

# **Ofcom Broadcast and On Demand Bulletin**

**Issue number 304  
9 May 2016**

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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

### Changes to Section Three of the Broadcasting Code

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On 4 May 2016 Ofcom published changes to the rules in Section Three of the Broadcasting Code, and accompanying guidance, to ensure they are as clear as possible for broadcasters.

Ofcom has a duty to review and revise the rules in the Broadcasting Code from time to time when we consider it appropriate. We publicly consulted on our proposals to revise Section Three of the Code in January 2016.

Section Three relates to crime. It prohibits the broadcast of material likely to encourage or to incite the commission of crime, or to lead to disorder. It also helps to provide adequate protection for members of the public from the inclusion in services of harmful and/or offensive material.

Ofcom has updated the title of the Section from “Crime” to “Crime, Disorder, Hatred and Abuse” and introduced two additional rules which apply to content containing hate speech and abusive or derogatory treatment. Ofcom has also included notes and meanings to help explain the rules in this section of the Code and provide additional information for broadcasters on how they are applied.

The updated Code and guidance can be found at the following link:  
<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/crime/>

If you have any questions about these changes please contact  
laura.cole@ofcom.org.uk.

**The new rules come into effect today, Monday 9 May 2016 at 10:00.**

## Broadcast Standards cases

### In Breach

#### Urs Nehrian

Noor TV, 17 November 2015, 21:00

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#### Introduction

Noor TV is a digital satellite television channel that broadcasts programmes about Islam in a number of languages, including English, Urdu and Punjabi. It can be received in the United Kingdom, Europe, Africa, the Middle East and Asia. The licence for Noor TV is held by Mohiuddin Digital Television Limited (“MDT” or “the Licensee”).

Ofcom was alerted to this programme by a viewer who considered that a speaker was “spreading hate” against Jewish people.

Ofcom reviewed this programme, which was of two hours duration, and in Urdu. It was the second instalment of a series of four programmes which had been recorded at the Urs Nehrian festival<sup>1</sup> in Pakistan that had taken place in June 2015. The programme consisted of 15 religious scholars and preachers addressing an assembled congregation with short sermons, homilies and poetic verses.

We noted that one of the speakers made a number of remarks about Jewish people. Ofcom translated the content from Urdu (and a very small amount which was in Arabic) into English. We gave the Licensee an opportunity to comment on the accuracy of the translation. MDT confirmed its accuracy, and we therefore relied on this translation for the purposes of the investigation.

Ofcom noted that at approximately one hour and 43 minutes into the programme, one of the speakers, Allama Mufti Muhammad Saeed Sialvi Sahib (“Allama Sialvi”) said the following:

*“On one particular occasion in blessed Medina, the Holy Prophet made an announcement...and I won’t take up too much of your time and will finish on this note, as I want you to appreciate the level of devotion displayed by these disciples, who sold themselves in obedience of the Prophet<sup>2</sup>. [The Prophet] said ‘whoever amongst you comes across a Jew, they should slay him immediately’<sup>3</sup>. Now, there were two brothers, one of whom was a Sahabi<sup>4</sup> and the other a Kaafir<sup>5</sup>. Both were merchants, and were on very good terms with this Jewish trader, and they had done hundreds and thousands of Dinar worth of business*

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<sup>1</sup> The Urs Nehrian festival is an annual event which commemorates the death anniversary of the Sufi saints Khawaja Ghulam Mohiuddin Ghaznavi and Khawaja Pir Saani Sahib at the shrine of Nehrian located in Azad Kashmir, Pakistan.

<sup>2</sup> Meaning that they offered themselves heart and soul to the Prophet.

<sup>3</sup> The speaker spoke this phrase in Urdu and then repeated it in Arabic.

<sup>4</sup> A Sahibi is a companion of the Prophet Muhammad.

<sup>5</sup> A Kaafir is a non-Muslim.

*with the Jewish trader. Now, the brother who had become a Muslim, upon hearing the command of the Prophet to kill Jews, went straight around to the Jewish trader and killed him on the spot. Upon carrying out this deed he returned home. The other brother who was a Kaafir heard what had happened... Now let me relate to you the consequences of becoming a true disciple of a blessed one. When that [Muslim] person came home, the other brother who remained a Kaafir, asked 'I heard you killed the Jew'. To which he replied 'Yes, I have'. The other [brother] said 'Didn't you stop to think that we did hundreds and thousands of Dinars worth of profitable business with the Jew?' Allaho Akbar!, now listen to what he says next, and appreciate the actions of a true disciple. The Sahabi said: 'That man was Jewish, and meant nothing to me, now you my brother listen. If the lofty [blessed] person who gave me the command [to kill Jews] told me to behead you my brother I would do so immediately and without a thought!'*

Allama Sialvi went on to say the following:

*"Now remember that the brother was a Kaafir, and he thought to himself 'how is it possible that this man [the Prophet Muhammad] could have such an effect upon my brother, my mother's son, that he could even contemplate beheading me, his brother, at his [Muhammad's] command?' He thought, 'let me go around and view the countenance of this person, who can turn the mind of a person in this way.' Now this is the miracle manifested to a true disciple. He left his house and went around to the home of the Prophet and upon seeing his blessed countenance immediately proclaimed the Shahada<sup>6</sup>, and became a Muslim. So, my message to you all is that a true disciple isn't simply a person who kisses the hand of his Pir<sup>7</sup>, but someone who also obeys his commands and instructions, who prays regularly, respects his parents, who curbs his tongue, and earns his living from honest endeavour".*

Ofcom considered that the content raised potential issues warranting investigation under the following rules:

- Rule 2.1: "Generally accepted standards must be applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material".
- Rule 2.3: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context... Such material may include, but is not limited to...discriminatory treatment or language (for example on the grounds of...race, religion...".
- Rule 3.1: "Material likely to encourage or incite the commission of crime or to lead to disorder must not be included in television or radio services".

Ofcom therefore asked the Licensee how the programme complied with these rules.

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<sup>6</sup> The Shahada is the Islamic profession of faith.

<sup>7</sup> A Pir is a Saint.



## Response

MDT accepted that the programme “breached generally accepted standards”. Specifically, it said that the comments made by the speaker “were capable of offending members of the Jewish community as well as the wider audience. The historical example used was likely to be construed as offensive in today’s society and was not justified by [the] context”. The Licensee said that Allama Sialvi was speaking as one of a number of Islamic scholars and Imams delivering sermons, homilies and poetic verse during a religious festival in Pakistan. MDT said that Allama Sialvi “was invited to the platform to give an address, despite **not being a listed or scheduled guest** [Licensee’s emphasis]”.

In addition, the Licensee said that it did not accept that the speaker’s comments were in breach of Rule 3.1 because the comments were “made in the historical context of an Islamic parable [and] it was not presented as an instruction”. In this context, it added that its editorial policy is to “adopt a very strict policy against condoning extremism, terrorism, racism, anti-semitism and abuse of individuals in its programmes”.

In its initial comments to Ofcom, MDT stated that it had tried to obtain direct references from sacred texts to the content used by the speaker. It said that the speaker’s “comments can only be attributed to handed-down Islamic Parables, which are an amalgamation of a number of similar events that took place under the united tribes Constitution of Medina in around 629 AD”<sup>8</sup>. MDT added that it had contacted Allama Sialvi to clarify his comments. According to the Licensee, Allama Sialvi had stated “I’m giving the people an example of obedience to information given by the Prophet”. He had also informed the Licensee that “I used this example to show the connection between saint and disciple/follower and that of obedience and following the perfect...saint”.

However, in later comments, the Licensee “sourced references to support the context of texts used by speaker, Allama Sialvi”. It cited three references from Islamic religious texts concerning the parable related by Allama Sialvi “in order to illustrate how his comments are ‘deriving from a sacred text’”:

- Hadith<sup>9</sup> number 3002, Volume 3, in Sunan Abu Dawud [Selected Hadith collected by Abu Dawud]<sup>10</sup>;

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<sup>8</sup> The Constitution of Medina was a treaty that laid out the rights and obligations of all the tribes living in the city of Medina. This included various Jewish tribes living in Medina at the time. <http://www.oxfordbibliographies.com/view/document/obo-9780195390155/obo-9780195390155-0209.xml>

<sup>9</sup> The Hadith are accounts of the actions and sayings of the Prophet Muhammad which help interpret the Qur’an.

<sup>10</sup> MDT provided Ofcom with a translation from Arabic into English of this Hadith published in this book: “It was reported from the daughter of Muhayyiah, that she narrated from her father, Muhayyiah, that the Messenger of Allah said [“]if you gain victory over any Jewish man, then kill him.” Muhayyiah jumped on Shubaibah – a Jewish merchant who used to mix with them – and killed him. Huwayyisah had not become a Muslim at that time, and was older than Muhayyiah. When he killed him, Huwayyisah started beating him (his brother) and saying: “O enemy of Allah, by Allah you prospered a great deal from his wealth.” Ofcom confirmed that this translation was accurate.

- a commentary on Hadith including number 3002 in Assarim Ul-Maslool, written by Imam Ibn Taymiyyah; and
- a second commentary on Hadith including number 3002 in Al Raud al Unuf by Imam Suhayli.

MDT argued that Hadith 3002 provided “some contextual justification for the [i.e. Allama Sialvi’s] comment”. Nonetheless the Licensee recognised “the mistake made”, that “the language [used by Allama Sialvi] was unacceptable” and it “should not have allowed the address to be broadcast unedited.”

MDT said that it had broadcast the following apology in both Urdu and English three times a day for eight days from 22 December 2015 to 29 December 2015:

*“On the 17<sup>th</sup> November 2015 at 21.00hrs, Part 2 of our coverage of the Urs Nehrian programme featured a guest speaker who, in interpreting an Islamic Parable, may have offended viewers. We wish to formally apologise for the comments made in the programme and any unintended offence caused to any religious denomination or nationality”.*

The Licensee said that the speaker in this case had been dealing with “an extremely sensitive area of Islamic history” and his comments “should have been vetted and edited appropriately”. It added that in this case the *Urs Nehrian* series had been produced by an independent production company who MDT said had provided coverage of the Urs Nehrian festival for Noor TV since 2009. It added that the independent production company is “experienced and familiar with broadcasting rules in the UK”. According to the Licensee, the independent production company:

- had wanted to “give all the speakers [in the programme] coverage”;
- had considered that the speaker “was telling a particular story from Islamic history, [and] he was not saying anyone should follow the actions in his account, but they should be as obedient and following of the perfect [saint]”;
- now accepted the words used in Allama Sialvi’s speech “should have been removed”; and
- “expected Noor TV to always carry out its own independent compliance monitoring [of] content”.

The Licensee said that in relation to the checking of this programme by Noor TV production staff “it is apparent insufficient time was allowed for the processing, including full review of the content”. It added that in this case a compliance form had been “filled in...However, the form was not signed off as Compliance Checked, as per normal procedure”. Accordingly, playout staff had “believed compliance had been completed” when it had not.

In summary, MDT said this incident resulted from “a human error not a systematic failure of the processes put in place to ensure compliance”. But it added that it had taken steps to “prevent this happening again”. The Licensee said that:

- its Programme Compliance Form has been amended to require that two people have to “sign off programmes as Code compliant” before playout of content is possible;

- it had appointed a new Head of Compliance who was “an experience[d] broadcast professional” to ensure compliance with the Code in future;
- it had introduced and completed “Ofcom Code refresher training to keep staff up-to-date with Ofcom Codes and case law”; and
- it issued “regular updates based on Ofcom’s Broadcast Bulletins”.

## Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set such standards for broadcast content as appear to it best calculated to secure the standards objectives, including that: generally accepted standards are applied so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material, and material likely to encourage or incite the commission of crime or lead to disorder is not included in television or radio services. These duties are reflected in Sections Two and Three of the Code.

In reaching a Decision in this case, Ofcom has taken account of the audience’s and broadcaster’s right to freedom of expression set out in Article 10 of the European Convention on Human Rights (“ECHR”). Ofcom also had regard to Article 9 of the ECHR which states that everyone “has the right to freedom of thought, conscience, and religion”. This Article goes on to make clear that freedom to manifest one’s religion or beliefs is “subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order...or for the protection of the rights and freedoms of others”.

