

# **Ofcom Broadcast and On Demand Bulletin**

**Issue number 321  
23 January 2017**

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## Introduction

Under the Communications Act 2003 (“the Act”), Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives<sup>1</sup>. Ofcom also has a duty to secure that every provider of a notifiable On Demand Programme Services (“ODPS”) complies with certain standards requirements as set out in the Act<sup>2</sup>. Ofcom must include these standards in a code, codes or rules. These are listed below.

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

- a) [Ofcom’s Broadcasting Code](#) (“the Code”) for content broadcast on television and radio services.
- b) the [Code on the Scheduling of Television Advertising](#) (“COSTA”) which contains rules on how much advertising and teleshopping may be scheduled in television programmes, how many breaks are allowed and when they may be taken.
- c) certain sections of the [BCAP Code: the UK Code of Broadcast Advertising](#), which relate to those areas of the BCAP Code for which Ofcom retains regulatory responsibility for on television and radio services. These include:
  - the prohibition on ‘political’ advertising;
  - sponsorship and product placement on television (see Rules 9.13, 9.16 and 9.17 of the Code) and all commercial communications in radio programming (see Rules 10.6 to 10.8 of the Code);
  - ‘participation TV’ advertising. This includes long-form advertising predicated on premium rate telephone services – most notably chat (including ‘adult’ chat), ‘psychic’ readings and dedicated quiz TV (Call TV quiz services). Ofcom is also responsible for regulating gambling, dating and ‘message board’ material where these are broadcast as advertising<sup>3</sup>.
- d) other licence conditions which broadcasters must comply with, such as requirements to pay fees and submit information which enables Ofcom to carry out its statutory duties. Further information can be found on Ofcom’s website for [television](#) and [radio](#) licences.
- e) Ofcom’s [Statutory Rules and Non-Binding Guidance for Providers of On-Demand Programme Services](#) for editorial content on ODPS. Ofcom considers sanctions in relation to advertising content on ODPS on referral by the Advertising Standards Authority (“ASA”), the co-regulator of ODPS for advertising or may do so as a concurrent regulator.

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

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<sup>1</sup> The relevant legislation is set out in detail in Annex 1 of the Code.

<sup>2</sup> The relevant legislation can be found at Part 4A of the Act.

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

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

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

## Note to Broadcasters and On Demand Service Providers

### Ofcom consultations on:

- **new proposed procedures for handling BBC content standards complaints, investigations and sanctions; and**
  - **proposed changes to current investigation and sanction procedures for other broadcasters and notified on demand service providers**
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Ofcom will take on regulation of the BBC from 3 April 2017. We have previously informed broadcasters and on demand programme service (ODPS) providers that we will be consulting on proposed procedures explaining how we will handle complaints about BBC programmes, and how we will conduct our investigations and sanctions.

This consultation is published today. It seeks stakeholders' views on proposed procedures that Ofcom will normally follow for BBC's UK broadcasting and on demand programme services funded by the licence fee when:

- considering and investigating content standards issues under the Code;
- considering and adjudicating Fairness and Privacy complaints under the Code; and
- considering the imposition of sanctions for breaches of the Code.

We invite representations from interested stakeholders on the matters set out in the consultation by no later than 5pm on **6 March 2017**.

<https://www.ofcom.org.uk/consultations-and-statements/category-2/bbc-content-standards-investigations-and-sanctions>

We have also taken this opportunity to review our current procedures which apply to all other Ofcom television and radio licensees and notified ODPS providers.

As a result, as well as consulting on proposed BBC procedures, we are today seeking stakeholder views on proposed changes to Ofcom's current procedures. This consultation covers the following procedures:

- Procedures for investigating breaches of content standards for television and radio
- Procedures for the consideration and adjudication of Fairness & Privacy complaints
- General procedures for investigating breaches of broadcast licences
- Procedures for the consideration of statutory sanctions in breaches of broadcast licences
- Procedures for investigating breaches of rules for on-demand programme services
- Procedures for the consideration of statutory sanctions arising in the context of on-demand programme services

The reason for also consulting on our current procedures at this time is to ensure that: where appropriate, they are consistent with the proposed BBC procedures; our processes are fair, efficient and timely; and there is transparency and clarity as to how our processes will be run.

We invite responses on the matters set out in this consultation also by no later than 5pm on **6 March 2017**.

<https://www.ofcom.org.uk/consultations-and-statements/category-2/review-procedures-handling-content-standards-and-broadcast-licensing>

## Note to Broadcasters

### Northern Ireland Assembly elections

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On 2 March 2017, elections will be taking place for the Northern Ireland Assembly, following the UK Government's announcement<sup>1</sup> that it is calling elections to that body.

Broadcasters will be aware that Ofcom is consulting on amendments to its rules on due impartiality, due accuracy, elections and referendums<sup>2</sup>. The consultation closed on 16 January 2017 and we intend to publish a statement setting out our decisions for the elections taking place on 4 May 2017 shortly. However, the **current** version of Ofcom's Rules on Party Political and Referendum Broadcasts<sup>3</sup> will apply to the March 2017 Northern Ireland Assembly elections, and the **current** versions of Section Five (Due Impartiality)<sup>4</sup> and Section Six (Elections and Referendums)<sup>5</sup> of the Broadcasting Code will apply to programming broadcast during the election period for the Northern Ireland Assembly elections.

We have reviewed Ofcom's March 2016 list of larger parties in Northern Ireland<sup>6</sup>. We consider that there have been no significant changes and the March 2016 list of larger parties in Northern Ireland remains appropriate for the March 2017 Northern Ireland Assembly elections.

Ofcom reminds all broadcasters that great care needs to be taken when broadcasting election-related programming. In particular, broadcasters should ensure that they comply with Section Five (Due Impartiality) and Section Six (Elections and Referendums) of the Code, as well as the prohibition on political advertising contained in section 321 of the Communications Act 2003 and reflected in Section 7 of the BCAP Code.

In relation to these elections, the rules in Section Six of the Code will apply when the "election period" commences, which will be 26 January 2017. Broadcasters should consult the list of larger parties to ensure that any election-related programming complies with Section Six of the Code.

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<sup>1</sup> See: <https://www.gov.uk/government/speeches/secretary-of-states-oral-statement-on-political-situation-in-northern-ireland>

<sup>2</sup> See: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0024/93840/Larger-parties-and-BBC-impartiality.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0024/93840/Larger-parties-and-BBC-impartiality.pdf)

<sup>3</sup> See: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0015/36114/pprb\\_rules\\_march\\_2016.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0015/36114/pprb_rules_march_2016.pdf)

<sup>4</sup> See: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0024/86307/bc2015-07-section\\_5\\_due\\_impartiality.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0024/86307/bc2015-07-section_5_due_impartiality.pdf) Ofcom's published Guidance to Section Five of the Code can be found at: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0018/24534/section5.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0018/24534/section5.pdf)

<sup>5</sup> See: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0024/86307/bc2015-07-section\\_5\\_due\\_impartiality.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0024/86307/bc2015-07-section_5_due_impartiality.pdf) Ofcom's published Guidance to Section Five of the Code can be found at: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0018/24534/section5.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0018/24534/section5.pdf)

<sup>6</sup> See: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0018/24048/larger-parties.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0018/24048/larger-parties.pdf)



Ofcom will consider any breach arising from election-related programming to be potentially serious, and will consider taking regulatory action, as appropriate, in such cases, including considering the imposition of a statutory sanction. If a complaint is made which raises a substantive issue concerning due impartiality during the election period, and in Ofcom's opinion the complaint, if upheld, might require redress before the election, it will be considered by Ofcom's Election Committee<sup>7</sup>. In such circumstances, it will be necessary for Ofcom to act expeditiously in order to determine the outcome of any such complaints in a proportionate and transparent manner before the election. Given this, Ofcom may expedite any investigation carried out in relation to potential breaches of the impartiality provisions of the Code during the election period and broadcasters should be prepared to engage with Ofcom on short timescales.

For further information about the Northern Ireland Assembly elections, broadcasters should visit the Electoral Commission website at [www.electoralcommission.org.uk](http://www.electoralcommission.org.uk)

Broadcasters are also reminded that if they would find it helpful to have informal guidance on Sections Five and Six of the Code, they can contact Ofcom directly ([adam.baxter@ofcom.org.uk](mailto:adam.baxter@ofcom.org.uk)).

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<sup>7</sup> See Ofcom Election Committee's Terms of Reference: <https://www.ofcom.org.uk/about-ofcom/how-ofcom-is-run/committees/election-committee>

## Note to Broadcasters

### References to providers of technical information in sports programming on television

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Rule 9.5 requires broadcasters to ensure that no undue prominence is given in programming to a product, service or trade mark. This may result from its presence where there is no editorial justification, or the manner in which it is referred to.

It is an established industry practice that in broadcast coverage of sports events there may be sufficient editorial justification for the inclusion of a brief on-screen acknowledgement of a provider of technical information, e.g. lap times, match statistics, or a scoreboard. This convention is not referred to in the Code or Guidance, but has been acknowledged in previous Findings<sup>8</sup>.

This Note to Broadcasters does not set out an exhaustive definition of the types of technical information which can involve an on-screen reference to providers. We will continue to make judgements under the Code on a case-by-case basis, taking into account all relevant circumstances. We nevertheless think that it would be useful to provide broadcasters with some general guidance on the factors we are likely to consider in such cases:

- The technical information provided should enhance the viewing experience. In practice, this might mean that the information is integral to viewers' understanding and/or enjoyment of the sports event and the absence of the information would make it difficult for viewers to follow the action adequately (e.g. lap times in athletics coverage). Alternatively, the information may provide viewers with a broader understanding of the event they are watching (e.g. match statistics in a football game).
- The purpose of including technical information should not be to promote the information provider, and so credits should be brief and secondary. In addition, unique products from a specific provider, available for sale and targeted at viewers, are not a legitimate form of technical information (e.g. betting odds), in contrast to matters of objective fact concerning the sports events, which in theory a number of companies could provide (e.g. a scoreboard).
- Although betting odds would not constitute technical information, there may be limited circumstances in which references to odds within a programme may be justified. For example, where there is a close association between a sporting event and betting which is longstanding and uncontroversial (e.g. horseracing). In such cases, betting odds from a range of providers or an average of those odds should be made available to viewers, to avoid promotion of, or undue prominence to, any one provider.
- Broadcasters should take particular care when crediting providers of technical information with whom they have entered into sponsorship, product placement or other commercial arrangements for the same programme. In such cases it will be more difficult to demonstrate that references to products, services or trade marks

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<sup>8</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0016/47140/issue144.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0016/47140/issue144.pdf) and [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/46772/issue175.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/46772/issue175.pdf)

are editorially justified. There is also the potential for certain commercial arrangements to engage the product placement rules.

Any broadcaster who requires further guidance on references to providers of technical information in sports programming on television should contact Paul Ingram at [paul.ingram@ofcom.org.uk](mailto:paul.ingram@ofcom.org.uk).

## Broadcast Standards cases

### In Breach

#### Like Radio UK

27 November 2016, 16:10

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#### Introduction

Like Radio is a DAB radio station that broadcasts to Hereford, Worcester, Glasgow and Birmingham. The licence for the service is held by Like Radio Limited (“Like Radio” or “the Licensee”).

