03/09/2011	Advertising scheduling	1
The Field of Blood	BBC 1	29/08/2011	Generally accepted standards	1
The Human Centipede	SyFy	06/09/2011	Generally accepted standards	1
The Human Centipede	SyFy	06/09/2011	Generally accepted standards	1
The Jeremy Kyle Show	ITV2	08/09/2011	Sexual material	1
The Jonathan Ross Show	ITV1	03/09/2011	Drugs, smoking, solvents or alcohol	4
The Jonathan Ross Show	ITV1	03/09/2011	Generally accepted standards	1
The Milkshake! Show	Channel 5	29/08/2011	Advertising minutage	1
The Million Pound Drop Live	Channel 4	10/09/2011	Age discrimination/offence	1
The Million Pound Drop Live	Channel 4	17/09/2011	Generally accepted standards	1
The Sex Education Show	Channel 4	09/08/2011	Nudity	2
The Sex Education Show	Channel 4	23/08/2011	Due impartiality/bias	1
The Sex Education Show	Channel 4	23/08/2011	Sexual material	2
The Today Programme	BBC Radio 4	06/09/2011	Disability discrimination/offence	1
The Walking Dead Season 2 (trailer)	FX	30/08/2011	Violence and dangerous behaviour	1
The Wright Stuff	Channel 5	14/04/2011	Violence and dangerous behaviour	1
The X Factor	ITV1	27/08/2011	Advertising scheduling	1
The X Factor	ITV1	10/09/2011	Fairness	1
The X Factor	ITV1	11/09/2011	Disability discrimination/offence	1
The X Factor	ITV1	11/09/2011	Gender discrimination/offence	1
The X Factor	ITV1	11/09/2011	Generally accepted standards	1
The X Factor	ITV1	18/09/2011	Generally accepted standards	1
The Xtra Factor	ITV2	10/09/2011	Violence and	1

			dangerous behaviour	
The Xtra Factor	ITV2	11/09/2011	Fairness	1
The Xtra Factor	ITV2	11/09/2011	Violence and dangerous behaviour	1
The Xtra Factor	ITV2	15/09/2011	Violence and dangerous behaviour	1
This Morning	ITV1	n/a	Competitions	1
Three in a Bed	Channel 4	13/09/2011	Offensive language	1
Torchwood: Miracle Day	BBC 1	25/08/2011	Violence and dangerous behaviour	1
Trailer for Embarrassing Bodies	Channel 4	n/a	Generally accepted standards	1
UEFA Europa League Live	ITV4	25/08/2011	Drugs, smoking, solvents or alcohol	2
United 93	ITV1	10/09/2011	Generally accepted standards	1
Vantage Point	Channel 5	11/09/2011	Advertising minutage	1
Various	Babestation / Filth	n/a	Outside of remit / other	1
Various	Religious programming	n/a	Outside of remit / other	1
Various	Various	n/a	Product placement	1
Various	Various	n/a	Premium rate services	1
Waterloo Road	BBC 1	14/09/2011	Generally accepted standards	1
Wuthering Heights	ITV3	21/08/2011	Advertising minutage	1
Young, Dumb and Living Off Mum	BBC 3	04/09/2011	Disability discrimination/offence	1

Investigations List

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

Here is an alphabetical list of new investigations launched between 22 September and 5 October 2011.

Programme	Broadcaster	Transmission Date
50 Super Epic TV Moments	E! Entertainment	07 September 2011
Advertising minutage	4Music	17 August 2011
Advertising minutage	Zing	18 August 2011
Aviva's sponsorship of Downton Abbey	ITV1	18 September 2011
Big Brother	Channel 5	23 September 2011
Channel Report	Channel TV	17 August 2011
Charity appeals	Takbeer TV	11 August 2011
Charity appeals	ATN Bangla UK	17 August 2011
Charity appeals	Bangla TV	21 and 23 August 2011
Charity appeals	Iqra TV	22 August 2011
Charity appeals	Prime TV	22 August 2011
Charity appeals	Ummah Channel	20 August 2011
Exposure: Gaddafi and the IRA	ITV1 London	26 September 2011
Ikhlas	Ikhlas	16 September 2011
PS3's sponsorship of Five Movies	Channel 5	04 September 2011
Pwned	Information TV	03 September 2011
Red Light Central	Red Light 2	02 September 2011
The Pet Detectives	Channel 4	22 August 2011
Torchwood	Watch	05 September 2011

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

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

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

For fairness and privacy complaints go to:
<http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/fairness/>.