### Rule 2.1

Rule 2.1 requires that:

“Generally accepted standards must be applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material”.

Under this rule, broadcasters must ensure that they take sufficient steps to provide adequate protection to members of the public from the inclusion of harmful and/or offensive material. This rule deals with the reasonable likelihood of members of the public being caused harm and/or offence by what has appeared on a broadcast service. How adequate protection might be achieved is an editorial matter for the individual broadcaster. In reaching a decision under Rule 2.1, Ofcom must assess the nature of the material and its potential effect or what actual harm and/or offence has occurred. The crucial question is whether broadcasters have provided sufficient context in the editorial content so that harm and/or offence is unlikely to be caused as a result. Accordingly, if it is to find a programme in breach of Rule 2.1, Ofcom must satisfy itself that there is a sufficient causal link between the editorial content in question and instances of actual or potential harm and offence. Ofcom must also take proper account of the broadcaster’s right to freedom of expression.

We first considered whether this programme contained potentially harmful and/or offensive material. We noted that Allama Sialvi used the titles “Allama”, which means scholar, and “Mufti”, which denotes someone who is both a scholar and one who has

the authority to hand down religious edicts known as fatwas. The speaker therefore in Ofcom's view was likely to be a figure of authority within the Muslim community.

While delivering a sermon at a religious festival, Allama Sialvi recited what he described as an "announcement" by the Prophet Muhammed to his followers that "whoever amongst you comes across a Jew, they should slay him immediately". The speaker then recounted a parable that featured two brothers, a Muslim and non-Muslim, who were merchants and who had "done hundreds and thousands of Dinar worth of business with [a] Jewish trader". We noted the following elements of the parable as recounted by the speaker:

- the speaker said that the Muslim brother "upon hearing the command of the Prophet to kill Jews, went straight around to the Jewish trader and killed him on the spot";
- on hearing about his brother's actions, the non-Muslim brother questioned his brother by, according to the speaker, asking "Didn't you stop to think that we did hundreds and thousands of Dinars worth of profitable business with the Jew?";
- the speaker said that the Muslim brother described his killing of the Jewish trader as follows "That man was Jewish, and meant nothing to me, now you my brother listen. If the lofty [blessed] person who gave me the command [to kill Jewish people] told me to behead you my brother I would do so immediately and without a thought!"
- according to the speaker, the non-Muslim brother, wondering how the Prophet Muhammed could have caused his brother to have killed the Jewish trader, "went around to the home of the Prophet and upon seeing his blessed countenance immediately...became a Muslim".

We noted that, by referring to the above parable as an example of the devotion and obedience of a disciple to the Prophet, Allama Sialvi on several occasions appeared to condone the killing of a Jewish trader. For example, the speaker said:

*"I want you to appreciate the level of devotion displayed by these disciples, who sold themselves in obedience of the Prophet".*

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*"The consequences of becoming a true disciple of a blessed one".*

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*"Appreciate the actions of a true disciple".*

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*"So, my message to you all is that a true disciple isn't simply a person who kisses the hand of his Pir, but someone who also obeys his commands".*

In our view, Allama Sialvi's clear statements that religious obedience within the Islamic faith could be demonstrated through murder of Jewish people had the potential to be interpreted as spreading anti-Semitism i.e. his comments could be a

form of 'hate speech'. In this context we are mindful of the Council of Europe's definition of 'hate speech', as follows:

"all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin"<sup>11</sup>.

We noted the Licensee's representation that the speaker's comments were "made in the historical context of an Islamic parable". In addition, it cited the speaker's subsequent justification for his words: that he was "giving the people an example of obedience to information given by the Prophet". However, we considered that in reciting the parable in the way that he did, Allama Sialvi's words would have had the potential to have caused significant offence. This is because he held up in unequivocal terms the killing of a Jewish person as an example of devotion and obedience within the context of the Islamic faith.

In Ofcom's view, the content also had the potential to have caused harm. We considered that Allama Sialvi invoked, in highly positive terms, the killing of a Jewish person as a demonstration of perfect obedience to the Muslim faith. This was done in a religious programme containing Muslim sermons on the occasion of a Muslim religious festival. We considered that the likely overall effect of this content would have been that, by encouraging uncritical obedience to Islam using the example he did (i.e. the murder of a Jewish person), the speaker promoted a highly negative anti-Semitic attitude towards Jewish people. We therefore considered that there was likelihood that his comments would have had the potential to harm community cohesion by suggesting to viewers of Noor TV that the killing of Jewish people was permissible and an act of obedience to be approved.

We then went on to consider whether the Licensee had taken sufficient steps to provide adequate protection to members of the public from the inclusion of potentially harmful and/or offensive material. We noted that the speaker spoke uninterrupted and his views were not challenged, held up to scrutiny or otherwise countered by other content which softened or otherwise challenged the provocative statements that Allama Sialvi was making.

Ofcom noted that in its initial response, the Licensee provided no scriptural or textual references to seek to justify the inclusion of the parable. However, Ofcom took into account the three references later given by the Licensee to Islamic religious texts which it said provided "some contextual justification for the [i.e. Allama Sialvi's] comment". We therefore assessed whether these references provided any relevant context for the audience which might have helped to provide adequate protection from Allama Sialvi's potentially harmful and offensive comments.

We noted that at no point during Allama Sialvi's sermon, nor in the programme overall, was any reference made to any of these three Islamic texts. When cited later by the Licensee in its submissions to Ofcom, they could not point to any context for the audience at the time of the broadcast to help provide adequate protection from Allama Sialvi's potentially harmful and offensive comments.

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<sup>11</sup> Council of Europe Committee of Ministers Recommendation, 30 October 1997 ([http://www.coe.int/t/dghl/standardsetting/hrpolicy/other\\_committees/dh-lgbt\\_docs/CM\\_Rec\(97\)20\\_en.pdf](http://www.coe.int/t/dghl/standardsetting/hrpolicy/other_committees/dh-lgbt_docs/CM_Rec(97)20_en.pdf)).

For all these reasons, in Ofcom's view the Licensee did not take sufficient steps to provide adequate protection to members of the public from the inclusion of potentially harmful and/or offensive material.

In reaching its Decision, Ofcom acknowledged: MDT's acceptance that the programme "breached generally accepted standards"; the Licensee's statement that the incident was due to "human error not a systematic failure of the processes put in place to ensure compliance"; the apology broadcast by the Licensee in both Urdu and English three times a day for eight days; and the steps it had taken to improve compliance. We also took into account MDT's stated editorial policy to "adopt a very strict policy against condoning extremism, terrorism, racism, anti-semitism and abuse of individuals in its programmes".

However, in Ofcom's view the Licensee did not apply generally accepted standards so as to ensure that adequate protection was provided to members of the public from any potentially harmful or offensive material, in breach of Rule 2.1.

### Rule 2.3

Rule 2.3 requires that:

"In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context... Such material may include, but is not limited to...discriminatory treatment or language (for example on the grounds of...race, religion...".

Rule 2.3 requires broadcasters to ensure that the broadcast of potentially offensive material is justified by its context. Context is assessed by reference to a range of factors including: the editorial content of the programme, the service on which the material was broadcast, the degree of harm or offence likely to be caused, the effect of the material on viewers who might come across it unawares, warnings, and likely audience expectations.

We first considered whether the programme had the potential to cause offence. We noted that in his remarks Allama Sialvi recited what he described as an "announcement" by the Prophet Muhammed to his followers that "*whoever amongst you comes across a Jew, they should slay him immediately*". The speaker then recounted a parable that featured two brothers, one of whom kills a Jewish trader as described under Rule 2.1. The speaker condoned the killing of a Jewish trader as being an example of "*obedience of the Prophet*". We considered that these remarks would have had the potential to be extremely offensive.

We considered that the potential for offence would have been likely to have been increased by three factors:

- The non-Muslim brother in the parable had questioned his brother's killing of the Jewish trader solely on the fact that the two brothers had done "*hundreds and thousands of Dinars worth of profitable business with the Jew*".
- The Muslim brother's reported comment that a reason why he was able to kill the Jewish trader was because "*That man was Jewish, and meant nothing to me*".
- The speaker's use of highly violent, lethal imagery in general (for example, the Muslim brother stated he would be willing to "*behead*" his own brother).

We therefore went on to consider whether the broadcast of this speech was justified by the context. We noted that Allama Sialvi was speaking as one of a number of Islamic scholars and Imams delivering sermons, homilies and poetic verses during a religious festival in Pakistan. Ofcom acknowledges the importance of the right to freedom of expression and freedom of religion. In line with these rights, licensees are free to broadcast programming containing religious scholars and teachers giving their views on theology, as long as any potentially offensive content is justified by the context.

As discussed above, the speaker referred to what he implied was a direct teaching of the Prophet Muhammad, delivered during his lifetime, reportedly instructing his followers to kill Jewish people. Allama Sialvi then recited a parable in which a Muslim immediately acted upon this order and killed a Jewish trader with whom he had longstanding business relations. By contrast his brother, who had not as yet accepted Islam, questioned this act of blind obedience. The speaker held up the Muslim brother's act of killing as an example of religious obedience, and worthy of praise. We noted that the speaker spoke uninterrupted and there were no views or statements in the programme which challenged or otherwise softened the considerable level of potential offence caused by the speaker's comments. In addition, the fact that, as stated by MDT, the speaker "was invited to the platform to give an address, despite **not being [a] listed or scheduled guest** [Licensee's emphasis]", did not mitigate the likely level of offence caused in this case. In any event, the programme was not a live broadcast of the religious festival but one five months later.

We recognise that there are many examples of Islamic teaching being based on the reported actions and words of the Prophet Muhammed<sup>12</sup>. Therefore, there may be cases where some context can be provided by the fact that potentially offensive content is derived from a sacred text such as, in the case of Islam, the Qur'an or the Hadith. Ofcom noted that in its initial response, the Licensee provided no scriptural or textual references to seek to justify by context the inclusion of the parable. However, Ofcom took into account the three references later given by the Licensee to Islamic religious texts which it said provided "some contextual justification for the [i.e. Allama Sialvi's] comment". We noted however that at no point during Allama Sialvi's sermon, nor in the programme overall, was any reference made to any of these three Islamic texts. When cited later by the Licensee in its submissions to Ofcom, they could not point to any context for the audience at the time of the broadcast to help justify the broadcast of Allama Sialvi's potentially offensive remarks. By simply stating that to kill Jews was a command of the Prophet Muhammad, in Ofcom's opinion, he gave weight to the parable without any appropriate textual justification being cited during his sermon, or within the programme in general.

We noted MDT's acceptance that the programme "breached generally accepted standards"; the Licensee's statement that the incident was due to "human error not a systematic failure of the processes put in place to ensure compliance"; the apology broadcast by the Licensee in both Urdu and English three times a day for eight days; and the steps it had taken to improve compliance. We also took into account MDT's stated editorial policy to "adopt a very strict policy against condoning extremism, terrorism, racism, anti-semitism and abuse of individuals in its programmes".

However, Ofcom considered there would have to be very strong, if not exceptional contextual factors to justify the inclusion of such highly offensive material as the suggestion that the killing of Jewish people was permissible and an act of obedience

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<sup>12</sup> 570CE – 632CE [http://www.bbc.co.uk/religion/religions/islam/history/muhammad\\_1.shtml](http://www.bbc.co.uk/religion/religions/islam/history/muhammad_1.shtml)

to be approved. In our view there was clearly insufficient context to justify the highly offensive statements and Rule 2.3 was therefore breached.

### Rule 3.1

Rule 3.1 states that:

“Material likely to encourage or incite the commission of crime or to lead to disorder must not be included in television or radio services”.

In considering material under Rule 3.1 we are required to assess the *likelihood* of it encouraging or inciting the commission of crime or of it leading to some form of disorder. In deciding whether this rule is contravened Ofcom takes account of all the relevant circumstances, but in particular the nature of the content, its context and its probable effects.

We therefore considered whether Allama Sialvi’s statements were likely to encourage or incite criminal action against Jewish people or to lead to disorder. We took into account the Licensee’s comments, including that the statements were “made in the historical context of an Islamic parable [and] it was not presented as an instruction”.