A complainant alerted Ofcom to “unacceptable” language in a song broadcast on 27 November 2016 on this station. Ofcom noted that the song “Drum” by MØ was broadcast at approximately 16:10 and included the word “*fuck*”.

We considered this language raised potential issues that warranted investigation under Rule 1.14 of the Code which states: “The most offensive language must not be broadcast...when children are particularly likely to be listening”.

#### Response

Like Radio apologised for this incident, adding that “on this occasion it looks like our Head of Music has poorly edited the music track” and “[a] fraction of the offending word had remained”. The Licensee said that the presenter was unable to apologise at the time of the broadcast because he “was unable to hear it as the station was live from an event with the music being played locally at the station”. It added that as soon as it was made aware of this incident, it edited the offensive language from the version of the song to be used for future broadcast.

Like Radio said that following the incident each song is now checked twice before being loaded into the playout system, and each song that requires editing is now logged into a spreadsheet.

#### 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. These include that people under eighteen are protected. This objective is reflected in Section One of the Code.

Rule 1.14 of the Code states that the most offensive language must not be broadcast when children are particularly likely to be listening. Ofcom research on offensive language<sup>1</sup> clearly states that the word “*fuck*” and similar words are considered by audiences to be among the most offensive language.

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<sup>1</sup> On 30 September 2016, Ofcom published updated research in this area: Attitudes to potentially offensive language and gestures on television and radio:  
([http://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0022/91624/OfcomOffensiveLanguage.pdf](http://www.ofcom.org.uk/_data/assets/pdf_file/0022/91624/OfcomOffensiveLanguage.pdf));  
([http://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0023/91625/OfcomQRG-AOC.pdf](http://www.ofcom.org.uk/_data/assets/pdf_file/0023/91625/OfcomQRG-AOC.pdf)).

Ofcom's published Guidance on offensive language on radio<sup>2</sup> states that the phrase "when children are particularly likely to be listening" includes the period "between 06:00 and 19:00 at weekends all year round...".

In this case, the word "fuck" was broadcast at a time when children were particularly likely to be listening i.e. at approximately 16:10 on a Sunday afternoon. The Licensee acknowledged that the inclusion of the offensive word was due to the fact that the song in question was "poorly edited". Like Radio said that the presenter was unable to apologise live as he "was unable to hear it as the station was live from an event with the music being played locally at the station". However, Ofcom expects broadcasters to monitor, as appropriate, all output as broadcast. In the event that offensive language is broadcast at a time when children are particularly likely to be listening, the broadcaster should apologise, as appropriate, at the earliest opportunity, to mitigate any offence. Ideally this should occur during the relevant programming, or as soon as possible afterwards.

We took into account that the Licensee: apologised in its representations to Ofcom; edited out the offensive word from any future broadcast of this song; and, took steps to ensure a similar incident will not happen in the future. Nonetheless, our Decision was that the broadcast of this material was in breach of Rule 1.14.

#### **Breach of Rule 1.14**

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<sup>2</sup> See Ofcom Guidance on offensive language on radio  
[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0014/40541/offensive-language.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0014/40541/offensive-language.pdf)

## In Breach

### Steve Allen

LBC 97.3FM, 17 October 2016, 05:00

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#### Introduction

Steve Allen presents the early weekday morning breakfast show between 04:00 and 06:30 on the speech based radio station LBC 97.3FM. The format of the programme is based on the presenter expressing his views on a range of topical issues and encouraging listeners to interact and express their opinions. The licence for the service is held by LBC Radio Limited (“LBC Radio” or “the Licensee”).

A listener complained that presenter Steve Allen made discriminatory comments about people from Portugal during this programme.

We noted that during the programme, the presenter Mr Allen made reference to an episode of the Channel 5 television programme *Can't Pay? We'll Take It Away* that he had watched. He explained that a person featured in the programme had been approached by High Court Enforcement Agents to repay a £63,000 loan that he had acted as guarantor for. Shortly afterwards, when discussing listeners' responses on this subject, Mr Allen said the following:

*“Somebody called Joel, who does have a surname, he said ‘you said the person owes £3,000 they have to pay back’ — no, no, you’re not listening properly are you? It’s a shame. They owed £63,000. I can’t help thick people this morning, I really can’t, honestly. You know sometimes, I mean I’ve heard some stupid people over the time, but Joel would be the one actually. He comes from Portugal. Obviously, the further you get abroad, the dumber they become really. No, no, no, they offered £3,000. I can’t be bothered to explain it to you. You’re too stupid for words, aren’t you really? Where do you come from? Are you just some sort of just...”*

He went on to say:

*“Oh, he’s a bit simple isn’t he Joel? As I say, he’s from Tavira in Portugal. The gender he can’t quite work out what it is. I suspect old woman. He’s obviously a regular listener, but unfortunately you’ve just gone into the ‘sin bin’ so now you’ve got nobody to write to anymore. What are you going to do? What are you going to do? Never mind. I’m sure you’ll find somebody. Perhaps your local police office can probably find you somebody to talk to”*

Shortly afterwards, when discussing an unrelated story about “evil, unhinged parents”, Mr Allen said:

*“...I suspect they are living in Portugal. That’s about the saddest place we have found at the moment where they are really are a bit thick. I mean honestly, it’s almost too embarrassing for words”*

Approximately five minutes later, when speaking about another topic and referencing his brother, Mr Allen said:

*“...imagine if I banned my brother. Like anybody from Portugal at the moment, you know, because this one was really thick. How stupid you can be? Obviously very, very stupid with a surname like he’s got. I mean God, you do worry don’t you!? These people, perhaps they vote. Perhaps he’s not intelligent enough to vote. I bet he’s not working either”.*

We considered that this material raised potential issues under the following rule of the Code:

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

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

## **Response**

LBC Radio said that the programme “featured Steve Allen’s acerbic view of topical issues, which included the news stories of the day and the weekend’s TV”. The Licensee explained that the subject of discussion had included *Strictly Come Dancing* and that Mr Allen had described one of the dancers to be “useless” and another to be like “a sack of potatoes”. The Licensee said that Mr Allen’s “advice and opinions on other topics continued in a similar vein”.

The Licensee went on to discuss Mr Allen’s response to the listener (“Joel”) who had misheard his comments about the amount of money owed by a person featured in an episode of *Can’t Pay? We’ll Take It Away*. LBC Radio said Mr Allen chastised Joel for “not listening properly” and consigned him to the “sin bin”. The Licensee told Ofcom that “[I]n common with many other presenters and journalists, being misquoted is a particular bug bear of Steve Allen’s”. The Licensee went on to say that “as the listener had mentioned their location, he decided to play on this in response to emphasise his irritation”.

LBC Radio described the reference to Portugal as “irrelevant”. In the Licensee’s view, Mr Allen “did not intend to make a serious generalisation about a particular nation, and believed his listeners would be familiar enough with these ‘exaggerated moments’ to understand this”. The Licensee said this was a spontaneous overreaction by Mr Allen to one listener’s comments.

LBC Radio told Ofcom that it had made Mr Allen aware of this complaint and had highlighted the material to him. The Licensee said that Mr Allen recognised that while the majority of listeners understood his style, this may not always be clear to every member of the audience, and that “he has taken this on board for future broadcasts”.

## **Decision**

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

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

ensuring members of the public are adequately protected from material which may be considered offensive on one hand and the right to freedom of expression on the other.

Under Rule 2.3, broadcasters must ensure that potentially offensive material is justified by context. Context is assessed by reference to a range of factors including the editorial content of the programme, the service in which the material is broadcast, the time of broadcast and the likely expectation of the audience.

We first considered whether Mr Allen's comments had the potential to cause offence.

As noted in the "Introduction" section above, Mr Allen responded to a comment from a listener named "Joel" who had misheard an earlier remark by Mr Allen about a television programme he had recently watched.

Mr Allen made a number of remarks in relation to the listener's intelligence for mishearing, and incorrectly misquoting the amount of money referred to in the television programme:

*"You're too stupid for words aren't you really?"*

*"I mean I've heard some stupid people over the time, but Joel would be the one actually".*

*"Oh, he's a bit simple isn't he, Joel".*

*"...this one was really thick. How stupid you can be but obviously very, very, stupid with a surname like he's got".*

*"Perhaps he's not intelligent enough to vote. I bet he's not working either".*

We also particularly noted how these remarks, in relation to Joel being "stupid", and "simple" were then directly linked to the fact he originated from Portugal. Mr Allen said:

*"He comes from Portugal. Obviously, the further you get abroad the dumber they become really".*

*"That's [Portugal] about the saddest place we have found at the moment where they really are a bit thick".*

*"...imagine if I banned my brother. Like anybody from Portugal at the moment, you know, because this one was really thick".*

Having reviewed these comments, Ofcom did not accept the Licensee's view that "the reference to Portugal was irrelevant". The presenter clearly linked his view of Joel as "stupid" and "simple" to the fact he came from Portugal, which he then used as an opportunity to express his views that Portuguese people, generally, were also "a bit thick" and "really thick".

Ofcom also did not accept the Licensee's view that Mr Allen's comments were "a spontaneous overreaction to one listener's comments". Ofcom acknowledged that the presenter's first disparaging references towards Joel were made soon after he read Joel's email in which he misquoted the sum of money. However, the presenter continued to make humiliating and insulting remarks towards Joel and Portugal a



further three times, even when the topic of conversation had moved on from the programme under discussion to two unrelated topics. In Ofcom's view, this was not a "spontaneous" reaction, but a series of repeated, insulting comments which had the potential to cause offence to listeners.

Ofcom then went on to consider whether the broadcast of these comments was justified by the context.

Firstly, we considered the editorial context. We noted that Mr Allen took objection to Joel for misquoting the amount of money owed by the individual featured in the *Can't Pay? We'll Take It Away* programme. We also noted the Licensee's view that the comments which followed arose as part of the presenter's regular "acerbic view of topical issues", which included the news stories of the day and the weekend's television viewing.

Ofcom acknowledged that Mr Allen had an "acerbic" presenting style, which is known by listeners to be opinionated and robust, and his comments on other topics within this programme also "continued in a similar vein". For example, in the same programme, Ofcom noted Mr Allen's references to the dancers in *Strictly Come Dancing* as set out in the Licensee's response above. We also noted the Licensee's view that Mr Allen's particular comments, in response to the listener Joel, arose because he had "misheard" the amount of money referenced by the presenter and "[I]n common with many other presenters and journalists, being misquoted...[was] a particular bug bear" for him. Therefore, in the Licensee's view Mr Allen was chastising Joel for this and, as the listener had mentioned his location, "he decided to play on this to emphasise his irritation".

However, Ofcom's concern was that the presenter's comments went further than just a chastisement for a misquoted sum of money and Mr Allen's purported "acerbic" presenting style. In our view, the repeated, abusive and personal nature of these comments far exceeded the views Mr Allen expressed about the dancers in *Strictly Come Dancing*, the other programme under discussion, or a response to his "irritation" at being misquoted. The comments amounted to a series of insulting comments towards a listener's level of intelligence and an unwarranted indictment of the intelligence of Portuguese people generally.

Ofcom took into consideration that Joel appeared to contact the presenter to express a view on the programme, although this view was not read out, and he had not been featured live to challenge or rebuke the presenter's opinion. If this had been the case, Mr Allen's offensive comments may have been mitigated to some extent as listeners may have considered that Joel had an opportunity to respond to the criticism levelled at him. Instead, in Ofcom's view, the reaction from Mr Allen, delivered in a repeatedly, deliberately mocking and belittling tone, would have exceeded audience expectations and were therefore capable of causing offence.