Allama Sialvi’s statements were broadcast in the context of a religious programme made for a predominantly Muslim audience. It is sometimes possible that followers of a religion may cause offence to others in expressing or explaining their beliefs in a broadcast service. Their comments might even, depending on the facts, have the potential to encourage or incite crime. Broadcasters of religious programmes must therefore always be alert for material which might be capable of being interpreted in this way.

In this case Ofcom considered the broadcast of these comments by Allama Sialvi to be a serious matter. As pointed out above, clear statements that religious obedience within the Islamic faith could be demonstrated through murder of a Jewish person had the potential to be interpreted as spreading anti-Semitism i.e. his comments could be a form of ‘hate speech’. We noted that initially the Licensee did not offer any justification for the remarks by way of reference to the Qur’an or other Muslim holy texts. In subsequent comments the Licensee did provide three references to Islamic texts which it said related to the parable. But none of these texts was referred to during the programme itself, and as a result could not provide a reason to justify, or materially lessen the potential for harm likely to be caused by, Allama Sialvi’s remarks. As a result in our view the comments had the potential to be seen by some as encouraging unlawful action against Jewish people.

We therefore examined very carefully the context in which the comments were made to decide if in fact they were likely to encourage or incite crime.

We took into account that the threshold to find that broadcast material is likely to encourage or incite crime or to lead to disorder is set at a high level. Ofcom also had careful regard to the rights to freedom of expression and freedom of religion of the Licensee and of the audience.

We noted that Allama Sialvi made his remarks in the context of a serious religious gathering. The *Urs Nehrian* festival is an annual event in Pakistan which commemorates the anniversary of the deaths of the Sufi saints Khawaja Ghulam Mohiuddin Ghaznavi and Khawaja Pir Saani Sahib. Ofcom understands that the primary focus of the gathering is to pledge allegiance and reaffirm devotion to the



beliefs and practices of these two saints and to Islam, and it is not intended as a forum to abuse or attack the Jewish faith or Jewish people. A succession of speakers recounted events from the lives of the two saints and used parables to emphasise the importance in their eyes of continued obedience to the current successor of the two saints, Pir Allauddin. It was in this context that the speaker used a religious parable featuring the reported statements and actions of the Prophet Muhammed and his followers to illustrate his message of the importance of religious obedience.

We noted that Allama Sialvi did not state that it was a prerequisite of religious obedience in the present day for Muslims to kill Jewish people, nor did he directly encourage or incite the audience to take any violent action against Jewish people. In Ofcom's opinion, in this context overall, viewers would have been more likely to interpret the parable as a call for religious obedience, and not as a call for any form of criminal action against Jewish people.

For all the reasons above, our Decision is that Allama Sialvi's comments were not likely to encourage or incite crime or lead to disorder, and there was no breach of Rule 3.1.

### Conclusion

Ofcom was concerned by the potentially harmful and highly offensive content broadcast by the Licensee. **Ofcom considered the breaches of Rules 2.1 and 2.3 to be serious. We are therefore putting the Licensee on notice that Ofcom will consider these breaches for the imposition of a statutory sanction.**

**Decision: Breaches of Rules 2.1 and 2.3. Not in Breach of Rule 3.1**

## In Breach

### Frances & Friends

*SonLife Broadcasting Network, 18 December 2015, 15:00*

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#### Introduction

SonLife Broadcasting Network is a channel originating in the USA, broadcast on digital satellite and licensed by Ofcom in the UK. The licence for this channel is held by Lancaster LLC (the "Licensee"). *Frances & Friends* is a daily discussion programme providing analysis on religious doctrine and world events. It is presented by Frances Swaggart (wife of the American Pentecostal pastor and televangelist, Jimmy Swaggart) with a panel of guests, including the Swaggarts' son, Donnie.

Ofcom was alerted to an episode of *Frances & Friends* broadcast on 18 December 2015 at 15:00. A viewer considered that it contained many disparaging and offensive remarks about Muslims.

The programme, which was two hours in duration, focused on economic events in America, but also discussed Muslim immigration into Europe following recent events in Syria and Islamic theology. During the programme various guests made the following statements (in the order in which they appeared in the programme):

Frances Swaggart:

*"The middle class which is the strength of America, the top middle class has disappeared, and it's now the middle to the lower class what's the predominant [sic]. When we lost that middle class we lost the backbone of America. But now we are bringing in all of these refugees, that are coming in, and they're creating havoc in the countries they are going in. I was just reading about Sweden this morning".*

John Rosenstern<sup>1</sup>:

*"Rape capital of the world they call it now".*

Frances Swaggart:

*"Yeah, the rape capital of the world. One in every four girls and women get raped, now think about what we are saying – by the people who are brought into that country. There is no safe place. And the citizens are the ones that's forced because we the tax payers, we're the ones that pay the bills for all of this...[W]hen you say we have got 5% unemployed that doesn't count all the immigrants that they are bringing into the country and on a daily basis they are being flown in and paid for by the tax payer, they are being bussed across the border, and bussed into our cities and the tax payer's paying for all that..."*

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<sup>1</sup> Reverend John Rosenstern is an Associate Pastor with Jimmy Swaggart Ministries as well as a regular panellist on *Frances & Friends*.

Frances Swaggart:

*“Now I want to read this, because this was on Glenn Beck’s programme<sup>2</sup> yesterday or the day before concerning Sweden. And this is what a person in Sweden is saying: ‘There are no apartments left to rent, there’s no jobs. We do not dare go shopping anymore without a gun but we are supposed to think everything is great in our country - women and girls are being raped by these non-European men – who come here claiming that they are unaccompanied children even though they are all grown men – 21, 22 – they are saying they are children. Sweden is now the rape capital of the world, and I should say there’s one other country – some place in Africa that actually has a higher rape rate, but it’s a country in the middle of Africa, this is Sweden. And girls now have a one in four chance of being raped in Sweden. It has just skyrocketed in the last couple of years. Instead of a torchlight procession against racism, we need a Prime Minister that speaks out against violence; we need a President that speaks out against violence and don’t try to make this about racism, because it’s not. In all honesty I don’t even feel that our government ministers see the problems. There’s no one in meetings who can tell them what real life actually looks like’. And then they go on to say that ‘the government is putting the immigrants ahead of the citizens’, well what’s happening here in the United States”.*

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John Rosenstern:

*“It is said in the last days, meaning the eschatological times of Islamic prophecy that there will be a removal of the Jizya tax<sup>3</sup>, when Isa and the Mahd<sup>4</sup> come back. And that will be a way for Muslims to force conversion of the whole world to finally convert to the ways of Islam. They believe this. They practise this. And it’s in their books. This is why the moderate Muslims have no success and by the way, if only 10% are radicalised why haven’t the 90% of the moderate Muslims been able to overtake these so called radicals themselves, or at least speak out against them? But the fact is you cannot reform Islam in the sense that Christianity was reformed because the Catholic Church and the Roman Catholic system moved so far away from the moorings of the word of God that the Reformation was simply bringing the church back to what Paul and the other apostles wrote about, whereas in Islam they are practising what the book teaches. The radicals are the true fundamentalist Muslims of today. It’s the others; they are not good practising Muslims. One more thought. The moderate Muslims are those that feel there is another way to reach the endgame, and it’s not necessarily through violence. But they don’t abrogate. They sympathise with those that do abide violence, but they’re not willing to be violent themselves”.*

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<sup>2</sup> Glenn Beck is an American conservative political commentator. He currently hosts an hour-long afternoon programme, *The Glenn Beck Program*, on TheBlaze which is an American television channel.

<sup>3</sup> Jizya is a tax levied under Islamic law by some Islamic states on certain non-Muslim subjects residing in Muslim lands.

<sup>4</sup> In Islamic belief, the Mahdi is the prophesied redeemer of Islam. According to Islamic tradition, the appearance of the Mahdi will coincide with the Second Coming of Jesus Christ (*Isa*).

Donnie Swaggart:

*“The beheadings that ISIS<sup>5</sup> carries out, the hangings, throwing people off roofs, the stoning, the enslaving, making people slaves – that is a part of original Islam. They are doing and carrying out what is really taught. That’s why once again I go back, I know most people won’t do it, but I am sure its online if you go and look at the March issue of Atlantic magazine the cover story on the real story of ISIS, and it was the most in-depth study of ISIS, and the end result, don’t be shocked, you shouldn’t be shocked. What ISIS is doing is what Islam really is. ISIS is now that they have a caliphate, this is the true face of Islam and anyone including other Muslims that will not submit, they will suffer the same fate. And you don’t understand, America – you’re dealing with animals – this ISIS group they’re animals – they have no heart, they are evil from head to toe, they delight in cutting people’s heads off, they delight in raping girls, they delight in taking girls and mutilating their genitalia – they delight in making slaves out of people, they delight in taking homosexuals to the top of a high building and just throwing them off like a sack of grain, and watching them splatter and leave their bodies, leave their broken bodies that splatter like a grapefruit on the ground for everyone to see, that’s Islam”.*

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Donnie Swaggart:

*“We are dealing with demon powers in the form of Muslim radicals who are using the guise of Syrian refugees to flood our nation for one reason to kill you [emphasis added to indicate he shouted at this point]...do you understand that? You are the great Satan, we are the great Satan, it is their committed plan to overthrow this nation and to fly the crescent moon flag of Islam over the White House...Do you realise, that in Europe right now Barbara [addressing a viewer who had contacted the programme to suggest the United States should take in migrants from the Middle East], these Syrian refugees in their migrant camps they are setting up, that they are taking girls as young as 12 and forcing them into prostitution, to make money, that’s the people that you are calling the hungry, that’s the people you are calling the stranger and you are saying that we should take them in? They are taking wives. Listen to this, they are going into these camps, they are going in to where families are, walking in, and physically apprehending the woman, the wife, the mother, and forcing her into prostitution. They are, the sexual abuse that’s happening in these camps is beyond the pale, the media won’t cover it completely because it paints a bad picture. You’ve already brought out Sweden. One in four women in Sweden are being raped, not by Swedes, not by Germans, not by Polish people, by Muslims”.*

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<sup>5</sup> “ISIS” is also known as “ISIL”. The UK Government’s list of proscribed terrorist organisations dated 30 October 2015 states the following in relation to ISIL: “Islamic State of Iraq and the Levant (ISIL) also known as Dawlat al-Iraq al-Islamiyya, Islamic State of Iraq (ISI), Islamic State of Iraq and Syria (ISIS) and Dawlat al Islamiya fi Iraq wa al Sham (DAISh) and the Islamic State in Iraq and Sham – *Proscribed June 2014*. ISIL is a brutal Sunni Islamist terrorist group active in Iraq and Syria. The group adheres to a global jihadist ideology, following an extreme interpretation of Islam, which is anti-Western and promotes sectarian violence. ISIL aims to establish an Islamic State governed by Sharia law in the region and impose their rule on people using violence and extortion”. See [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/472956/Proscription-update-20151030.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/472956/Proscription-update-20151030.pdf)

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John Rosenstern:

*“Jesus Christ is God and that’s the part that angers that’s the part that Islam hates. In fact Islam hates every Christian because we commit the sin of shirk<sup>6</sup>. We associate other Gods with Allah they claim and therefore that’s punishable by death. So Muslims – when you understand the Qur’an, Miss Frances, and again I could time and time again prove scripture over scripture their scholars I’ve been reading the four schools of the Sunni jurisprudence, all very similar, just a slight difference in how you arrive at the same goal – hate God, they hate the Lord Jesus Christ. Therefore they hate Christians and they hate Jews, who are people of the book that have not submitted to Islam”.*

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Donnie Swaggart:

*“Look. Not every Muslim is a terrorist not every imam in America is speaking and endorsing terrorism. Not every mosque is fermenting rebellion. There are some that are not. And I’ll be the first one to say it. But here’s the problem. If you are a true follower of the Qur’an you are in sympathy with those who do [practise terrorism] because that’s what the Qur’an teaches. There are Muslims in this country and around the world that would never pick up a gun and shoot somebody. They wouldn’t. They would never strap on a bomb and blow somebody up. They would never allow one of their children to become a suicide bomber. But they don’t shed any tears over the ones that do and kill innocent people...But that’s a part of the plan of Islam – to create this idea that there is this large segment that’s peaceful, but the reality is that if they are ever in a position – those that are peaceful where Islam has the upper hand – they become terrorists”.*

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John Rosenstern:

*“There’s no such thing as moderate Islam – that’s a western American media creation, it is, and deception is part of war. War is deceit, Mohammed would say in the Qur’an”.*

In Ofcom’s view, this programme was a current affairs programme from a Christian evangelical perspective.