Ofcom had regard to the right to freedom of expression of LBC Radio, Mr Allen and of the LBC audience, and balanced this carefully against our duty to provide adequate protection for members of the public from harmful and/or offensive material. Ofcom acknowledged that it was essential that broadcasters have the editorial freedom to debate topics of public interest and to be permitted to make provocative and offensive remarks.

Ofcom noted that the Licensee said that it had made Mr Allen aware of the complaint and that he understood that "the majority of listeners" appreciated his style of presenting and this was not always clear to every member of the audience. However,

despite the presenter's view that regular listeners might be comfortable with the offensive nature of his comments, Ofcom considered that the views about Joel and Portuguese people expressed in this programme were offensive and likely to have exceeded audience expectations. Therefore, for the reasons set out above, we did not consider that the inclusion of this offensive material was justified and took the view that the Licensee failed to apply generally accepted standards. This was a breach of Rule 2.3.

### **Breach of Rule 2.3**

## In Breach

### Premier League Football

6eren, 6 March 2016, 14:45

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#### Introduction

6eren is subscription television channel specialising in live sport, science fiction and drama series. It is available on terrestrial, cable and satellite platforms across Denmark. The licence for the service is owned by Discovery Corporate Services Limited (“Discovery” or “the Licensee”).

On 6 March 2016, 6eren broadcast live coverage of a football match between Tottenham Hotspur and Arsenal. The programme was sponsored by the online gambling company Bet365.

A complainant alerted Ofcom to the presence of the sponsor’s logo at various points during the programme. Having sought an independent translation of the content from Danish into English, Ofcom noted that on eight occasions the Bet365 logo appeared alongside live betting odds for certain scenarios at the bottom of the screen. For example:

*“Source: Bet365*

*Live betting: which team to score first goal of the match? Tottenham 1.72, no goals 11.00, Arsenal 2.25”.*

On a further four occasions the following message was displayed across the bottom of the screen.

*“Match presented by Bet365”.*

Ofcom considered that the content raised issues warranting investigation.

Rule 9.5 of the Code states that:

“No undue prominence may be given in programming to a product, service or trade mark. Undue prominence may result from:

- the presence of, or reference to, a product, service or trade mark in programming where there is no editorial justification; or
- the manner in which a product, service or trade mark appears or is referred to in programming”.

Rule 9.13(c) of the Code states that the product placement of gambling is prohibited. In addition, Rule 9.23 of the Code states that:

“Where a sponsor is prohibited from product placing in the programme it is sponsoring, sponsorship credits may not be shown during the sponsored programme”.

We therefore requested Discovery's comments on how the content complied with Rules 9.5 and 9.23.

## Response

### Rule 9.5

Discovery stated that Bet365, in addition to being one of the sponsors of this coverage of Premier League football, was also a "provider of technical information", i.e. live betting odds. The Licensee explained that it had paid Bet365 for the provision of live betting odds for use in the programme, and provided copies of the contracts between the two parties to confirm this. Ofcom noted that this transaction was separate to the payment made by Bet365 to Discovery in exchange for the right to be identified as a sponsor of the programme.

The Licensee said: "It is standard industry practice, and in line with the Ofcom Code, to transmit a brief, on-screen acknowledgement to providers of such technical information. When the data about betting odds relating to these football matches was broadcast, then the appropriate acknowledgement to the technical provider was given". Ofcom understood this to be a reference the on-screen identification of Bet365 as the "*Source*" of live betting odds on the eight occasions that they were shown. Discovery argued that the fact that Bet365 was the source of the live odds was relevant information for viewers.

Discovery also cited a previous Ofcom Decision, which stated: "[T]here is sufficient editorial justification for broadcasters to show brief and limited credits for companies who provide technical services to sports events and coverage. For example, the display of the names of companies who supply timing services when lap finishes, finishing times and so on are shown"<sup>1</sup>. The Licensee stated that in its view "there was significant editorial justification in referencing Bet365 as a 'genuine' information/technical provider", and that therefore it did "not consider these references were in breach of Rule 9.5".

The Licensee said: "We believe that the amount of exposure given to the Bet365 logo is in line with standard practice and, in some cases, significantly less than other broadcast sporting events". It claimed that the references to Bet365 were "relatively brief", only appearing on screen for as long as the live odds were displayed. In addition, Discovery emphasised that there were no verbal references to Bet365, which it said was "in line with common practice" for the crediting of technical providers.

Discovery also stated that, in its view, the use of on-screen credits for technical providers was a "'grey' area of Ofcom regulation", which was not referred to in the Code or Guidance, and about which there were no clear precedent Decisions. It suggested that further clarification about what constitutes legitimate 'technical information' would be helpful to broadcasters, arguing in response to Ofcom's Preliminary View, which was to record a breach of Rule 9.5: "[W]e are concerned that by publishing this finding with what appears to be a very clear decision, Ofcom has already decided the criteria by which legitimate technical information will be judged. It seems we would be found in breach of rules/guidance which we would not have been aware of until Ofcom published this decision." The Licensee then summarised what it took Ofcom's criteria to be, and questioned whether other examples of providers being credited by broadcasters would satisfy that definition of technical information.

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<sup>1</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/46772/issue175.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/46772/issue175.pdf)

Finally, the Licensee stated: “Prior to broadcast, this programme was subject to thorough compliance oversight since it involved a number of commercial relationships with third parties... [Discovery] was careful to ensure that the technical provider arrangement with Bet365 did not result in a breach of the Code”.

In summary, Discovery maintained that: Bet365 was credited as a provider of technical information, a role for which it was paid; and these references, which were included at the Licensee’s discretion, were editorially justified and appropriately limited. It therefore believed that the content was not in breach of Rule 9.5.

### Rule 9.23

In addition to the eight occasions when Bet365 was credited as a “Source”, there were four occasions during the programme when the following message was displayed on screen: “*Match presented by Bet365*”.

The Licensee acknowledged that these “in-programme sponsorship credits...were transmitted in error”, but emphasised that “[n]o payment or any other consideration was made for these credits”, and they were not “part of the sponsorship contract” between the two parties. Instead, Discovery stated that they were broadcast as a result of human error: “There was a miscommunication resulting in these graphics being incorrectly placed at the point of transmission”.

The Licensee further explained: “An external contractor, who produces and manually inserts graphics during live broadcasts, inserted these internal credits at the point of transmission. We accept – because of the nature of the product [i.e. gambling] – that these internal credits should have been spotted before they went to air. However, it is understandable but highly regrettable that the production team missed these credits”. Discovery added that since the mistake had come to light it had “taken swift action aimed at ensuring this error does not occur again”, requiring relevant staff to undergo additional compliance training.

### **Decision**

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure a number of 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”. These obligations include ensuring compliance with the Audiovisual Media Services (“AVMS”) Directive.

A further standards objective is that “the product placement requirements...are met in relation to programmes included in a television service”. The Act’s product placement requirements include a prohibition on the placement of specific products and services, including gambling, in programmes made under UK jurisdiction<sup>2</sup>.

The requirements of the Act and the AVMS Directive are reflected in Section Nine of the Code, including, among other rules, Rules 9.5 and 9.23. Importantly, Section Nine does not proscribe all references to products and services in programmes.

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<sup>2</sup> “Programmes produced under UK jurisdiction” means any programme produced or commissioned by either: the provider of the television programme service or any person connected with that provider (except in the case of a film made for cinema); or any other person with a view to its first showing taking place in a television programme service under the jurisdiction of the United Kingdom (for the purposes of the AVMS Directive).

However, it does require all such references to be justified by the editorial requirements of a programme and not to be unduly prominent.

### Rule 9.5

Rule 9.5 states: “No undue prominence may be given in programming to a product, service or trade mark”. It adds that undue prominence may result from “the presence of, or reference to, a product, service or trade mark where there is no editorial justification”; or “the manner in which a product, service or trade mark is referred to”.

On eight occasions during this programme, the Bet365 logo appeared alongside live betting odds for certain scenarios at the bottom of the screen. For example:

*“Source: Bet365*

*Live betting: which team to score first goal of the match? Tottenham 1.72, no goals 11.00, Arsenal 2.25”.*

The Licensee argued that these references to Bet365 were editorially justified, and in line with the established industry practice of crediting the providers of technical information during sports programmes, e.g. an on-screen acknowledgement of the company providing lap times during athletics coverage or a scoreboard during other sports. Discovery further argued that the references were appropriately limited, because they were brief and non-verbal.

Ofcom did not accept that the provision of live betting odds constituted ‘technical information’ that justified references to a gambling company during the programme. As Discovery noted, Ofcom accepts that there may be editorial justification in the coverage of sports events to credit the providers of certain technical information. However, as with any in-programme reference to a product, service or trade mark, such references must support the editorial purpose of the programme.

Information that enhances the viewing experience – for example information which is integral to a viewer’s understanding of an event (e.g. a race lap time) or in other ways supports the viewer’s understanding of what they are watching (e.g. statistics in a football match) – may warrant an on-air credit for the information provider. However, in this case, the information provided related to an off-air commercial activity (betting), which was incidental to viewers’ enjoyment of the football match, i.e. the absence of this information would not have significantly impeded their ability to follow or enjoy the game.

For these reasons, Ofcom did not accept the Licensee’s argument that the references to Bet365 were editorially justified. The fact that these references were brief and non-verbal was not sufficient mitigation given this lack of editorial justification for their inclusion. The content was therefore in breach of Rule 9.5.

### Rule 9.23

Rule 9.23 states: “Where a sponsor is prohibited from product placing in the programme it is sponsoring, sponsorship credits may not be shown during the sponsored programme”. Rule 9.13(c) makes clear that the product placement of gambling is prohibited.

Bet365 was a sponsor of this programme, but as a gambling operator prohibited from product placing in programmes, Rule 9.23 prohibited it from being identified in internal sponsorship credits.

On four occasions during the programme, the following message was displayed across the bottom of the screen.

*“Match presented by Bet365”.*

The Licensee acknowledged that these internal sponsorship credits should not have been broadcast and stated that this had occurred as a result of human error. Ofcom noted that the Licensee said that, since this mistake came to the light, it had provided additional compliance training to its staff. The content was nevertheless in breach of Rule 9.23.

### Conclusion

Ofcom recognises that the established industry practice of crediting providers of technical information is not referred to in the Code or Guidance. In this case, we took the view that the Licensee should have been aware that the inclusion within a programme of references to a sponsor, highlighting specific products available for viewers to purchase only from that sponsor, was likely to raise potential issues under the Code.

This issue of the Broadcast and On Demand Bulletin includes a Note to Broadcasters providing clarification in this area.

### **Breaches of Rules 9.5 and 9.23**

## In Breach

### Desi Beat

Colors, 28 August and 11 September 2016, 19:00

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#### Introduction

Colors is a general entertainment channel serving the Asian community in the UK. The licence for Colors is held by Viacom 18 Media Private Limited (“Viacom 18” or “the Licensee”).