Ofcom considered that the content raised potential issues warranting investigation under the following rules:

Rule 2.2 “Factual programmes or items or portrayals of factual matters must not materially mislead the audience.”

Rule: 2.3 “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context... Such material may include, but is not limited to...discriminatory

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<sup>6</sup> In Islam, *shirk* is the sin of practicing idolatry or polytheism, i.e. the deification or worship of anyone or anything other than the singular God i.e. Allah.

treatment or language (for example on the grounds of...race, religion...”.

Ofcom therefore asked the Licensee how the programme complied with these rules.

## **Response**

Although the Licensee made various comments about the programme, it said it accepted Ofcom’s findings in this matter.

### General comments

The Licensee said in its initial comments that the aim of *Frances & Friends* was to provide a different perspective on current affairs from that which is available on other television networks, and specifically from a Christian perspective. It explored the implications of current events for the Christian community and for the individual, and examined events in the context of Biblical doctrine and teaching. The Licensee advised that its primary target audience was the members and supporters of Jimmy Swaggart Ministries, but acknowledged that the audience for the programme “comprised of people residing all over the world” and that, as a Christian broadcast network, it was “committed to bring the Gospel of Jesus Christ to the entirety of the world”.

It added that *Frances & Friends* is a live two hour programme. During the first hour the panel discusses the topic(s) of the day. In the second hour, viewers are invited to call in to the programme to express their opinions. The Licensee said all viewpoints were welcome on *Frances and Friends*. All callers wishing to express an opinion or ask a question concerning the topic of a discussion are put through to the programme, regardless of whether their position is the same as that of the panel.

The Licensee stated that the primary theme of the programme broadcast on the 18 December 2015 was the importance of the upcoming presidential election in the United States, and the panel discussed “several of the more controversial policies” implemented by the Obama administration “and their adverse effects on multiple aspects of American society and America as a whole.” These topics included “America’s declining economic situation”, unemployment and underemployment, banking and financial policies, healthcare, “the struggling middle class and the ever increasing burden on American taxpayers to cover the costs of the current Administration’s liberal policies.” The Licensee explained that the panellists admonished Christians to study the Bible and seek a greater understanding of the Scripture, and then to apply this understanding to how they live their lives – including how they participate in the political process.

The Licensee said that the common thread of immigration and its impact on all segments of American life was interwoven in these discussions. It said that: President Barack Obama “has worked to open the borders of the United States as wide as possible”; this “open door” approach to immigration has greatly increased not only the number of immigrants in the United States, but also the costs of resettling and supporting those immigrants which are borne by the American taxpayer”; the influx of refugees and migrants from Syria and other Middle Eastern countries into Europe has “reached crisis proportions”; President Obama had asserted that the United States should open its borders as “European nations such as Sweden and Germany have done”; and, as a result there has been “much public debate in the United States regarding this issue”, which it described as a “very volatile topic, and ripe for discussion in light of the coming [US Presidential] election”.

The Licensee stated that the panel used the current state of the world as a lens through which the American people, and more specifically American Christians, should view the potential future of the United States if it failed to respond to the refugee crisis “in the right way”. The Licensee said that many European nations were now struggling under the “tremendous financial burden” of admitting tens of thousands of refugees, and that the “indigenous populations” are suffering “significant repercussions” including “[d]ramatic increases in criminal activity, especially sex-related crimes” resulting in concerns being expressed by law enforcement agencies and public safety concerns “rising at an alarming rate”.

The Licensee added that of “even greater concern is the exploitation of the refugee crisis by those who wish to do harm”. In particular it said that analysts and officials have cautioned that members of ISIL and Al Qaeda are hiding among refugees and migrants and moving across borders that would otherwise be closed to them. The Licensee said the panellists sought to educate American Christians concerning the strain of “minimally regulated immigration on a nation’s financial and legal resources, as well as the impact of such on its citizenry”. It said that the panellists sought to instruct the Christian “concerning his responsibility to the nation and his fellow citizens to be a knowledgeable member of society and an active participant in government” and to “conduct himself according to Biblical doctrine, thereby helping the United States avoid the problems faced by other nations”. The Licensee said that, in its view, there was a strong possibility that the United States could face similar issues if it does not make sound decisions concerning its immigration policy.

The Licensee said that the incidents cited by the panel had been widely reported in the American and international press and that much of the discussion has focused on the causes of the problems now being faced by those nations which have admitted vast numbers of refugees over the past few years. Examples and statements made by the panel were “not intended to be harmful or offensive, but rather illustrative and informative”. The Licensee said that it understands that religion is a deeply personal subject for believers, regardless of their religion, and so it “will always strive to treat the adherents of these various religions with fairness and equality”.

The Licensee explained that, in its view, in order to accurately discuss the refugee crisis situation currently affecting Europe it was necessary also to discuss Islam as the overwhelming majority of refugees and migrants currently flowing into European nations were from countries where Islam is the dominant, and in some cases, only religion. In those countries, the Licensee said, “the religion of Islam is incorporated into every aspect of life” and it “governs their political and economic systems, it shapes their cultural identity and societal structures, and oftentimes it is their legal system”. Consequently, “as refugees from these countries spread throughout Europe, they bring with them their religious, cultural and political beliefs” which, in its view, “differ sharply” from those of the host nation. According to the Licensee, among the most controversial and concerning of problems arising as a result of this is in the areas of women’s rights and freedom of religion.

The Licensee advised that John Rosenstern had read extensively from the Qur’an, the Hadith<sup>7</sup> and Tafsir<sup>8</sup> for over 30 years and personally met and engaged Islamic scholars in the West to gain a comprehension of Islamic thinking.

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<sup>7</sup> A Hadith is a report describing the words, actions or habits of the Prophet Muhammad and is considered important for understanding the Qur’an.

<sup>8</sup> The Tafsir is a commentary on the Qur’an.

To “confirm the accuracy of the information cited by the panel”, the Licensee provided reference citations for each statement which Ofcom asked the Licensee to comment on. These “reference citations” were to particular articles on websites, blogs, books or verses from the Qur’an.

#### Action taken by the Licensee

The Licensee acknowledged that the programme was “controversial”. It stated however that it could not “abrogate its duty to address concerns facing Christians around the world”. The Licensee recognised its duty “to treat others fairly and abide by the Ofcom Code”. The Licensee therefore referred to various steps in its initial comments that it had taken “in an effort to continue to maintain its compliance with Ofcom regulations”. It said it had:

- redistributed a 21-page compliance document to the producers of *Frances & Friends* emphasising in particular the requirements of Sections Two, Four, Five and Seven of the Code;
- reviewed with Frances Swaggart “guidelines on how to mitigate the impact of some of her guests’ comments”, by for example “asking her guests to put some of the more controversial comments into proper context by providing factual information to support their statements” and “encouraging viewers who disagree with the ideas or opinions expressed to call in and participate in the discussion”;
- held quarterly training sessions on Ofcom regulations for all SonLife Broadcasting Network (“SBN”) producers, hosts and contributors;
- placed a “temporary moratorium on all discussion of the topic of Islam in order to allow SBN executives an opportunity to determine how such future discussions may be improved with regards to Ofcom compliance”;

In response to Ofcom’s Preliminary View in this case, the Licensee informed Ofcom of further steps it had taken to ensure compliance with the Code:

- it had conducted training between 12-14 April 2016 in which all hosts, contributors, panellists, producers, editors, and other support personnel participated which focused specifically on events that were the subject of complaint; and
- decided that from 25 April 2016, *Frances & Friends* would no longer be broadcast live in order to ensure compliance with the Code. Instead it would be recorded, reviewed and broadcast a day later.

#### **Decision**

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that generally accepted standards are applied so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material in the manner which best guarantees “an appropriate level of freedom of expression”. This duty is reflected in Section Two of the Code.

In reaching a Decision in this case, Ofcom acknowledged the importance attached to freedom of expression in broadcasting, as contained in Article 10 of the European



Convention on Human Rights (“ECHR”). This provides for the broadcaster’s and audience’s right to freedom of expression, which encompasses the right to hold opinions and to receive and impart information and ideas without due interference by public authority.

Article 10 of the ECHR also provides that the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society.

Ofcom has also taken account of Article 9 of the ECHR which states that everyone “has the right to freedom of thought, conscience, and religion”. This Article goes on to make clear that this right is “subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order...or for the protection of the rights and freedoms of others”.

### Rule 2.2

Rule 2.2 requires that:

“Factual programmes or items or portrayals of factual matters must not materially mislead the audience”.

Ofcom’s published guidance to Section Two of the Code<sup>9</sup> (the “Guidance”) states that Ofcom is “required to guard against harmful or offensive material, and it is possible that actual or potential harm and/or offence may be the result of misleading material in relation to the representation of factual issues”. The Guidance says Rule 2.2 is therefore “designed to deal with content that **materially misleads the audience so as to cause harm or offence**” [emphasis in original] and not with “issues of inaccuracy in non-news programmes”. The Guidance also states that “[w]hether a programme or item is *materially* misleading depends on a number of factors such as the context, the editorial approach taken in the programme, the nature of the misleading material and, above all, either what the potential effect could be or what actual harm or offence has occurred [emphasis in original]”.

Rule 2.2 is therefore concerned with the misrepresentation of facts in a programme and whether facts have been misrepresented in a way which materially misleads the audience of that programme. Broadcasters should therefore take care to ensure that facts are not presented in programmes in a way which is materially misleading. This is particularly important in factual programmes which discuss current affairs because the level of audience trust and the audience expectation that such programmes will not be materially misleading is likely to be higher.

It is important to note that Section Two does not prevent a broadcaster from making programmes about controversial subject matters or topics which may elicit strong opinions and emotions. Indeed it is crucial that broadcasters have the editorial freedom to do so. However, in broadcasting such programmes licensees are required to ensure they comply with Section Two, including ensuring that facts are not misrepresented in a way which materially misleads the audience under Rule 2.2.

Ofcom took into account the context in which the programme was broadcast. In particular we noted that there was continuing controversy and public debate in Europe and elsewhere about the significant numbers of refugees and migrants from

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<sup>9</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section2.pdf>

Syria, Iraq and other countries to Europe during 2015, and about how Europe would and should react to this movement of people. We noted that the Licensee referred to the significant influx of refugees and migrants from Syria and other Middle Eastern and North African countries into Europe and the fact that it has reached crisis proportions. It said that President Obama had asserted that the United States should open its borders to refugees and migrants as countries like Sweden and Germany had done, and that the President had in fact allowed some resettlement to take place. There was “much debate in the United States regarding this issue” and it was therefore “ripe for discussion” in light of the coming Presidential election. The Licensee stated that the panel approached this issue by using the current state of the world as a lens “through which the American people, and more specifically the American Christian, should view the potential future of the United States if it fails to respond to the refugee crisis in the right way”. The Licensee stated that some European countries were “suffering significant repercussions as a result of their governments’ ultra-liberal immigration policies” and that “the panel sought to correlate the current state of these European host nations with the future condition of the United States if these policies are not changed”. Against this background, and in line with the right to freedom of expression, we considered it legitimate for the Licensee to make and broadcast a programme examining these issues. Nevertheless, in making and broadcasting such a programme, the Licensee needed to comply with Rule 2.2 of the Code by ensuring that facts were not presented in the programme in a way which was materially misleading.

Ofcom also assessed the nature of the programme and audience expectations. The aim of *Frances & Friends* is to provide a different, evangelical Christian perspective on current affairs and events. The Licensee stated that the primary target audience was members and supporters of Jimmy Swaggart Ministries but that the audience might include any other viewers “residing all over the world”. Ofcom noted the channel’s wider aims. According to the Licensee it was “committed to bring the Gospel of Jesus Christ to the entirety of the world”. We considered that the audience for this channel and programme would have been familiar with the content and approach of this broadcast and would have expected it to discuss important issues facing Christians in the present day from an evangelical American Christian perspective, and to take what might appear to European sensibilities in some respects a controversial approach. However, we also noted that the programme was broadcast as part of a service licensed by Ofcom and receivable throughout Europe.