*Desi Beat* is a lifestyle programme about Asian culture and heritage in the UK. A complainant alerted Ofcom to episodes of the programme broadcast on 28 August and 11 September 2016, which respectively featured two fashion boutiques in Bradford (Janan and Maysa), and two restaurants in Southend-on-Sea (Mim Spice and Taj Mahal).

As the programme was predominantly in English with some Punjabi and Hindi phrases, Ofcom translated the Punjabi and Hindi content into English.

Each episode consisted of two segments that featured these local businesses. In each case the segment included images of the featured business and visual and audio references to the range and quality of the goods which they offered. Some extracts of the references are noted below:

#### 28 August 2016

##### Janan

This part of the programme included images of clothing, jewellery and accessories around the premises. The commentary from the presenter included the following information:

*“For Fashion enthusiasts like me a visit to Janan is like an unrestricted entry to Alice in Wonderland, the multi-brand fashion retail house creates a grand impression right from the entry”.*

*“You just have to name it and the latest fashions will be presented to you”.*

*“So walking into this store at Jana you can see that they’re making a really good effort to make sure everything’s here that you need. You walk in, you’ve got shoes, you’ve got a bag to match your outfit, you’ve got occasional wear, you’ve got casual wear, you’ve got men’s sherwani<sup>1</sup> over here, you’ve got jewellery, you’ve got everything you need”.*

*“...Janan’s have got so much option for you; they’ve got saris, they’ve got lenga<sup>2</sup>, everything you need. There is a lot of opportunity and a lot of choices here...they’ve got loads of options here, they’ve got a bespoke team that’s going to be able to make you something special for your special day”.*

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<sup>1</sup> Men’s tunic.

<sup>2</sup> Traditional women’s bridal dress.



*“Coming from a Desi tradition we all have one favourite designer and the sheer variety of unstitched dress materials on display here can spark your imagination in different ways”.*

*“...but if you can't be bothered with this creative exercise and trying to get things stitched in time Janan also has their own designer catalogue, you can literally go in a pick a ready-made outfit”.*

*“So this is what I love about Janan, they're so innovative; not only have they put their fingers in many, many pies, they do clothes, bridal wear, shoes...they even have their own range of perfume”.*

*“Besides having loads of authentic Desi Kupray<sup>3</sup> here in clothing and fashion, they also do food, and I've heard it's really freshly made and I can't wait to try it”.*

*“Wow, I feel so satisfied after coming out of Janan, they are definitely pushing the right buttons in the Desi fashion scene...and for that reason they're going to go on our Desi list for Bradford”.*

### Maysa

This part of the programme included images of clothing, jewellery and accessories around the premises. The commentary from the presenter included the following information:

*“Opened with an aim to provide a fresh take on Desi fashion, Maysa boasts a beautifully done up space which seems to provide a peaceful environment to surf through their beautiful collections. Or support staff are always ready to serve you. The first impression suggests that Maysa has everything from chic kurtas<sup>4</sup> to Grecian style suits to elegant semi formals which will stand you in good stead any time of the day, and of course, they have always been in demand for bridal wear and party outfits”.*

*“Maysa seems to have a massive collection of gorgeous party perfect options. . . to suit every occasion of your choice”.*

*“But it is important to remind you that Maysa is not just a bridal shop, they have got so much other stuff here as well. In Bradford and the rest of UK Maysa are indeed famous and their clientele extends to other European countries, and even US and Canada and all these creations are customised to a client's taste”.*

[Presenter leaves shop]

*“Wow, amazing, so good. I have to say I'm surprised I haven't got shopping bags with me, I could literally buy everything in that shop. I love Maysa boutique and I think what's good about it is if you cut sections of the store out it's like walking on a Pakistani or Indian catwalk runway. Everything is so original”.*

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<sup>3</sup> Clothes.

<sup>4</sup> A traditional loose fitting men's shirt.

11 September 2016

Mim Spice

This part of the programme included images of the restaurant, food on offer and the dining experience. The commentary from the presenter included the following information:

*"We have come far and wide to find this restaurant, the Mim restaurant in the Southend of Sea. We have heard a lot about them but the best way to find out is to go in and try the food ourselves".*

*"Mim Spice has a very warm vibe, and being a desi I can especially feel the extra nice courtesy extended by the fellow desi staff and their overwhelming smiles. The décor is modern, a mix of clean white and aubergine coloured walls, chunky leather chairs and a super crisp linen. The restaurant might appear to be comparatively small but what do I care – what interests me more is the food that they cook".*

*"I can already smell the flavours and it's just hit the frying pan, it smells incredible already...if only you were here you could smell this amazing smell".*

[Presenter tastes food]

*"Food that looks so delicious it's bound to taste delicious...oh very tender, did you see just how it broke to pieces there. Mmm, you can definitely taste the flavours in there, you can taste the salt coming through, the real flavour of the fish, it's delicious. I think I might have changed my opinion on not liking salmon. This could have been a revelation right here".*

*"Mim Spice seems to thrive on innovation, but just as I said earlier they have wide spread of traditional dishes as well but whether it is Balti dishes, tandoori dishes or biriyani that is good enough to make you feel right at home".*

Taj Mahal

This part of the programme included images of the restaurant, food on offer and the dining experience. The commentary from the presenter included the following information:

*"Walking through the glass doors of the Taj Mahal restaurant cannot be compared with the actual Taj Mahal but it nevertheless gives you a sense of opulence, chic, and sleek. It presents the exotic desi embellishments and designs in a new package whether it is wallpaper, or maybe bottled spices even, or maybe the imposed Taj Mahal all around the restaurant. Taj Mahal has made a great effort to make you feel like you are at the Taj, it feels like we're here in spirit".*

*"A conscious touch of royalty seems to prevail as an underlining thought in the restaurant, whether it is ambience, whether it is menu design, or whether it is your starters dahi baray".<sup>5</sup>*

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<sup>5</sup> Indian dessert dumplings in yoghurt.

*“Delicious, it’s so moist, look at that, look how it’s just broken with my knife and fork. You can taste the really sweet taste of yoghurt. You’ve got the tangy, tangy taste of the Imlee,<sup>6</sup> everything tastes nice doesn’t it? Altogether it tastes delicious...it’s so good, it’s so tender and soft”.*

*“I had such an amazing time in there my tummy is really full, but the food – delicious. I can’t tell you, honestly”.*

Ofcom requested information from the Licensee to decide whether the references constituted product placement as defined in the Code. The Licensee confirmed that the references described above were not in return for payment or other valuable consideration from the businesses in question to Viacom 18, the programme producer, or any connected person.

On the basis of information provided, Ofcom considered that the references raised issues warranting investigation under the following rules of the Code:

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

Rule 9.5: “No undue prominence may be given in programming to a product, service or trade mark. Undue prominence may result from:

- the presence of, or reference to, a product, service or trade mark in programming where there is no editorial justification; or
- the manner in which a product, service or trade mark appears or is referred to in programming”.

We therefore asked Viacom 18 for comments as to how the material complied with Rules 9.4 and 9.5.

## **Response**

Viacom 18 said it takes its compliance with the Code very seriously, and has an experienced team to review all content in line with its strict internal policies and guidelines to ensure compliance.

The Licensee said that *Desi Beats* aims to showcase various elements of South Asian culture and lifestyle prevalent in the United Kingdom and thus features popular establishments in different regions to explore food, drink, fashion and culture preferences of the local community.

It explained that “it is difficult from a creative standpoint” to talk about the fashion, culture, and food of an ethnic community without having a backdrop or a context to that conversation, and that it would “not be able to successfully engage our audiences” without this visual link. It said that “the episodes were produced in ‘real’ spaces so as to bring in an element of connectivity and resonance with the viewers”, but were not intended to “specify or endorse any of the products or services”.

The Licensee reiterated that neither Viacom 18 Media Private Limited nor any affiliated person or party, had entered into any monetary agreement with the establishments featured in the episodes.

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<sup>6</sup> Indian spice tamarind.

The Licensee said it believed it had avoided any promotional references, and there were no calls to action for viewers either to visit or make purchases from the establishments featured. In particular, it said that it had ensured that:

- close up shots of logos, banners, flags or name boards of the featured business were avoided;
- comments that were promotional or made claims about the business and its services were edited from the episodes;
- all brands, designers' labels, and price tags were either blurred or deleted;
- there were no interviews or endorsements validating the businesses featured; and
- there was no attempt to influence viewers or claims that the presenter's opinion or verdict was final.

As regards undue prominence, the Licensee considered that any references to the establishments' products or services were editorially justified in context of a series exploring various elements of South Asian culture. In particular, it argued that:

- almost half the screen time was dedicated to the generic script which talked about cultural and regional aspects;
- the presenter gave generic details about the local area and elements that interest the local South Asian population, including what the area is famous for, the mix of South Asians present and their likes, recreational practices, and food habits;
- it had included "infotainment" in the script by linking the topic to other factors. For example, the Licensee said that in the episodes featuring food the presenter talked about dishes in India, the history of those dishes, and how they remain relevant today. Similarly, in the episodes featuring clothing and fashion stores, the presenter talked about the current wedding trends, jewellery, preferences and tastes of modern brides.

Given the above factors, the Licensee considered this material complied with Rules 9.4 and 9.5 of the Code.

## **Decision**

Under the Communications Act 2003 ("the Act"), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure a number of 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". These obligations include ensuring compliance with the Audiovisual Media Services ("AVMS") Directive.

The requirements of the AVMS Directive and the Act are reflected in Section Nine of the Code, including Rules 9.4 and 9.5 among others. The rules in this section serve to protect viewers from both excessive commercial references in programming and from surreptitious advertising by:

- limiting the extent to which references to products, services and trade marks can feature in programming; and
- helping to ensure that broadcasters do not exceed the limits placed on the amount of advertising they can transmit.

Importantly, Section Nine does not proscribe all references to products and services in programmes. However, it does require all such references to be justified by the editorial requirements of a programme and not be promotional or unduly prominent.

Rule 9.4 states that products, services and trade marks must not be promoted in programming. Ofcom's published guidance<sup>7</sup> on Rule 9.4 states: "Where a reference to a product or service features in a programme for purely editorial reasons, the extent to which a reference will be considered promotional will be judged by the context in which it appears. In general, products or services should not be referred to using favourable or superlative language and prices and availability should not be discussed".

Rule 9.5 states that no undue prominence may be given in programming to a product, service or trade mark, noting that undue prominence may result from a reference to a product, service or trade mark where there is no editorial justification, or from the manner in which a product, service or trade mark is referred to. Ofcom's published guidance on Rule 9.5 states: "Whether a product, service or trade mark appears in a programme for solely editorial reasons...or as a result of a commercial arrangement between the broadcaster or producer and a third party funder...there must be editorial justification for its inclusion. The level of prominence given to a product, service or trade mark will be judged against the editorial context in which the reference appears".

It is important to emphasise that the rules in Section Nine of the Code are intended to preserve the integrity of editorial content and protect audiences by limiting the number and kind of commercial references contained in programming.

In this case, we took into account the Licensee's representations that it had taken steps to limit the number of visual and verbal references to the businesses featured. However, in our view, the segments contained promotional references to the four businesses (Janan, Maysa, Mim Spice and Taj Mahal) that were more akin to advertising than editorial material.