The question for Ofcom in relation to Rule 2.2 was a narrow one: was an established fact materially misrepresented in the programme?

It appeared to Ofcom that a fact was misrepresented in the programme. This was an assertion contained in a statement made by Donnie Swaggart about an hour into the programme in which he suggested that the seemingly high volume of rapes carried out in Sweden was entirely attributable to Muslim immigrants (i.e. a viewer would infer that Muslims were responsible for all reported rape cases in Sweden). Specifically, he said: “*You’ve already brought out Sweden. One in four women in Sweden are being raped, not by Swedes, not by Germans, not by Polish people, by Muslims*”. This immediately followed various other comments he made in response to a caller who suggested the United States should perhaps take in some of the Syrian refugees and migrants about the alleged criminal activities of “Syrian refugees in their migrant camps” in Europe.

We also noted the following exchange between Frances Swaggart and John Rosenstern early on in the programme in which Frances Swaggart and John Rosenstern suggested to viewers that a dramatic increase in rapes in Sweden was

attributable to “refugees”, “people who are brought” into Sweden, and migrant “non-European men” coming into Sweden:

Frances Swaggart:

*“[N]ow we are bringing in all of these refugees, that are coming in, and they’re creating havoc in the countries they are going in. I was just reading about Sweden this morning”.*

John Rosenstern:

*“Rape capital of the world they call it now”.*

Frances Swaggart:

*“Yeah, the rape capital of the world. One in every four girls and women get raped, now think about what we are saying – by the people who are brought into that country. There is no safe place... [W]hen you say we have got 5% unemployed that doesn’t count all the immigrants that they are bringing into the country and on a daily basis they are being flown in and paid for by the tax payer, they are being bussed across the border, and bussed into our cities and the tax payer’s paying for all that...”*

Ten minutes later Frances Swaggart returned to the subject of rape in Sweden:

*“Now I want to read this, because this was on Glenn Beck’s programme yesterday or the day before concerning Sweden. And this is what a person in Sweden is saying: ‘There are no apartments left to rent, there’s no jobs. We do not dare go shopping anymore without a gun but we are supposed to think everything is great in our country – women and girls are being raped by these non-European men – who come here claiming that they are unaccompanied children even though they are all grown men – 21, 22 – they are saying they are children. Sweden is now the rape capital of the world, and I should say there’s one other country – some place in Africa that actually has a higher rape rate, but it’s a country in the middle of Africa, this is Sweden. And girls now have a one in four chance of being raped in Sweden. It has just skyrocketed in the last couple of years”.*

The Licensee referred Ofcom to several articles which it claimed provided evidence of the accuracy of Donnie Swaggart’s assertion that the entirety of all Swedish rape cases are carried out “not by Swedes, not by Germans, not by Polish people, by Muslims”. Ofcom reviewed the various articles and noted that there were three articles that appeared to be relevant to its consideration of Donnie Swaggart’s assertion<sup>10</sup>. Ofcom carefully assessed these three sources cited by the Licensee.

The first article (on a website called “The Conservative Papers”) was headed “Sweden Now Rape Capital of the World Due to Islamic Immigration.” The article made various allegations about how the number of rapes and sexual assaults had risen sharply in Sweden in recent years and how this was “[t]hanks to the staggering rise of Muslim immigrants”. The article asserted that Sweden “now sees **one out of**

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<sup>10</sup>These three articles were as follows:

<http://conservativepapers.com/news/2013/06/19/sweden-now-rape-capital-of-the-world-due-to-islamic-immigration>; <http://dailycaller.com/2015/10/23/sweden-opened-its-doors-to-muslim-immigration-today-its-the-rape-capital-of-the-west-japan-didnt/>; <http://www.gatestoneinstitute.org/5195/sweden-rape>

**every four Swedish women** being the victim of rape” [emphasis in original]. The article questioned whether this was the result of the rapid influx of Muslim immigrants and referred to a source called the “Counter Jihad Report” which stated that Muslims “were represented in as many as 77 per cent of the rape cases” (seemingly in Sweden, although this was not clear, and this statistic was not sourced). Crucially the article did not provide any clear data or other evidence to suggest that it was accurate to claim that these rapes were all being carried out “*not by Swedes, not by Germans, not by Polish people, by Muslims*”.

The second article was on the website of the Gatestone Institute<sup>11</sup>. It was entitled “Sweden – rape capital of the West” and was by Ingrid Carlqvist and Lars Hedegard. This article stated that there had been an increase of 1,472% in the number of rapes reported to the police in Sweden between 1975 and 2014 (from 421 to 6,620 per annum). It also referred to figures published by The Swedish Council for Crime Prevention (an agency under the Swedish Ministry of Justice) which it said reported that, in 2011, 29,000 Swedish women reported they had been raped. Interestingly, it noted that the “report does not touch on the background of the rapists”. The article also mentioned a study conducted by the Swedish National Council for Crime Prevention in 1996 which, the article claimed, indicated that immigrants to Sweden from North Africa were 23 times as likely to commit rape than Swedish men. It also referred to evidence given in court by a local politician in the context of his defence against a criminal charge of “denigration of ethnic groups” (for which he was subsequently convicted). In his court case, the local politician had sought to show there was a link between the incidence of rape in Sweden and foreign men. However, this source did not contain any clear data or other evidence to support Donnie Swaggart’s assertion about Muslims being responsible for all Swedish rape cases.

The third article (on the website, “The Daily Caller”) was an opinion piece by James Zumwalt entitled “Sweden Opened Its Doors to Muslim Immigration, Today It’s the Rape Capital of The West. Japan Didn’t”. This article referred to “a drastic increase in rapes in Sweden – more than a thousand fold” and compared Sweden’s approach to immigration and the “Muslim immigration problems arising there” to Japan’s approach to immigration and the “non-existence of such problems there”. It also referred to the same study cited in the previous article conducted by the Swedish National Council for Crime Prevention in 1996. As with the other two articles Ofcom considered that, whilst suggesting there may be a correlation between immigration and the rise in Swedish rape statistics, this opinion piece did not include any clear data or other evidence to support the assertion that all rapes in Sweden are carried out by Muslims.

Ofcom accepted that there was some evidence to indicate that there appears to be an abnormally high (and seemingly increasing) number of reported cases of rape in Sweden and that there has been widespread debate about this issue<sup>12</sup>. However, we

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<sup>11</sup> This Institute, based in the United States, describes itself as “a non-partisan, not-for-profit international policy council and think tank...dedicated to educating the public about what the mainstream media fails to report”. See <http://www.gatestoneinstitute.org/about/>

<sup>12</sup> See for example the following items from: the BBC news website; the UN Office on Drugs and Crime; and the Swedish National Council for Crime Prevention – <http://www.bbc.co.uk/news/magazine-19592372;> [https://www.unodc.org/documents/data-and-analysis/Crime-statistics/Sexual\\_violence\\_sv\\_against\\_children\\_and\\_rape.xls;](https://www.unodc.org/documents/data-and-analysis/Crime-statistics/Sexual_violence_sv_against_children_and_rape.xls) [http://www.bra.se/bra/bra-in-english/home/crime-and-statistics/rape-and-sex-offences.html.](http://www.bra.se/bra/bra-in-english/home/crime-and-statistics/rape-and-sex-offences.html)

were unable to find any official or reliable statistics, or other source for the assertion that all Swedish rapes were being carried out “*not by Swedes, not by Germans, not by Polish people, by Muslims*”. Given the categorical nature of the assertion and the Licensee’s inability to point to any firm evidence underpinning it, we considered that Donnie Swaggart’s statement was inaccurate and therefore misleading. By inferring that Muslims are responsible for all rape cases in Sweden the programme clearly misrepresented the factual position according to the evidence cited by the Licensee and the available statistics concerning rape crimes in Sweden.

Ofcom went on to assess whether the misrepresentation was “materially” misleading. In doing so, we considered the context, editorial approach, the nature of the misrepresentation, and importantly whether the programme caused, or had the potential to cause, harm or offence to viewers of the programme.

We were concerned by the context in which the assertion was made – in the wake of a mass migration of mainly Muslim refugees and migrants into Europe throughout 2015, following conflict and civil war in Syria, Iraq and other Middle Eastern countries, which has caused considerable controversy. This in turn increased the potential of a misleading statement like Donnie Swaggart’s about Muslim men in Sweden to cause harm or offence.

We took into account that Donnie Swaggart was speaking in the context of a discussion about topical events from an evangelical Christian perspective. This discussion focused on how the American Christian community should respond to suggestions that the United States should accept a number of refugees and migrants, and what this might mean for the potential future of the United States if it failed to respond to the refugee crisis appropriately. This was against the background of President Obama’s position on the admission and resettlement of refugees and migrants into the United States and the public debate that had ensued, amid public safety concerns and fears that organisations such as ISIL were using the cover of the refugee crisis to infiltrate countries and commit terrorist acts. We noted that the Licensee said that the panel’s use of examples was intended to be illustrative and informative. The examples were also, the Licensee said, to assess if current problems in some European host nations provided insights for Americans, and in particular, American Christians who have a responsibility to help the United States avoid the problems faced by other nations.

Ofcom acknowledged that the audience may have had a different expectation of this programme compared to other current affairs programmes, given the nature of the *Frances & Friends* series. This would have made it more likely in our opinion that the audience would have expected some level of hyperbole, and the expression of opinions which might appear exaggerated and controversial from a European perspective. Nonetheless, the programme dealt with highly sensitive issues arising from the refugee and migration crisis in Europe which the Licensee itself described it as “a very volatile topic”. We considered therefore that viewers would have still placed a relatively high level of trust in the programme and would have expected to be able to rely on factual statements made, given the nature of the programme and its subject matter.

We also noted that Donnie Swaggart was speaking in the context of discussion of what was perceived to be the threat posed by Muslim refugees and migrants to

Europe, in which Muslim refugees and migrants (and Islam) were presented overall in a negative light<sup>13</sup>.

In this context, we took into account the exchange between Frances Swaggart and John Rosenstern early on in the programme about Sweden being the rape capital of the world, and Swedish women and girls being raped by non-European men. We also noted the following comments made by Donnie Swaggart immediately before his statement about the Swedish rape statistic:

*“Do you realise, that in Europe right now...these Syrian refugees in their migrant camps they are setting up, that they are taking girls as young as 12 and forcing them into prostitution, to make money, that’s the people that you are calling the hungry, that’s the people you are calling the stranger and you are saying that we should take them in? They are taking wives. Listen to this, they are going into these camps, they are going in to where families are, walking in, and physically apprehending the woman, the wife, the mother, and forcing her into prostitution. They are, the sexual abuse that’s happening in these camps is beyond the pale, the media won’t cover it completely because it paints a bad picture”.*

We considered that the cumulative effect of these earlier remarks was to contribute materially to the negative portrayal of refugees and migrants to Europe and to increase the likelihood that viewers would accept as a matter of fact the assertion about Muslims in Donnie Swaggart’s statement later in the programme that *“one in four women in Sweden are being raped, not by Swedes, not by Germans, not by Polish people, by Muslims”*.

Having considered the context, editorial approach and the nature of the misrepresentation we then analysed whether the programme caused, or had the potential to cause, harm and offence to viewers. The programme was broadcast to viewers in the UK as part of a service licensed by Ofcom for broadcast in the UK and in Europe. The programme was broadcast in the UK at 15:00 when we considered it likely that the audience would have been relatively small.

We considered that the assertion *“not by Swedes, not by Germans, not by Polish people, by Muslims”* in the statement *“One in four women in Sweden are being raped, not by Swedes, not by Germans, not by Polish people, by Muslims”* was categorical and made in uncompromising terms. Both on its face, and in the context of the programme as a whole, Ofcom considered that this amounted to a clear assertion that all rapes in Sweden are being carried out by Muslims. This had the potential to cause considerable offence.

Ofcom considers it important that programmes discussing current affairs and events can be relied on by viewers. Audience trust in such programmes is likely to be higher than in other types of programming. The inclusion of a factual assertion which is inaccurate and misleading in a programme of this nature discussing highly controversial current events is likely to undermine the trust of viewers in such programmes and therefore to cause harm. Although Ofcom considered that the level of audience trust likely to be placed in a current affairs programme like *Frances & Friends* might be different to that placed in others, nonetheless this statement had the potential to cause harm to viewers by eroding their trust in current affairs programmes in general, and the potential to cause harm to members of the public

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<sup>13</sup> See the examples below in the section of this Decision assessing the content against Rule 2.3.

because this unsubstantiated comment could contribute to a negative understanding and stereotyping of Muslims and of Muslim men in particular.

Taking all this into account and for the reasons set out above, we considered that the assertion “*not by Swedes, not by Germans, not by Polish people, by Muslims*” contained in the statement “*One in four women in Sweden are being raped, not by Swedes, not by Germans, not by Polish people, by Muslims*” was materially misleading and had the potential to cause harm and offence to viewers of the programme.

It was therefore Ofcom’s Decision that the programme breached Rule 2.2.

### Rule 2.3

Rule 2.3 requires that:

“In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context... Such material may include, but is not limited to...discriminatory treatment or language (for example on the grounds of...race, religion...”.

Rule 2.3 requires broadcasters to ensure that the broadcast of potentially offensive material is justified by its context.

### *Offence*

Ofcom considered first whether certain statements in the programme had the potential to cause offence. Members of the panel discussed the religion of Islam and Muslims on a number of occasions in the context of current affairs (see comments set out in the Introduction). These remarks had certain common themes in Ofcom’s view: that the attitudes and actions of ISIL and its followers were typical of Islam; Islam and all practitioners of the Islamic faith were associated with or sympathetic to terrorism, and by implication, acts of violence; Islam and Muslims hate Christians and Jews; “*moderate*” Muslims sympathise with radical Muslims; “*moderate Islam*” was a “*western American media creation*”; and, true followers of Islam sympathise with terrorists. We considered these comments were inflammatory and capable of causing offence.

For example John Rosenstern stated:

*“It is said in the last days, meaning the eschatological times of Islamic prophecy that there will be a removal of the Jizya tax, when Isa and the Madhi come back. And that will be a way for Muslims to force conversion of the whole world to finally convert to the ways of Islam. They believe this. They practise this. And it’s in their books. This is why the moderate Muslims have no success and by the way, if only 10% are radicalised why haven’t the 90% of the moderate Muslims been able to overtake these so called radicals themselves, or at least speak out against them?...[I]n Islam they are practising what the book teaches. The radicals are the true fundamentalist Muslims of today. It’s the others; they are not good practising Muslims. One more thought. The moderate Muslims are those that they feel there is another way to reach the endgame, and it’s not necessarily through violence. But they don’t abrogate. They sympathise with those that do abide violence, but they’re not willing to be violent themselves”.*

He said later:

*“Islam hates every Christian because we commit the sin of shirk...We associate other Gods with Allah they claim and therefore that’s punishable by death. So Muslims – when you understand the Qur’an...I’ve been reading the four schools of the Sunni jurisprudence, all very similar, just a slight difference in how you arrive at the same goal – hate God, they hate the Lord Jesus Christ. Therefore they hate Christians and they hate Jews, who are people of the book that have not submitted to Islam”.*

We considered this claim was potentially offensive because it presented as fact that all Muslims hated Christians and Jewish people.

Donnie Swaggart commented:

*“The beheadings that ISIS carries out, the hangings, throwing people off roofs, the stoning, the enslaving, making people slaves – that is a part of original Islam. They are doing and carrying out what is really taught...you shouldn’t be shocked. What ISIS is doing is what Islam really is...this is the true face of Islam...And you don’t understand, America – you’re dealing with animals – this ISIS group they’re animals...they delight in making slaves out of people, they delight in taking homosexuals to the top of a high building and just throwing them off like a sack of grain, and watching them splatter and leave their bodies, leave their broken bodies that splatter like a grapefruit on the ground for everyone to see, that’s Islam”.*

We considered these remarks implied that the actions of ISIL were representative of the Islamic faith as a whole, and as such, were inflammatory and likely to cause offence.

John Rosenstern followed these comments later in the programme with a similar sentiment about Islam:

*“There’s no such thing as moderate Islam – that’s a western American media creation...”.*

### *Context*

We examined whether the broadcast of these potentially offensive statements was justified by the context. Context is assessed by reference to a range of factors including: the editorial content of the programme; the service on which the material was broadcast; the degree of harm or offence likely to be caused; the effect of the material on viewers who might come across it unawares; warnings; and, likely audience expectations.

The programme aimed to stimulate discussion about issues facing American Christians as evidenced by events taking place all over the world, including the impact of mass migration (especially of Muslims) on Europe and potentially on the United States. A group of panellists discussed current events from an American Christian evangelical perspective. As noted above, two panellists Donnie Swaggart and John Rosenstern made comments that were potentially offensive about Islam and Muslims. They stated for example that: the attitudes and actions of ISIL and its followers were typical of Islam; Islam and all practitioners of Islamic faith were associated with or sympathetic to terrorism, and by implication, acts of violence. In assessing the potential level of offence caused, we took into account that these remarks were made in the wake of the mass migration of mainly Muslim refugees



and migrants into Europe throughout 2015, following conflict and civil war in Syria, Iraq and other Middle Eastern countries. This migration had caused significant controversy, which in turn increased the potential for considerable offence that these comments could cause.

We had regard to the fact that the comments were made during a discussion of current affairs on an American evangelical Christian service. Ofcom acknowledged that the audience expectations of this channel and this programme might therefore differ to some extent from other services. In our view the channel's core audience may have expected the expression of some views and opinions which would be more likely to appear controversial or even mildly offensive from a European perspective. However, the channel has a wider reach in that it is licensed by Ofcom to be broadcast in the UK and in Europe. In Ofcom's opinion, the nature of the comments and the way they were phrased were so critical and abusive of Islam and Muslims in general that they would have exceeded the expectations of the UK (and wider European) audience for this programme on this channel, and particularly for viewers who might have come across this content unawares.

We noted that Donnie Swaggart did at one point in the programme remark:

*“Look. Not every Muslim is a terrorist not every imam in America is speaking and endorsing terrorism. Not every mosque is fermenting rebellion. There are some that are not. And I'll be the first one to say it”.*

This implied that he appeared to acknowledge that there were some “moderate” Muslims. However we considered he immediately undercut this more positive remark about the Muslim community with the following critical statements:

*“But here's the problem. If you are a true follower of the Qur'an you are in sympathy with those who do [practise terrorism] because that's what the Qur'an teaches... There are Muslims in this country and around the world that would never pick up a gun and shoot somebody. They wouldn't, they would never strap a bomb and blow somebody up. They would never allow one of their children to become a suicide bomber. But they don't shed any tears over the ones that do and kill innocent people and that's a part of... the plan of Islam – to create this idea that there is this large segment that's peaceful. But the reality is that if they are ever in a position, those that are peaceful, where Islam has the upper hand, they become terrorists”.*

Ofcom found no other statements made by the presenter or panellists which could be seen as seeking to place in context the exclusively negative and potentially offensive views of Islam and Muslims voiced by the panellists. The programme lacked a variety of views on Islam and Muslims which challenged, balanced, or otherwise mitigated the considerable level of offence potentially generated by those comments.

There was no warning or information about the potentially offensive content provided before, during or after the programme.

In terms of context Ofcom also took into account the Licensee's submissions about John Rosenstern's knowledge of Islamic holy texts, and references to the Qur'an and other written material, as providing a basis for his opinions. The Licensee advised that John Rosenstern had read extensively in the Qur'an and other Islamic texts for over 30 years. The Licensee also referred to: two verses in the Qur'an (that it said provided context for John Rosenstern's statement that all Muslims hated Jewish people and Christians); a text entitled “What Every American Needs to Know about

the Qur'an – A history of Islam & the United States" (which it said supported John Rosenstern's claims regarding radical Islam); and, to an online article on Islamic eschatology and a link to a Wikipedia entry on Islamic fundamentalism.

John Rosenstern alluded to his knowledge of Islamic texts when for example he referred on air to the fact that he had read the four schools of Sunni jurisprudence. We considered that his comments overall would have indicated to the audience that he had some familiarity with Islamic religious literature, and that this provided some basis for his opinions. Also, however, because John Rosenstern might be considered to be more authoritative on the subject of Islam than his fellow panel members, his comments were, in our view, likely to have a greater impact on the audience.

We also took into account that parts of the Qur'an, like many religious texts, are capable of various interpretations. Ofcom recognised that while some of these interpretations may provide material and arguments to support the point of view of those like John Rosenstern, other interpretations were capable of supporting a more moderate view. John Rosenstern was free to express his views and interpretation of these matters, but this did not override the requirements of Rule 2.3 for any potentially offensive remarks in the programme to be justified by the context. Therefore, while we noted John Rosenstern's knowledge of Islamic holy texts and the references to the Qur'an and other written material provided by the Licensee, for all the reasons set out above, we did not consider that the various statements made by the panellists in the programme about Muslims and Islam were appropriately justified in accordance with Rule 2.3.

Ofcom had careful regard to the Licensee's and audience's right to freedom of expression and religion in this case, and its wish to broadcast programmes "as an advocate of Biblical Christianity". We also noted that in its initial comments the Licensee acknowledged that the programme was "controversial", and in response to this case had taken various steps "to continue to maintain its compliance with Ofcom regulations". These included in particular: reviewing with Frances Swaggart how to ensure her guests "put some of the more controversial comments into proper context"; encouraging viewers who disagreed with the ideas or opinions expressed on the show to call in and participate in the discussion; and, placing a "temporary moratorium on all discussion of the topic of Islam...to allow SBN executives an opportunity to determine how such future discussions may be improved with regards to Ofcom compliance". In later comments to Ofcom, the Licensee said it accepted Ofcom's findings in this matter and said that, in addition to the steps it had outlined previously to Ofcom, it had conducted targeted training for all hosts, contributors, panellists, producers, editors and other support personnel and also advised that in future it would be broadcasting the *Frances & Friends* programme with a 24 hour time delay.

Ofcom underlines that it is essential that broadcasters have the right to make programmes containing comments critical of other religions and their followers. If those comments however are capable of causing offence they must be justified by the context. We recognise that broadcasters face particular challenges when complying live programmes, such as *Frances & Friends*. Nonetheless, as Ofcom has pointed out on a number of occasions, broadcasters can use a variety of editorial techniques to ensure any offence caused by comments during a live discussion of a sensitive subject is justified by the context.

In this case the remarks however were not justified by the context. As a result our Decision is that this programme was in breach of Rule 2.3.

**Ofcom directs the Licensee to broadcast a summary of this Decision in a manner and form and at a time to be determined by Ofcom.**

**Breaches of Rules 2.2 and 2.3**

## In Breach

### Children's Hour

*Betar Bangla Radio, 21 February 2016, 14:00*

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#### Introduction

Betar Bangla Radio is a community radio station broadcasting to the Bengali community in East London. The licence for Betar Bangla Radio is held by Betar Bangla Limited ("Betar Bangla" or "the Licensee").

A complainant alerted Ofcom to a music track being played in this programme which included offensive language. The complainant also concerned that this programme was apparently being presented by two children.

This 50 minute programme was presented by a child presenter who was accompanied on air by a child guest<sup>1</sup>. During the programme they recounted a range of jokes and riddles to each other and also played various music tracks. During the programme at approximately 14:23 a listener called in to request an urban music track, *My Mind is Gone* by Meek Mill, which the presenter then played. During the song there were:

- 14 instances of "fuck" or "fucking";
- 10 instances of "shit";
- 28 instances of "nigger"; and
- 1 instance of "bitch".

Ofcom considered this broadcast material raised issues warranting investigation under the following rules of the Code:

Rule 1.14: "The most offensive language must not be broadcast ...when children are particularly likely to be listening..."

Rule 1.16: "Offensive language must not be broadcast...when children are particularly likely to be listening...unless it is justified by the context..."

We therefore asked Betar Bangla how the material complied with these rules.

We also considered that the participation of the two children in this programme raised issues warranting investigation under Rule 1.28 of the Code:

"Due care must be taken over the physical and emotional welfare and the dignity of people under eighteen who take part or are otherwise involved in programmes. This is irrespective of any consent given by the participant or by a parent, guardian or other person over the age of eighteen in loco parentis".