Specifically, *Desi Beat* included:

- detailed information on the range and quality of services provided by the businesses (e.g. *"name it and the latest fashions will be presented to you"*; *"you've got shoes, you've got a bag to match your outfit, you've got occasional wear, you've got casual wear, you've got men's sherwani over here, you've got jewellery, you've got everything you need"*; *"Janan's have got so much option for you; they've got saris, they've got lenga, everything you need. There is a lot of opportunity and a lot of choices here...they've got loads of options here, they've got a bespoke team that's going to be able to make you something special for your special day"*; *"Janan also has their own designer catalogue"*; *"not only have they put their fingers in many, many pies, they do clothes, bridal wear, shoes...they even have their own range of perfume"*; *"they also do food, and I've*

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<sup>7</sup> See: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0014/33611/section9\\_may16.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0014/33611/section9_may16.pdf)

*heard it's really freshly made and I can't wait to try it"; "Maysa has everything from chic kurtas to Grecian style suits to elegant semi formals which will stand you in good stead any time of the day, and of course, they have always been in demand for bridal wear and party outfits"; "Maysa seems to have a massive collection of gorgeous party perfect options... to suit every occasion of your choice"; "Mim Spice seems to thrive on innovation, but just as I said earlier they have wide spread of traditional dishes as well but whether it is Balti dishes, tandoori dishes or biriyani that is good enough to make you feel right at home");*

- favourable and superlative language (e.g. *"Janan's have got so much option for you"; "this is what I love about Janan, they're so innovative"; "I feel so satisfied after coming out of Janan, they are definitely pushing the right buttons in the Desi fashion scene"; "they have always been in demand for bridal wear and party outfits"; "In Bradford and the rest of UK Maysa are indeed famous and their clientele extends to other European countries"; "I could literally buy everything in that shop. I love Maysa boutique and I think what's good about it is if you cut sections of the store out it's like walking on a Pakistani or Indian catwalk runway. Everything is so original"; "Mim Spice has a very warm vibe, and being a desi I can especially feel the extra nice courtesy extended by the fellow desi staff and their overwhelming smiles"; "it smells incredible already...if only you were here you could smell this amazing smell"; "gives you a sense of opulence, chic, and sleek"; "I had such an amazing time in there my tummy is really full, but the food – delicious")*).

In our view, these extensive references to products and services offered by the businesses featured, combined with the favourable language used, meant that the content was clearly promotional in tone. Ofcom concluded that both programmes were therefore in breach of Rule 9.4 of the Code.

Further, each segment of both programmes focused entirely on the products and services offered by a specific business. We took into account the Licensee's argument that these references were editorially justified in context of a series exploring various elements of South Asian culture. Although there may be editorial justification for certain references to brands in culture and lifestyle programmes, in this case, each of the programmes was little more than a vehicle for the promotion of the businesses. Given the presentation of the items was highly promotional in tone, as described above, the extended references to the products provided by the businesses featured were not justified.

Because the programmes were dependent on the inclusion of detailed references to the featured business' products and services, Ofcom concluded that both programmes were in breach of Rule 9.5 of the Code.

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

## Broadcast Licence Conditions cases

### Broadcasting licensees' late payment of licence fees

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Ofcom is partly funded by the broadcast licence fees it charges television and radio licensees. Ofcom has a statutory duty to ensure that the fees paid by licensees meet the cost of Ofcom's regulation of broadcasting. The approach Ofcom takes to determining licensees' fees is set out in the Statement of Charging Principles<sup>1</sup>. Detail on the fees and charges payable by licensees is set out in Ofcom's Tariff Tables<sup>2</sup>.

The payment of a licence fee is a requirement of a broadcasting licence<sup>3</sup>. Failure by a licensee to pay its licence fee when required represents a significant and fundamental breach of a broadcast licence, as it means that Ofcom may be unable properly to carry out its regulatory duties.

#### In Breach

The following radio licensees failed to pay their annual licence fees in accordance with the required payment date. These licensees have therefore been found **in breach** of Condition 3(2) of their broadcast licences.

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

Licensee Name	Service Name	Licence Number
An Individual	Core Radio Cambridge	DP101307BA
Poole Community Radio Ltd	Hot Radio 102.8	CR000120BA

#### Breaches of Licence Condition 3(2) in Part 2 of the Schedule of the relevant licences

The following TV licensees failed to pay their annual licence fees in accordance with the required payment date. These licensees have therefore been found **in breach** of Conditions 4(1) and 4(2) of their broadcast licences.

In the specific circumstances of these cases, the payment is still outstanding and the non-payment of the fee was considered by Ofcom to amount to a serious licence breach. **Ofcom is therefore putting these licensees on notice that the breaches are being considered for the imposition of a statutory sanction, which may include a financial penalty and/or licence revocation.**

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<sup>1</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0019/51058/charging\\_principles.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0019/51058/charging_principles.pdf)

<sup>2</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0034/57976/tariff-tables-2016-17.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0034/57976/tariff-tables-2016-17.pdf)

<sup>3</sup> As set out in Licence Condition 3 for radio licensees and Licence Condition 4 for television licensees.

<b>Licensee Name</b>	<b>Service Name</b>	<b>Licence Number</b>
Kensington Project Management Ltd	IQTV	TLCS100550BA
Kingdom Media Ltd	Kingdom Europe	TLCS100267BA

**Breaches of Licence Conditions 4(1) and 4(2) in Part 2 of the Schedule of the relevant licence**



## Broadcast Fairness and Privacy cases

### Upheld

#### **Complaint by Mr Sukhwinder Singh and Ms Kamal Preet Kaur** *Gurdwara Miri Piri Sahib Kar Sewa Live, MATV, 6 and 13 June 2016*

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##### **Summary**

Ofcom has upheld this complaint made by Mr Sukhwinder Singh on his own behalf and on behalf of his wife, Ms Kamal Preet Kaur, of unjust or unfair treatment in the programme as broadcast.

MATV broadcast two live discussion programmes on 6 and 13 June 2016. In the first programme, some callers made various allegations about the complainants. In the second programme, the presenter referred to these callers and also discussed matters concerning the ownership of the Gurdwara Miri Piri Sahib Southall (“the Gurdwara”).

Ofcom found that the comments made in the programmes about the complainants amounted to significant allegations of wrongdoing that were likely to materially and adversely affect viewers’ perceptions of them in an unfair way. Consequently, we took the view that that the broadcaster did not take reasonable care to satisfy itself that material facts were not presented in the programmes in way that was unfair to Mr Singh and Ms Kaur.

Given the significant allegations made in the programme about Mr Singh and Ms Kaur, the broadcaster was required to provide them with an appropriate and timely opportunity to respond to the claims in order to avoid unfairness. Its failure to do so also resulted in unfairness to both Mr Singh and Ms Kaur.

##### **Programme summary**

On 6 and 13 June 2016, MATV broadcast an edition of *Gurdwara Miri Piri Sahib Kar Sewa Live*. These programmes were broadcast in Punjabi and an English translation was obtained by Ofcom and provided to the complainant and the broadcaster for comment. Both parties confirmed to Ofcom that the translated transcript represented accurately the content of the programme and that they were content for Ofcom could use the translation for the purpose of its investigation.

##### *6 June 2016*

Prior to the start of the programme, an on-screen message was shown:

*“Viewers are requested that the following programme is only for your entertainment. You should not deduce any meaningless assumption from this programme and you are also requested that you should not take it as scientific and official interpretation. Your cooperation is highly valued. Thanks”.*

The programme’s presenter, Ms Manjit Kaur, introduced the programme and explained that the topic which would be discussed during the programme was:

*“...custom pertaining to the customary statement given by the President of Shri Akal Takht Sahib and the controversy that emerges when the Sikh congregation*

*responds. Today we will discuss this issue and what is to be done, whether this is acceptable, whether the congregation should create a controversy”.*

The presenter then introduced the two guests who joined her in the studio, Mr Jaswant Singh Thekadar and Mr Parminder Singh Bal. The presenter also requested that any callers to the programme “*should limit himself/herself to talk only about the selected topic*” and said that “*if we wander away from the topic then this will upset the running of the programme and future callers will repeat what has gone before them*”.

The presenter and the two guests then discussed the commemoration of the anniversary of 6 June 1984<sup>1</sup> and the current president of Akal Takht Sahib<sup>2</sup>. After a brief discussion, the programme’s presenter took a call from a viewer who was identified by Mr Thekadar as “*Sohan Singh Dhesi’s wife*”. The caller (“*Caller One*”) said that she wanted to talk about “*Sukwinder, Sukhi*” (the complainant) whom she said had appeared on the programme on 3 June 2016. The following conversation took place:

Caller One: “*When the legal case was ongoing. When I came from India, he asked me when I came from India, when I went.*”

Presenter: “*Okay, I got it now. I got it now. I have identified you.*”

Caller One: “*Then he went and said my name in court. Okay.*”

Presenter: “*But, sister today we are talking about the topic related to Akal Takht.*”

Caller One: “*I’m not going to say a lot, can you let me say it?*”

Presenter: “*Okay.*”

Caller One: “*Then, he’s the one that mentioned my name in court, saying that Dhesi’s wife is saying such and such. Today he claims to be close to Dhesi. On that day he told me to stay away from Thekadar and co. That Thekadar will use you. I said to him that we have been together for the last thirty years, we’re going to stay together. I told him it was up to him what they wanted to do or not. But, we would not be separated. But now he has succeeded in separating them both. They have been torn apart. They’re both as bad as each other. They have both been taught. He is a fool that he follows other people.*”

Presenter: “*Sister, today...*”

Caller One: “*I have told him many times that we should not follow the advice of others and we should act on our own. Sukhi has succeeded in separating them hasn’t he?*”

Presenter: “*Sister, what would you like to say about today’s topic on Akal Takht, about 6<sup>th</sup> June?*”

Caller One: “*I will tell you about that too.*”

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<sup>1</sup> The date when the Indian army stormed The Golden Temple which resulted in the mass killing of Sikhs.

<sup>2</sup> i.e. The Golden Temple.

Presenter: *Sorry?*

Caller One: *He is listening to Sukhi. He has got the Gurdwara valued. Valued by Maan Gurdev Singh. Now he has had the Miri Piri Gurdwara valued. He has colluded with the Bhatwaraa<sup>3</sup> and Cheeras<sup>4</sup>. Now he talks too much, but he knows nothing. What has he done after colluding with gossips? First, he spent money in the courts, then he earned a bad name for himself. He earned a bad name here and there too. Now he is living at his daughter's. I was thankful to God that if he was staying at the Gurdwara, let him be".*

The presenter thanked the caller and reminded viewers to only discuss the topic of the day i.e. the anniversary of 6 June 1984 and the President of the Akal Takht Sahib. Following this, the presenter, the two guests, and another caller discussed this topic.

Prior to answering a further call, the presenter reminded callers to "*confine their views to the topic that is under consideration...*". The presenter then summarised what had already been discussed, before answering the call:

Caller Two: *"Hello, I am Surinder, what so ever sister Joginder [Caller One] has said. She was very right in what she said.*

Presenter: *Sister, we are very thankful to you for your participation in the programmes.*

Caller Two: *Because, please listen to me, we go to work in the morning, and when we visit the Gurdwara to pray, this person Sukhwinder and his wife [the complainants] with her bun on her head, they demand money in the early morning.*

Presenter: *Sister.*

Caller Two: *Tell us, should we give them money first and only then can we bow our head in front of Guru? This man has done a lot of wrong there. To rectify this, you're going to have to get him out of there. I have heard from other Gurdwaras that he has been removed from other Gurdwaras too.*

Presenter: *Sister, your name. Sister Surinder Kaur.*

Caller Two: *What is required from the Sikh congregation is that they should remove this person from here. The kind of things he does. The second thing that I would like to say, my friend who works with me, she says he has been removed; he and his wife have been removed from other Gurdwaras. Because he was involved in embezzlement of money over there too. Friends, please tell me the solution for a man like him. He should not be allowed to enter into any Gurdwara. He is really something.*

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<sup>3</sup> Person(s) who divides or dilutes a property/estate.