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

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<sup>1</sup> The Licensee confirmed to Ofcom that both the presenter and guest were nine years old.

## Response

The Licensee expressed its “sincere apologies” for this “very unfortunate lapse on our part” and also accepted that the programme breached Rules 1.14 and 1.16 of the Code. However, it pointed to the fact that this was the first occasion it had breached the Code.

Explaining how the Meek Mill music track was broadcast, Betar Bangla stated its belief that “an older teenager either as a ‘joke’ (or maliciously) sought to get the unwitting younger children to play a song with which they (the presenters) were demonstrably unfamiliar, and which clearly contained inappropriate content – in our view inappropriate at any point in our schedule”.

The Licensee said that while the music track was being broadcast the adult who was “charged with the responsibility of monitoring editorial output” in this case was “by unfortunate coincidence...taking...a bathroom break as well as a prayer break” for a period of “8 to 10 minutes”. Betar Bangla added that the supervising adult “remained unaware of the incident until we informed him of the complaint brought to our attention by Ofcom”. It said that had the supervising adult been “in the control room at the time, he would have certainly intervened and stopped the song” and an apology would have been issued at the time. The Licensee said that since this incident the supervising adult had been “reprimanded and made aware of his ongoing responsibilities with regard the levels of vigilance we expect of those supervising under 18s on the station”.

Betar Bangla said that if children were to take part in its programming, its “general child protection practice” was to “require a minimum of two adults [to be present] – one representing the editorial interests of on air behaviour [in the studio] and one, generally a parent, for purposes of ensuring general child protection”. It added that the parent would be “within view of the studio (the station layout allows for studio to be monitored from reception area)”. However, the Licensee said that the “parents are not required to monitor output and some may...have insufficient English language skills to necessarily be in a position to adequately do so”. In this case, the Licensee said that although the supervising adult was absent from the studio while the music track in question was broadcast, there was a “parent on the premises”.

Betar Bangla accepted that on this occasion it had failed to ensure “on air monitoring by a duly delegated station adult” and it added that it had taken steps to ensure “such a failure cannot happen again”. These included: ceasing ‘phone-in’ programmes involving children; ensuring all music tracks are approved prior to broadcast by editorial staff; and, providing training to the child presenter and supervising adult in this case. In addition, the Licensee said that while children are presenting programmes there would always be an adult monitoring the “children’s on air presence”.

In conclusion, Betar Bangla said it does its “absolute best on very limited means to give an essential service to all of our community”.

The Licensee also provided additional comments in response to Ofcom Preliminary View to record breaches of the Code. It acknowledged its “error, on a technical level” but considered that “at no time could the incident and the circumstances surrounding it be represented as a physical threat to the welfare of the children in question”. Betar Bangla argued that “A parent being present and general studio security would we believe represent due care with regard physical welfare”. In addition, whilst accepting its “lapse in monitoring”, the Licensee stated its belief that the content in this case

“flew over the heads” of the two children featured in the programme...and therefore the potential for any detrimental outcome in terms of emotion or dignity was fortunately minimal on this occasion.

## Decision

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

### Rule 1.14

Rule 1.14 states that the most offensive language must not be broadcast on radio when children are particularly likely to be listening. Ofcom’s research on offensive language<sup>2</sup> clearly notes that the word “fuck” and variations of this word are considered by audiences to be amongst the most offensive language.

The Code states that the phrase “when children are particularly likely to be listening” refers to: “the school run and breakfast time, but might include other times”. Ofcom’s guidance on offensive language on radio<sup>3</sup> notes that:

“For the purpose of determining when children are particularly likely to be listening, Ofcom will take account of all relevant information available to it. However, based on Ofcom’s analysis of audience listening data, and previous Ofcom decisions, radio broadcasters should have particular regard to broadcast content at the following times:

- between 06:00 and 19:00 at weekends all year around...”.

In this case, 14 instances of “fuck” or “fucking” were broadcast at 14:00 on a Sunday afternoon. The most offensive language was therefore broadcast when, in Ofcom’s view, children were particularly likely to be listening. The material was therefore clearly in breach of Rule 1.14.

### Rule 1.16

Rule 1.16 states that offensive language must not be broadcast on radio when children are particularly likely to be listening unless it is justified by the context.

We noted that the song in this case included: 10 instances of “*shit*”, 28 instances of “*nigger*”, and one instance of “*bitch*”.

Ofcom’s research indicates that the word “nigger” may be acceptable in some limited contexts when children are particularly likely to be listening. The research also found that the words “shit” and “bitch” might be acceptable for broadcast at times when

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

<sup>3</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/offensive-language.pdf>

children are particularly likely to be listening but that care needed to be taken over their use at such times.

Ofcom considered whether the use of this offensive language in the programme was justified by the context. As noted above, Ofcom considered that it was likely that children would be in the audience for this programme when broadcast. We also noted that the Licensee did not offer any editorial justification for the broadcast of this offensive language at this time. Therefore, we considered that the broadcast of the offensive language described above was not justified by the context, and it breached Rule 1.16 of the Code.

### Rule 1.28

Rule 1.28 states:

“Due care must be taken over the physical and emotional welfare and the dignity of people under eighteen who take part or are otherwise involved in programmes. This is irrespective of any consent given by the participant or by a parent, guardian or other person over the age of eighteen in loco parentis”.

Under-eighteens can participate in television and radio programmes provided the broadcaster complies with Rule 1.28 of the Code. Ofcom has published detailed guidance on this rule (“the Code Guidance”)<sup>4</sup>, which was drafted with the assistance of child experts and child welfare groups. The purpose of the Code Guidance is to help broadcasters achieve the appropriate level of protection for under eighteens in programmes when complying with Rule 1.28.

The concept of “due care” is central to Rule 1.28. The Code Guidance makes clear that the level of care must be “appropriate to the particular circumstances”. Broadcasters are required to decide what measures are appropriate in the context of individual programmes, genres and formats and the level of child participation involved. Relevant factors include a participant’s age, and maturity and capacity to make judgments about participation and its likely consequences.

The Code does not prohibit the broadcast of programmes with child presenters or guests. However, in such circumstances a broadcaster must ensure that due care is taken over the physical and emotional welfare and the dignity of the children involved. Although Betar Bangla made reference to its “very limited means” in producing its broadcast output, it was still obliged to take due care of the two children featured in this programme.

In this case, a radio programme called *Children’s Hour* was broadcast, which featured a presenter and guest who were both nine years old. We noted that for the vast majority of the programme the two children recounted a range of jokes and riddles to each other and also played various music tracks. In our view, this content would have been suitable for any child listeners in the audience and correspondingly suitable for the child presenter and their child guest to be exposed to in a broadcasting environment.

However, at one point in the programme, the child presenter responded on air to a telephone call from an audience member, who requested an urban music track which

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<sup>4</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/updated-code-guidance.pdf>

the presenter then played. As already discussed above, Ofcom's Decision is that the broadcast of this track, which contained multiple use of the most offensive and offensive language, was in breach of Rules 1.14 and 1.16 of the Code. We noted Betar Bangla's argument that the offensive content "flew over the heads" of the two children featured in the programme...and therefore the potential for any detrimental outcome in terms of emotion or dignity was fortunately minimal on this occasion. However, Rules 1.14 and 1.16 are aimed to protect children in the audience from inappropriate content. Ofcom was therefore concerned that two young child programme contributors were exposed to a music track containing such a large amount of offensive – and therefore highly unsuitable – language.

The Licensee stated that when children participate in programmes its "general child protection practice" was to "require a minimum of two adults – one representing the editorial interests of on air behaviour [in the studio] and one, generally a parent, for purposes of ensuring general child protection". However, we noted that when the audience member requested the Meek Mill music track and it was played, the supervising adult in the studio "charged with the responsibility of monitoring editorial output" was absent "by unfortunate coincidence" for a period of "8 to 10 minutes". During this time two nine-year old children were left to broadcast alone at this time, with no adult supervision in the studio. Therefore any audience members telephoning in were not vetted or otherwise checked by a responsible adult prior to going on air. As a result, the children played and were exposed to a music track containing highly unsuitable content. In our view, the absence of an adult directly supervising the child contributors put the two child contributors at potential risk given that an audience member could – and in this case did – contact the child contributors, without those audience members being vetted or otherwise checked by a responsible adult prior to going on air.

We took into account Betar Bangla's statement that there was a "parent on the premises" in this case, who would have been "within view of the studio". However, we noted, according to the Licensee, that parents are "not required to monitor output and some may...have insufficient English language skills to necessarily be in a position to adequately do so". Therefore, we did not consider that the fact that there was a "parent on the premises" in this case was sufficient to ensure due care was provided for the children as required by Rule 1.28.

We also noted the Licensee's argument that "at no time could the incident and the circumstances surrounding it be represented as a physical threat to the welfare of the children in question". We note that this appeared to be the Licensee expressing a view on one aspect of Rule 1.28. However, Rule 1.28 is not just concerned as to whether a broadcaster has taken due care over the "physical welfare" of any under-eighteens appearing in programming but also the emotional welfare and dignity of such contributors.

In reaching this Decision, we noted Betar Bangla's acceptance that on this occasion it had failed to ensure "on air monitoring by a duly delegated station adult". We also noted the various steps that the Licensee had taken to improve compliance including: ceasing 'phone-in' programmes involving children; approving all music tracks prior to broadcast; and ensuring that while children are presenting programmes there would always be an adult monitoring the "children's on air presence".

However, for the reasons above, we considered that the Licensee failed to take due care over the physical and emotional welfare and the dignity of the child presenter and child guest. Ofcom was particularly concerned that, in this case, two young



children were left to broadcast and interact with the audience without supervision. There was therefore a breach of Rule 1.28.

**Breaches of Rules 1.14, 1.16 and 1.28**

## In Breach

### Murder of Couriers

*Bike, 6 March 2016, 09:00*

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#### Introduction

Bike is a television channel which broadcasts a mixture of sports, entertainment and documentary programmes revolving around the world of cycling, and is available on the digital satellite and cable platforms. The licence for Bike is held by Bike Media UK Limited (“BMUK” or “the Licensee”).

A complainant alerted Ofcom to offensive language in a programme called *Murder of Couriers* broadcast on a Sunday morning when children could have been watching. *Murder of Couriers* is a documentary that follows the lives of a group of bike couriers in Vancouver, Canada over a three year period. It features scenes of cycle couriers going about their day to day work interspersed with interviews with the couriers.

Offensive language was used throughout the 94 minute programme. In particular Ofcom noted the following:

- 84 uses altogether of “*fuck*”, “*fucking*”, “*fuckers*” and “*fucked*”;
- six of “*motherfuckers*”;
- 34 of “*shit*” and “*shitty*”;
- two of “*bullshit*”;
- one of “*apeshit*”; and
- one of “*arsehole*”.

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

Rule 1.14: “The most offensive language must not be broadcast before the watershed...”;

Rule 1.16: “Offensive language must not be broadcast before the watershed..., unless it is justified by the context. In any event, frequent use of such language must be avoided before the watershed”; and

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 how the programme complied with these rules.

#### Response

BMUK stated that the broadcast of this programme “was a grave mistake made completely unintentionally due to human error”. The Licensee said that it had prepared an appropriately edited version of the programme with all the offensive

language removed, but due to “human error the wrong unedited version was transmitted in place of the edited one”. The Licensee accepted that by broadcasting this unedited version of the programme “Rule 1.14, Rule 1.16 and Rule 2.3 [of the Code] were indeed breached”.

In mitigation BMUK pointed out that Bike was not a channel aimed at children. It nevertheless accepted that there “could well have been a number of children viewing”.

It went on to say that as a “responsible broadcaster” it had “put in place additional training for all our programming team together with our editors, in order to avoid a repeat of this grave mistake”, but said that this error was not due to any systemic failure of compliance on the part of BMUK.

### **Preliminary View**

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, which include ensuring that persons under the age of eighteen are protected from material that is unsuitable for them, and providing adequate protection for members of the public from harmful and/or offensive material. These objectives are reflected in Sections One and Two of the Code.