<sup>4</sup> Punjabi slang for a bhatwaraa, i.e. someone who tears something up.

Presenter: *Sister, we are very thankful to you. What do you want to say about the topic that we have for today's discussion? What do you want to say about the practice of the President of the Akal Takht delivering a message to the Sikh congregation?*

Caller Two: *Yes, you're talking about that anyway. This I heard about last week too. We are pained to see this man in the Gurdwara every day. What is he doing over there?*

Presenter: *Sister, we are thankful to you for calling us on the phone. Waheguru Ji Ka Khalsa, Waheguru Ji Ki Fateh<sup>5</sup>. The person who just called us was Sister Surinder Kaur. When people from the Sikh congregation telephone us on the programme, we give them the opportunity to share what is in their heart. But when we are discussing a topic and if we confine ourselves to that topic then our awareness for the topic under discussion increases. Brother, what would you like to say?"*

The presenter, the two guests and two subsequent callers to the programme continued to discuss matters related to Akal Takht. A further caller to the programme also discussed this topic, but went on to give his view on a court order relating to the auction the Gurdwara. In response, Mr Thekadar said that he did not want the Gurdwara to be auctioned and would be willing to sit with Mr Dhesi to resolve the matter. Later, the presenter summarised what had been said about Gurdwara and answered another telephone call from Caller One in which the ownership of the Gurdwara was discussed.

The programme ended and no further references were made to the complainants.

*13 June 2016*

Prior to the start of the programme, the same on-screen message as that broadcast on 6 June 2016 programme was shown.

The presenter of this edition of the programme was Mr Thekadar and Mr Bal appeared as a guest. Mr Thekadar introduced the programme and then said:

*"Through this programme, we try our best, to apprise our Sikh congregation of any incidents happening within the community or within the Sikh Nation, or whatsoever is happening. With this, the world comes to know of the actual situation. Perhaps you may be aware that in the last programme [broadcast on 6 June 2016], some people, eight to ten people, a maximum of eight to ten people, some of whom were women, came here for a demonstration and they had no purpose. They were speaking incorrectly. In the way we have stories in the Punjab about being foolish, they demonstrated the same here. They should either have some purpose, or... they had no purpose. After losing their case, they were unable to decide what they should do next. They were in so much flurry and even today they are in a flurry. They are spreading lies in the community. We will respond to these lies one by one. We do not want to touch this issue time and again. But circumstances are such that if we do not respond, then it will also be a bad thing".*

Mr Thekadar then provided details about the circumstances which had resulted in the court order being made to auction the Gurdwara and explained the implications of it.

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<sup>5</sup> Sikh greetings.

Later in the programme, the presenter answered calls from viewers. The first caller expressed his view that the *“mutual issue of the Gurdwara should not go to court”* and both the presenter and Mr Bal agreed with this assertion. They also talked in further detail about the matter and Mr Thekadar said: *“the person who is opposing us, the people who are interfering in the matter they do not let him [Mr Dhesi] come forward”*.

Later, the presenters took a call from another viewer in which the Gurdwara in Smethwick was discussed and the following conversation took place.

Mr Thekadar: *“Sister, you should speak about this Gurdwara, if you have anything to say”*.

Mr Bal: *“We should find a solution and stop its auction”*.

Caller: *“I will also come to this topic. I have told him that anywhere I speak, he should also speak at that place. You want to see bad things happening? You should not leave one person just to be with other people. Neither is he abstaining from these things, the people who teach these things, nor are they abstaining. Sukhi [the complainant] told me on that very day that he would get it accomplished... You see. That he will show us that he will get it accomplished. That he would succeed in separating him from the Thekadar. Sukhi has succeeded in creating the differences...”*

*Here, Pal, who is from Bilga, used to say to Sohan Singh and to the second person, Gyan Singh, that he would prove himself in separating them. He would take his full feast [celebrate] only on the day they were separated. I have told him all previous things. I have told him everything. I have given him an answer to everything. Once upon a time, he used to say that what Joginder Kaur says comes true, and now he says that I speak too much. He should have some sense. He still has the time to undo these things. He still has the time to use his mind, if he can use it. He should not earn a bad name for himself. His uncle worked for fifty years, managed the Gurdwara. He has earned a bad name for his uncle, his father and the elder brother of his father”*.

The caller and presenters then continued to discuss the Gurdwara. In another call later in the programme, a caller said that only one version of the matters concerning the Gurdwara was being presented in the programme and it would be beneficial for viewers to hear the other side. Mr Thekadar said that he had requested for Mr Dhesi to appear on the programme.

No further references to the complainants were made in the programme.

## **Summary of the complaint and broadcaster’s response**

### The complaint

- a) Mr Singh complained that he and Mrs Kaur were treated unjustly or unfairly in the programme as broadcast because the presenters “deliberately allowed and encouraged” the callers to make “defamatory and derogatory” comments about him and Ms Kaur in order to “malign” their image and to cast aspersions on their integrity and standing in the community.

For instance, it was said that: Mr Singh had been ousted from other Gurdwaras; Mr Singh should be ousted from the Gurdwara Miri Piri Sahib; Mr Singh was responsible for the breakdown of Mr Thekadar's and Mr Deshi's personal/business relationship; Mr Singh and Ms Kaur had asked people in their Gurdwara to give them money every morning; and they had been removed from other Gurdwaras because Mr Singh was "involved in embezzlement of money".

- b) Mr Singh complained that he and Ms Kaur were treated unjustly or unfairly in the programme because they were not given an appropriate and timely opportunity to respond to the allegations made about them.

By way of background, Mr Singh said that he is the vice-president, founder and trustee nominee of the Gurdwara.

### MATV's response

MATV provided background information which related to the ownership of the Gurdwara. Mr Thekadar, the complainant Mr Singh, and Mr Dhesi, were founder members of the Gurdwara. The broadcaster said that after a few years, there was a financial dispute between the men and that Mr Thekadar took control of the Gurdwara. Following this, MATV said that Mr Dhesi and Mr Singh commenced court proceedings against Mr Thekadar in relation to the ownership of this Gurdwara. The broadcaster said that the court found that Mr Dhesi was the legal tenant of the Gurdwara and that Mr Thekadar and his wife were major shareholders of the Gurdwara. The court also ordered payment of rent to Mr Thekadar and his wife.

In response to both heads of complaint, MATV said that Mr Dhesi's wife, who was also part of the Gurdwara dispute, contacted the programme and used "foul language" and created "some disturbance" during the programme. Nevertheless, the broadcaster said that the presenters tried to pacify the situation. In particular, it said that Mr Thekadar told another caller "not to abuse anyone on a live show"; Mr Bal said that the issues concerning the Gurdwara should be discussed "at [the] right platform" and that Mr Thekadar said that all the parties in the dispute should "sit and talk".

MATV said that it had nothing to do with the issues concerning the Gurdwara and stated that the parties involved in the dispute were airing their views in public by abusing each other.

### **Ofcom's Preliminary View**

Ofcom prepared a Preliminary View on this case that the complaint should be upheld. Both the complainant and the broadcaster were given the opportunity to make representations on the Preliminary View. The complainant did not submit any representations. MATV made the following representations on the Preliminary View:

MATV said that the programme began with a disclaimer stating that the comments made during the show were "not official interpretation of the agreed views of the Channel". Given this, MATV said that it "does not subscribe to any of the issues discussed" and that viewers would have understood the "position of this programme".

MATV said that the programme's topic of discussion was not about the complainants, but was about the customary statement given by the President of Akal Takht Sahib regarding the anniversary of 6 June 1984. It said that it was for this reason, therefore,

that the complainants did not contact the programme themselves and that the programme makers did not contact them prior to the broadcast of the programme.

Further, MATV said that from the outset, the presenter stated that callers should limit themselves to the topic being discussed in the programme. However, despite repeated requests, certain callers continued to discuss the complainants. MATV said that while the call had not been disconnected, in the interest of fairness to the callers, the presenter had said that it “was not right to call someone names”.

## 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 unwarranted infringement of privacy in, or in connection with the obtaining of material included in, programmes in such services.

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

In reaching this decision, we carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript, the unedited footage and transcript, and both parties’ written submissions. Ofcom also took into account the representations made by MATV. However, Ofcom concluded that none of the further points raised by MATV materially affected the outcome of upholding the complaint.

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

- a) We considered Mr Singh’s complaint that he and Mrs Kaur were treated unjustly or unfairly in the programme as broadcast because the presenters “deliberately allowed and encouraged” the callers to make “defamatory and derogatory” comments about him and Ms Kaur in order to “malign” their image and to cast aspersions on their integrity and standing in the community.

In assessing this head of the complaint, we had regard to Practice 7.9 of the Code which states that before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation. It is important to note that Ofcom is unable to make findings of fact in relation to the allegations made about Mr Singh and Ms Kaur in the programmes. Rather, our role is to consider whether by broadcasting the allegations the broadcaster took reasonable care not to present, disregard or omit material facts in a way that was unfair to the complainants.

The Code recognises the importance of freedom of expression and the public interest need to allow broadcasters the freedom to broadcast matters in programmes. However, in presenting material in programmes, reasonable care must be taken by broadcasters not to do so in a manner that causes unfairness to individuals or organisations in programmes. Whether a broadcaster has taken reasonable care to present material facts in a way that is not unfair to an

individual or organisation will depend on all the particular facts and circumstances of the cases including, for example, the seriousness of any allegations and the context within which they are made.

Therefore, we began by considering the seriousness of the allegations and whether they had the potential to materially and adversely affect viewers' opinion of Mr Singh and Ms Kaur in a way that was unfair. We then went on to consider whether, if the allegations did have this potential, the manner in which the allegations were presented in the programme resulted in unfairness.

We viewed the programme and examined a translated transcript of it, noting in particular the claims made by one of the callers to the programme that Mr Singh and Ms Kaur took money from their congregation and had been removed from other Gurdwaras because Mr Singh had been "*involved in embezzlement of money*". We considered that these were serious allegations that Mr Singh and Ms Kaur had acted improperly and been reprimanded as a consequence of Mr Singh's alleged behaviour. We also noted that in the programmes it was stated that Mr Singh was responsible for the breakdown of Mr Dhesi's and Mr Thekadar's business/personal relationship. While we do not consider that this, in itself, amounted to a significant allegation, when taken collectively with the other allegations made about Mr Singh in the programmes, it was our view that Mr Singh and Ms Kaur, by association with Mr Singh, were portrayed negatively and in a way that had the clear potential to materially and adversely affect viewers' opinion of them.

We then considered whether the presentation of these comments in the programme as broadcast resulted in unfairness to the complainants.

We recognised that this discussion programme was broadcast live and that broadcasters need to take particular care with such programmes. We understand that callers can sometimes make unexpected comments which have the potential to cause unfairness to an individual or organisation. In such circumstances, Ofcom considers that when including material that has the potential to amount to a significant allegation, reasonable care must be taken by the broadcaster that the broadcast material is consistent with the requirements of the Code and that it does not mislead viewers or portray individuals or organisations in a way that is unfair, without sufficient basis to do so. This may include ensuring that any allegations made during the programme are properly tested and challenged. This could be, for example, by pointing out any contradictory argument or evidence or by representing the viewpoint of the person or organisation that is the subject of the allegation.

In this case, we noted that during the programme broadcast on 6 June 2016, the presenters reminded callers, both prior to and during their telephone calls, of their obligation to limit themselves to only discuss the topic related to Akal Takht. We recognised that some of these callers strayed from this topic and chose instead to make allegations about the complainants. Although the presenters had taken some steps to limit the extent to which callers could discuss matters not related to the topic of the programme, we also took into account that the presenters continued to provide the callers with a platform to express their unchallenged views on the complainants. In addition, during the programme, the presenters made no attempt to place the claims being made in context by explaining, for instance, that the information being provided by these callers about the complainants was unverified, or that their comments only reflected their opinions.



We noted that it was during the programme broadcast on 13 June 2016, that Mr Thekadar said the callers to the programme “*were speaking incorrectly*” and that “*they are spreading lies in the community*”. However, Mr Thekadar made no attempt to challenge the allegations which had been made about the complainants, but instead allowed a caller to repeat the allegation that Mr Singh was responsible for the breakdown of Mr Thekadar’s and Mr Deshi’s personal/business relationship. Therefore, we considered that nowhere during either programme was anything said to balance or place into appropriate context the comments made about Mr Singh and Ms Kaur.

Taking into account all the factors above, we considered that the comments made against Mr Singh and Ms Kaur amounted to significant allegations about their conduct which had the clear potential to materially and adversely affect viewers’ opinions of them. For these reasons, Ofcom considered that, in the particular circumstances of this case, the broadcaster did not take reasonable care to satisfy itself that material facts had not been presented disregarded or omitted in the programme in a way that was unfair to Mr Singh and Ms Kaur.

- b) We next considered the complaint that Mr Singh and Ms Kaur were treated unjustly or unfairly because they were not given an appropriate and timely opportunity to respond to the allegations made about them in the programme.

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

For the reasons given in head a) above, we considered that the comments made in the programme amounted to significant allegations against Mr Singh and Ms Kaur. Normally, where significant allegations are made about an individual or organisation in a programme, the broadcaster should ensure that the individual or organisation concerned is given an opportunity to respond and, where appropriate, for that response to be represented in the programme in a fair manner.

In response to the Preliminary View, MATV said that it had not attempted to contact Mr Singh prior to the broadcast of the programme because the topic to be discussed during the programme was not about him. However, the broadcaster did not state in its representations whether or not the programme makers had made any attempt to contact Mr Singh or Ms Kaur during or immediately after the broadcast of the programme to seek their comments on the allegations directed against them in the programme.

Given the serious nature of the allegations made against Mr Singh and Ms Kaur, we considered that the broadcaster was required to provide Mr Singh and Ms Kaur with an appropriate and timely opportunity to respond. Its failure to do so resulted in unfairness to Mr Singh and Ms Kaur.

**Ofcom has upheld Mr Singh’s complaint made on behalf of himself and Ms Kaur of unjust or unfair treatment in the programme as broadcast.**

## Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 3 and 15 January 2017 because they did not raise issues warranting investigation.

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

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

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0020/55109/breaches-content-standards.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55109/breaches-content-standards.pdf)

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Pop Sludge	4Music	28/12/2016	Generally accepted standards	2
Gogglesprogs Christmas Special	4Seven	25/12/2016	Under 18s in programmes	1
Hive Active Heating's sponsorship	Absolute Radio	16/12/2016	Commercial communications on radio	1
Get In	attheraces	23/12/2016	Race discrimination/offence	1
Citizen Khan	BBC 1	16/12/2016	Dangerous behaviour	1
Citizen Khan	BBC 1	23/12/2016	Religious/Beliefs discrimination/offence	7
Doctor Who	BBC 1	25/12/2016	Scheduling	1
EastEnders	BBC 1	30/12/2016	Sexual orientation discrimination/offence	1
EastEnders	BBC 1	01/01/2017	Scheduling	8
Holby City	BBC 1	27/12/2016	Animal welfare	1
Jonathan Creek	BBC 1	28/11/2016	Race discrimination/offence	1
Look East	BBC 1	05/01/2017	Privacy	1
Michael McIntyre's Big Christmas Show	BBC 1	24/12/2016	Scheduling	1
Peter Pan Goes Wrong	BBC 1	31/12/2016	Scheduling	1
Planet Earth 2	BBC 1	06/11/2016	Materially misleading	1
Robbie Rocks Big Ben Live	BBC 1	31/12/2016	Generally accepted standards	14
Sherlock	BBC 1	01/01/2017	Offensive language	1
Silent Witness	BBC 1	09/01/2017	Nudity	1
Strictly Come Dancing	BBC 1	various	Other	1
The Nativity	BBC 1	21/12/2016	Scheduling	1
The One Show	BBC 1	05/01/2017	Sexual orientation discrimination/offence	2
To Walk Invisible	BBC 1	29/12/2016	Offensive language	1
Top Gear	BBC 1	03/07/2016	Other	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Walliams and Friend	BBC 1	09/12/2016	Generally accepted standards	1
Watchdog	BBC 1	14/12/2016	Harm	1
Daily Politics	BBC 2	20/12/2016	Generally accepted standards	1
Revolting	BBC 2	03/01/2017	Generally accepted standards	55
The Real Marigold Hotel on Tour: Florida	BBC 2	27/12/2016	Offensive language	1
The Real Marigold Hotel on Tour: Japan	BBC 2	30/12/2016	Offensive language	1
BBC News	BBC News Channel	28/12/2016	Animal welfare	1
A Point of View	BBC Radio 4	26/12/2016	Generally accepted standards	1
Shipping Forecast	BBC Radio 4	07/01/2017	Generally accepted standards	2
The News Quiz	BBC Radio 4	07/01/2017	Generally accepted standards	1
Programming	Brit Asia TV	02/12/2016	Offensive language	1
Gumball	Cartoon Network	09/12/2016	Scheduling	1
My Reality	CBS Reality	22/11/2016	Charity appeals	1
Ninja Warrior	Challenge	03/01/2017	Animal welfare	1
Ninja Warrior	Challenge	05/01/2017	Animal welfare	1
Pointless Celebrities	Challenge	29/12/2016	Animal welfare	1
Takeshi's Castle	Challenge	05/01/2017	Animal welfare	1
Young Messiah (trailer)	Challenge	15/12/2016	Religious/Beliefs discrimination/offence	1
Alan Carr's 12 Stars of Christmas	Channel 4	23/12/2016	Animal welfare	1
Alan Carr's 12 Stars of Christmas	Channel 4	23/12/2016	Disability discrimination/offence	1
Alan Carr's Happy Hour	Channel 4	02/12/2016	Generally accepted standards	1
Channel 4 News	Channel 4	03/01/2017	Due impartiality/bias	1
Channel 4 News	Channel 4	05/01/2017	Race discrimination/offence	1
Hollyoaks	Channel 4	27/12/2016	Materially misleading	1
Lego's Big Christmas	Channel 4	26/12/2016	Undue prominence	1
No Offence (trailer)	Channel 4	02/01/2017	Offensive language	1
Short Circuit 2	Channel 4	29/12/2016	Race discrimination/offence	1
The Big Fat Quiz of the Year	Channel 4	26/12/2016	Generally accepted standards	1
The Big Fat Quiz of the Year	Channel 4	26/12/2016	Religious/Beliefs discrimination/offence	1
The Simpsons	Channel 4	21/12/2016	Drugs, smoking, solvents or alcohol	1
The Simpsons	Channel 4	23/12/2016	Scheduling	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Trigger Happy Christmas Special	Channel 4	24/12/2016	Dangerous behaviour	1
We're Going on a Bear Hunt	Channel 4	24/12/2016	Scheduling	1
A Woman Betrayed	Channel 5	06/01/2017	Offensive language	1
Along Came Polly	Channel 5	08/01/2017	Sexual material	1
Best of Bad TV	Channel 5	09/12/2016	Race discrimination/offence	1
Britain's Favourite Christmas Songs	Channel 5	25/12/2016	Generally accepted standards	1
Celebrity Big Brother	Channel 5	05/01/2016	Generally accepted standards	1
Celebrity Big Brother	Channel 5	03/01/2017	Generally accepted standards	22
Celebrity Big Brother	Channel 5	03/01/2017	Other	1
Celebrity Big Brother	Channel 5	04/01/2017	Drugs, smoking, solvents or alcohol	1
Celebrity Big Brother	Channel 5	04/01/2017	Generally accepted standards	3
Celebrity Big Brother	Channel 5	04/01/2017	Generally accepted standards	1
Celebrity Big Brother	Channel 5	05/01/2017	Generally accepted standards	1
Celebrity Big Brother	Channel 5	06/01/2017	Drugs, smoking, solvents or alcohol	1
Celebrity Big Brother	Channel 5	06/01/2017	Generally accepted standards	1
Celebrity Big Brother	Channel 5	10/01/2017	Harm	1
Celebrity Big Brother	Channel 5	10/01/2017	Offensive language	1
Celebrity Big Brother	Channel 5	11/01/2017	Other	1
Celebrity Big Brother	Channel 5	11/01/2017	Race discrimination/offence	2
Harry and the Hendersons	Channel 5	27/12/2016	Offensive language	1
Legally Blonde	Channel 5	01/01/2017	Offensive language	1
Lip Sync Battle	Channel 5	06/01/2017	Generally accepted standards	1
Santa Makes You LOL	Channel 5	22/12/2016	Disability discrimination/offence	1
Sex Pod	Channel 5	05/01/2017	Sexual material	1
Sex Pod	Channel 5	05/01/2017	Sexual material	1
The Most Shocking Celebrity Moments 2016	Channel 5	02/01/2017	Generally accepted standards	1
There's a Croc In My Kitchen	Channel 5	27/12/2016	Animal welfare	2
Most Shocking Celebrity Moments 2016	Channel 5+1	28/12/2016	Gender discrimination/offence	1
Britain's Favourite Christmas Songs	Channel5	25/12/2016	Generally accepted standards	1
QI	Dave	10/01/2017	Offensive language	1
Bear Grylls: Breaking Point	Discovery Channel	18/12/2016	Generally accepted standards	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Wild Winter Wonderlands (trailer)	Drama	20/12/2016	Generally accepted standards	1
Carjackers	E4	16/12/2016	Crime and disorder	1
Hollyoaks	E4	31/12/2016	Race discrimination/offence	1
Naked Attraction	E4	04/01/2017	Nudity	1
Naked Attraction	E4	various	Nudity	1
Programming	Film4	18/12/2016	Religious/Beliefs discrimination/offence	1
Hairy Bikers' Cookbook	Good Food	09/01/2017	Offensive language	1
Heart Radio	Heart 106.2FM (London)	02/01/2017	Offensive language	1
All Star Family Fortunes	ITV	30/12/2016	Generally accepted standards	1
Carry On – Don't Lose Your Head	ITV	10/12/2016	Gender discrimination/offence	1
Channel ident	ITV	various	Other	1
Checktrade's sponsorship of Good Morning Britain National Weather	ITV	12/12/2016	Sponsorship credits	1
Coronation Street	ITV	06/01/2016	Generally accepted standards	1
Coronation Street	ITV	25/12/2016	Suicide and self harm	1
Coronation Street	ITV	26/12/2016	Crime and disorder	1
Coronation Street	ITV	06/01/2017	Generally accepted standards	1
Coronation Street	ITV	06/01/2017	Offensive language	1
Coronation Street (trailer)	ITV	24/12/2016	Scheduling	1
Dance Dance Dance	ITV	08/01/2017	Offensive language	1
Dickinson's Real Deal	ITV	various	Competitions	1
Emmerdale	ITV	15/12/2016	Generally accepted standards	1
Emmerdale	ITV	15/12/2016	Generally accepted standards	1
Emmerdale	ITV	15/12/2016	Generally accepted standards	1
Emmerdale	ITV	16/12/2016	Violence	1
Emmerdale	ITV	21/12/2016	Scheduling	1
Emmerdale	ITV	22/12/2016	Generally accepted standards	7
Emmerdale	ITV	29/12/2016	Disability discrimination/offence	1
Emmerdale	ITV	30/12/2016	Gender discrimination/offence	1
Emmerdale	ITV	05/01/2017	Generally accepted standards	1
Emmerdale	ITV	05/01/2017	Generally accepted standards	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
ET: The Extra-Terrestrial	ITV	01/01/2017	Offensive language	3
Good Morning Britain	ITV	20/12/2016	Generally accepted standards	1
Good Morning Britain	ITV	23/12/2016	Generally accepted standards	1
Good Morning Britain	ITV	30/12/2016	Generally accepted standards	1
Good Morning Britain	ITV	10/01/2017	Generally accepted standards	10
Harry Potter Season (trailer)	ITV	23/12/2016	Scheduling	1
Harry Potter Season (trailer)	ITV	31/12/2016	Scheduling	1
I'm a Celebrity...Get Me Out of Here!	ITV	12/11/2016	Animal welfare	1
ITV Evening News	ITV	05/01/2017	Race discrimination/offence	1
ITV News	ITV	10/01/2017	Generally accepted standards	1
ITV News website	ITV	09/10/2016	Race discrimination/offence	1
ITV Racing	ITV	01/01/2017	Sponsorship credits	1
ITV Racing (trailer)	ITV	06/01/2017	Animal welfare	1
Liar Liar	ITV	26/12/2016	Scheduling	1
Lorraine	ITV	04/01/2017	Scheduling	1
Maigret's Dead Man	ITV	25/12/2016	Race discrimination/offence	1
Ninja Warrior UK	ITV	07/01/2017	Generally accepted standards	1
The Chase	ITV	03/01/2017	Fairness	1
The Dam Busters	ITV	30/12/2016	Offensive language	3
The Jeremy Kyle Show	ITV	09/01/2017	Sexual material	1
The Jeremy Kyle Show	ITV	10/01/2017	Materially misleading	1
The Jeremy Kyle Show	ITV	11/01/2017	Generally accepted standards	1
This Morning	ITV	01/12/2016	Generally accepted standards	1
This Morning	ITV	14/12/2016	Materially misleading	1
This Morning	ITV	23/12/2016	Generally accepted standards	1
This Morning	ITV	03/01/2017	Offensive language	1
This Morning	ITV	11/01/2017	Generally accepted standards	3
Tipping Point	ITV	10/01/2017	Competitions	1
Toyota's sponsorship of ITV Movies	ITV	28/12/2016	Sponsorship credits	2
Toyota's sponsorship of ITV Movies	ITV	01/01/2017	Sponsorship credits	2

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Toyota's sponsorship of ITV Movies	ITV	various	Sponsorship credits	1
Toyota's sponsorship of ITV Movies	ITV	various	Sponsorship credits	1
You've Been Framed	ITV	10/12/2016	Disability discrimination/offence	1
ITV News Tyne Tees	ITV Tyne Tees	21/12/2016	Generally accepted standards	1
Educating Joey Essex (trailer)	ITV2	18/12/2016	Religious/Beliefs discrimination/offence	1
The Jeremy Kyle Show	ITV2	10/01/2017	Generally accepted standards	1
James O'Brien	LBC 97.3 FM	06/01/2017	Race discrimination/offence	1
Katie Hopkins	LBC 97.3 FM	26/12/2016	Due impartiality/bias	1
Katie Hopkins	LBC 97.3 FM	02/01/2017	Race discrimination/offence	4
Nick Ferrari	LBC 97.3 FM	20/12/2016	Generally accepted standards	1
Nick Ferrari	LBC 97.3 FM	21/12/2016	Race discrimination/offence	1
It Was Alright in the 1970s	More4	05/01/2017	Offensive language	1
Ex on the Beach (trailer)	MTV	22/12/2016	Nudity	1
The Roast of Donald Trump	My5	16/11/2016	Disability discrimination/offence	1
The Science of Laughter	n/a	09/01/2017	Animal welfare	1
Programming	New Style Radio 98.7 FM	17/12/2016	Crime and disorder	1
Peppa Pig	Nick Jr. too	22/12/2016	Gender discrimination/offence	1
Vesti	NTV Mir Baltic	18/10/2016	Due impartiality/bias	1
Haven	Pick TV	04/01/2017	Scheduling	1
Carl Spencer	Radio Aire	16/12/2016	Generally accepted standards	1
News	Rother FM	16/12/2016	Other	1
RT News	RT	06/01/2017	Due impartiality/bias	1
Tales of The Unexpected: Skin	Sky Arts	15/12/2016	Nudity	1
Sky Cinema (trailer)	Sky Channels	various	Materially misleading	1
Paper Review	Sky News	07/01/2017	Generally accepted standards	1
Press Preview	Sky News	06/01/2017	Generally accepted standards	1
Sky News	Sky News	27/12/2016	Due accuracy	1
Sky News	Sky News	30/12/2016	Generally accepted standards	1
Sky News	Sky News	01/01/2017	Due accuracy	1
Sky News	Sky News	03/01/2017	Due accuracy	1
Sky News	Sky News	03/01/2017	Materially misleading	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Sky News	Sky News	05/01/2017	Due accuracy	1
Sky News	Sky News	07/01/2017	Generally accepted standards	1
Sophy Ridge on Sunday	Sky News	08/01/2017	Offensive language	6
Sunrise	Sky News	03/01/2017	Due accuracy	1
The Pledge	Sky News	05/01/2017	Due accuracy	1
Delicious	Sky1	30/12/2016	Animal welfare	1
The Last Dragon Slayer	Sky1	26/12/2016	Violence	1
England v Scotland (trailer)	STV	10/11/2016	Generally accepted standards	1
70s 80s 90s Show with Steve Lee	Susy Radio 103.4	14/12/2016	Generally accepted standards	1
James Whale	TalkRadio	20/12/2016	Sexual material	1
Julia Hartley-Brewer	TalkRadio	02/12/2016	Due impartiality/bias	2
Weekend Sports Breakfast	Talksport	07/01/2017	Materially misleading	1
Say Yes To The Dress	TLC	16/12/2016	Offensive language	1
Toddlers and Tiaras	TLC	10/12/2016	Under 18s in programmes	1
Skönhetsfällan	TV3 (Sweden)	various	Gender discrimination/offence	1
Casillero del Diablo sponsorship	Various	various	Sponsorship credits	1
Online Istikhra	Venus TV	02/01/2017	Materially misleading	1
Ruhamilaj	Venus TV	11/12/2016	Charity appeals	1

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

For more information about how Ofcom assesses complaints about broadcast licences, go to: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0019/31942/general-procedures.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0019/31942/general-procedures.pdf)

Licensee	Licensed service	Categories
Gloucester FM	Gloucester FM	Key Commitments
Pulse Media Broadcasting Limited	Pulse	Key Commitments
Murfin Media Ltd	Sunshine Radio	Format

### Complaints assessed under the Procedures for investigating breaches of rules for On Demand programme services

Programme	Service name	Service provider	Categories	Number of complaints
Demolition Man	Sky Cinema on Demand	Sky UK Limited	Other	1



For more information about how Ofcom assesses complaints about on demand services, go to:

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0033/74499/procedures-investigating-breaches.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0033/74499/procedures-investigating-breaches.pdf)

## Complaints outside of remit

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

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

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

### Complaints about television or radio programmes

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

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0020/55109/breaches-content-standards.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0020/55109/breaches-content-standards.pdf)

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Newsnight	BBC 1	10/01/2017	Due impartiality/bias	1
South Today	BBC 1 South	08/01/2017	Due accuracy	1
Cunk on Christmas	BBC iPlayer	29/12/2016	Religious/Beliefs discrimination/offence	1
BBC News	BBC News Channel	10/01/2017	Due impartiality/bias	1
Today	BBC Radio 4	12/01/2017	Due impartiality/bias	1
World at One	BBC Radio 4	11/01/2017	Due impartiality/bias	1
Advertisement	Cartoon Network	09/01/2017	Advertising content	1
Advertisement	CBS Reality	05/01/2017	Advertising content	1
Advertisement	Channel 4	31/12/2016	Advertising content	1
Advertisement	Drama	01/01/2017	Advertising content	1
Advertisement	Film4	30/12/2016	Advertising content	1
Advertisement	Fox	29/12/2016	Advertising content	1
Advertisement	ITV	26/10/1984	Advertising content	1
Advertisement	ITV	04/01/2017	Advertising content	1
Advertisement	ITV2	12/01/2017	Advertising content	1
Advertisement	ITVBe	27/12/2016	Advertising content	1
Nigel Farage (Pre-TX)	LBC 97.3 FM	09/01/2017	Outside of remit	3
Advertisement	Pick TV	12/01/2017	Advertising content	1
Advertisement	Sky	06/01/2017	Advertising content	1
Advertisement	Sky Channels	various	Advertising minutage	1
Sky News Website	Sky News Website	03/01/2017	Outside of remit	1

### Complaints about on demand services

Programme	Service name	Accessed date	Categories	Number of complaints
The Jihadi Next Door	Netflix	08/01/2017	Crime and disorder	1

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

## Investigations List

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

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

Here are alphabetical lists of new investigations launched between 3 and 15 January 2017.

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

Programme	Broadcaster	Transmission date
Live at the Apollo	Comedy Central	25 December 2016
The Hub	Radio Dawn (Nottingham)	26 December 2016
News	Radio Sangam	various
Studio 66 Mornings	Television X	14 November 2016

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

### Ofcom is investigating the operation of the following TLCS licences:

Licensee	Licensed Service
ARY Network Limited	ARY News
ARY Network Limited	ARY Digital
ARY Network Limited	ARY QTV
ARY Network Limited	ARY World News
ARY Network Limited	ARY Entertainment
ARY Network Limited	QTV – Islamic Education Channel

### Investigations launched under the Procedures for investigating breaches of rules for On Demand programme services

Programme	Service provider
Various	BabeFox
Various	P110 Media Limited

For more information about how Ofcom assesses complaints and conducts investigations about on demand services, go to:

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0033/74499/procedures-investigating-breaches.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0033/74499/procedures-investigating-breaches.pdf)