#### Rule 1.14

Rule 1.14 of the Code states that “the most offensive language must not be broadcast before the watershed...”. Ofcom’s research on offensive language<sup>1</sup> notes that the word “fuck” and similar words are considered by audiences to be among the most offensive language and unacceptable for broadcast before the watershed. In this case, the word “fuck” and similar words were broadcast throughout the programme a total of 90 times. Our Preliminary View is therefore that the material was clearly in breach of Rule 1.14.

#### Rule 1.16

Rule 1.16 of the Code states that “offensive language must not be broadcast before the watershed...unless it is justified by the context. In any event frequent use of such language must be avoided before the watershed”.

Ofcom’s Guidance on Rule 1.16 of the Code<sup>2</sup> says that: “Milder [offensive] language in the early part of the evening may be acceptable...However, in general, viewers...do not wish to hear frequent or regular use of such language...before 2100.” In this case there were 38 instances in total of mild or moderately offensive language broadcast in this 94 minute programme i.e. “shit”, “shitty”, “bullshit”, “apeshit”, “arsehole”. We considered this constituted frequent use.

We went on to consider whether the frequent use of this offensive language broadcast before the watershed was justified by the context.

This was a observational documentary that followed the lives of a group of bike messengers in a Canadian city. It followed the couriers while they cycled around

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>

<sup>2</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section1.pdf>

Vancouver delivering packages, and recorded their candid comments on work and day to day social life. Therefore occasional use of mild offensive language might be expected in a pre-watershed programme. However in this case, milder offensive language was used frequently, and its impact heightened because it was interspersed with numerous uses of the most offensive language.

Our Decision is therefore that the frequent use of offensive language in this case was not justified by the context and breached Rule 1.16.

### Rule 2.3

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

In Ofcom’s view the 90 uses of the most offensive language, and 38 instances of milder offensive language, during this 94 minute documentary were clearly capable of causing offence.

We therefore considered whether this was justified by the context. As already pointed out, given that *Murder of Couriers* is a candid observational documentary following the lives of cycle couriers, viewers might have expected some offensive language. However this programme was broadcast at 09:00 on a Sunday, and in Ofcom’s view the nature and frequency of offensive language used would have far exceeded audience expectations for a programme broadcast at this time on this channel.

In Ofcom’s Decision the broadcast of the most offensive language in this case was therefore not justified by the context and breached Rule 2.3.

Ofcom noted that the Bike channel only started broadcasting in December 2015. We took into account that it acknowledged this “grave mistake” and instituted additional training of its staff to avoid a repeat of this compliance error. Nonetheless Ofcom was concerned that the Licensee allowed material which so clearly breached the Code to be broadcast pre-watershed.

### **Breaches of Rules 1.14, 1.16 and 2.3**

## In Breach

### Football Tonight

*BT Sport 1, 19 March 2016, 09:00*

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#### Introduction

*Football Tonight* is a topical weekly football entertainment show broadcast on the sports channel, BT Sport 1. The licence for BT Sport 1 is held by British Telecommunications Plc (“BT” or “the Licensee”).

A complainant alerted Ofcom to offensive language in an episode of *Football Tonight* broadcast on a Saturday at around 09:12. A 16 second social media clip was shown of an Arsenal fan attempting to burn an Arsenal football shirt in what appeared to be a back garden. In the clip the fan made abusive comments about the Arsenal manager, Arsene Wenger, which included one use of “*fucking*” and one of “*fuck off*”.

On Saturday, 26 March at 09:30 the presenter of *Football Tonight*, George Lamb, broadcast an apology before that week’s edition of the programme:

*“Hello, BT Sport would like to apologise for a video that aired at 9am on Saturday 19<sup>th</sup> March that contained swearing. We know this is unacceptable and BT Sport are sorry for any offence caused”.*

We considered the material raised issues warranting investigation under the following rule:

Rule 1.14: “The most offensive language must not be broadcast before the watershed...”.

#### Response

The Licensee explained that errors in the application of its compliance process had resulted in a pre-watershed version of the show that contained offensive language being transmitted by mistake. It apologised unreservedly for the offence caused to viewers.

BT explained how the mistake had occurred. It stated that *Football Tonight* is recorded on a Friday at 19:00. Afterwards three versions are created: one hour long post-watershed version broadcast at 21:45 that evening, and two pre-watershed versions (an hour version and a half hour version). Both pre-watershed versions are then checked by an Editor and an Edit Supervisor. The hour long pre-watershed version is then broadcast the following morning at 09:00.

The Licensee said that its compliance team advised the production team that the clip of the Arsenal fan was not suitable for the pre-watershed versions and should be removed, and that during the live recording of the show the Compliance Editor reiterated that this clip should be removed from the pre-watershed versions. However, the Licensee explained that “unfortunately this instruction was not followed by the Editor and was missed by the Edit Supervisor during the peer review”. As a result the hour long pre-watershed version of the show was broadcast including the clip that contained the offensive language. The Licensee told Ofcom that a “full

internal investigation and disciplinary processes” were underway “with the individuals connected with this matter”.

BT also said that as a result of this incident a “full review of the editorial, compliance and edit process has taken place to identify areas of improvement”. The Licensee advised that the pre-watershed version broadcast at 09:00 was “aired once and is not scheduled to be repeated again”. It also said that “due to the seriousness of this incident” it had decided to broadcast the apology for the offensive language immediately before the following week’s pre-watershed edition of the show. Additionally the Licensee said it had made the decision to no longer repeat the hour long pre-watershed version for the remainder of the series and “will now only transmit a half-hour pre-watershed version”. It stated that “as well as the compliance review during the ‘as live’ recording and the peer review, this 30 minute version will continue to have a full compliance review...”. The Licensee advised that should an episode be deemed unsuitable for pre-watershed transmission, then an alternative pre-watershed programme will be aired in its place.

## **Decision**

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

Rule 1.14 of the Code states that “the most offensive language must not be broadcast before the watershed...”.

Ofcom research on offensive language<sup>1</sup> notes that the word “fuck” and variations of this word are considered by audiences to be amongst the most offensive language. In this case, the instance of “*fuck*ing” and one of “*fuck off*” were broadcast soon after 09:00. Therefore, our decision is that there was a clear breach of Rule 1.14.

Ofcom took into account that the Licensee immediately accepted that the programme breached Rule 1.14, was proceeding with an internal investigation and disciplinary processes in view of “the severity of this matter”, and had broadcast an apology before the following week’s pre-watershed edition of the show. We also noted that BT said that it would no longer broadcast the hour long pre-watershed version of *Football Tonight* on Saturday mornings.

Ofcom had regard to these points. However, we remind the Licensee of the importance of ensuring that suitable checks are made to ensure that further examples of incorrect scheduling of material intended for pre-watershed broadcast do not recur.

## **Breach of Rule 1.14**

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>

## Broadcast Licence Conditions cases

### In Breach

#### Providing a service in accordance with ‘Key Commitments’

*Cross Rhythms Teesside (Stockton-on-Tees), 14 to 16 February 2016*

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#### Introduction

Cross Rhythms Teesside is a community radio station licensed to provide a service for the Christian community of Stockton-on-Tees and Middlesbrough. The licence is held by Tees Valley Christian Media (“CRT”, or “the Licensee”).

Like other community radio stations, CRT is required to deliver the ‘Key Commitments’ which form part of its licence<sup>1</sup>. These set out how the station will serve its target community and include: a description of the programme service; social gain (community benefit) objectives such as training provision; arrangements for access for members of the target community; opportunities to participate in the operation and management of the service; and, accountability to the community.

Ofcom received a complaint alleging that CRT was providing very little live and local programming, instead providing religious-based programming that did not appear to be produced locally.

CRT has the following Key Commitment set out in its licence:

- The station broadcasts 24 hours a day. Original locally-produced programming, including live output, makes up 5 hours per day on weekdays, and at least two hours per day during daytime at weekends. The station may take selected programming from Cross Rhythms Stoke on Trent that has content relevant to the local audience. Generally these shows would be in the evenings and at weekends.

We requested recordings of three days of CRT’s output, covering Sunday 14, Monday 15, and Tuesday 16 February 2016. We also asked the Licensee to highlight the locally-produced programmes in its schedule for the week commencing Sunday 14 February.

Responding to our request, the Licensee stated that the hours of locally-produced programming broadcast by CRT in the week commencing 14 February were:

Sunday 14 February	0 hours
Monday 15 February	1 hour
Tuesday 16 February	3 hours
Wednesday 17 February	3 hours
Thursday 18 February	3 hours
Friday 19 February	1 hour
Saturday 20 February	2 hours

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<sup>1</sup> Cross Rhythm Teesside’s Key Commitments can be viewed in full at:  
<http://www.ofcom.org.uk/static/radiolicensing/Community/commitments/cr000098.pdf>.

Given the requirement in the Key Commitments is for the station to broadcast original locally-produced output for five hours per day on weekdays, and two hours per day on weekend days, Ofcom considered that the issue warranted investigation under Conditions 2(1) and 2(4) in Part 2 of the Schedule to CRT's licence. These state, respectively:

"The Licensee shall provide the Licensed Service specified in the Annex for the licence period." (Section 106(2) of the Broadcasting Act 1990); and

"The Licensee shall ensure that the Licensed Service accords with the proposals set out in the Annex so as to maintain the character of the Licensed Service throughout the licence period." (Section 106(1) of the Broadcasting Act 1990).

We therefore requested CRT's comments on how it was complying with these conditions, with reference to the specific Key Commitment set out above.

## Response

The Licensee admitted that "the programme schedule and logs that we submitted as requested clearly show we are not meeting this Key Commitment". It also stated that it had "expected three volunteers... to be on air following training. However, since the Christmas break they have informed us of the high levels of workload they are experiencing at Uni[versity]". This had affected the station's ability to deliver the required number of hours of locally-produced programming.

Describing how it would attempt to increase the amount of locally-produced output in the future, CRT stated that "one of our presenters is aiming to expand his current two hour show... adding an extra two hour programme into the schedule each week". The Licensee added that it had recently been in contact with church leaders in Billingham, "who between them want to add in another show each week, initially at least one hour, following an initial training period".

The Licensee said that listeners were giving good feedback on the radio station, and the local Christian church community is supportive and increasingly engaged with CRT. It added that "we see the potential for a stronger station delivering much value locally in the months ahead".

However, CRT acknowledged that "much more needs to be done" to bring the station into compliance with its Key Commitments. Links with universities for volunteer engagement, together with stronger local oversight, were both goals that it had aimed for in the first quarter of 2016, and had so far only partially succeeded in. In addition, CRT acknowledged that it was essential that it strengthened its local governance at the level above station manager.

CRT conceded that there was no benefit to the local community if the station, which it said is "modelled on a very good pattern working in other areas [of the UK]", is unable to fully connect with the local Teesside audience. Therefore, it proposed setting a time limit of ten weeks in which to significantly increase the amount of local programming and secure stronger local oversight. If these targets were not achieved within the specified time frame, CRT said "we would propose that we hand back our licence to Ofcom".



## Decision

Ofcom has a number of duties in relation to radio broadcasting, including securing a diverse range of local radio services which are calculated to appeal to a variety of tastes and interests, along with the optimal use of the radio spectrum. These matters are reflected in the licence condition requiring the provision of the specified licensed service. Provision by a licensee of its licensed service on the frequency assigned to it is the fundamental purpose for which a community radio licence is granted.

According to our monitoring and the programming schedule provided to us by the Licensee, CRT had been failing to deliver the required hours of locally-produced programming (in the week we assessed, it broadcast 13 out of the required 29 local hours). In the absence of local programming, it was instead relaying the output of Cross Rhythms City Radio in Stoke-on-Trent.

A similar breach of CRT's licence for failing to deliver the required amount of original and locally-produced output was recorded by Ofcom in June 2015<sup>2</sup>, as a result of information contained in CRT's 2013 Annual Report. At the time CRT assured Ofcom that it expected the amount of locally-produced programming hours to increase through working with local churches, community groups and schools, and it reported that that volunteer numbers were up, and that a new secretary and station manager had been appointed.

We took into account that CRT said it had experienced a specific issue with volunteer availability. However, we were concerned that CRT's latest representations suggest that it still does not appear to have a solid local organisation or membership base in place, and is therefore overly-reliant upon the availability one or two particular individuals for the production of programming.

Provision of locally-produced programming is a fundamental characteristic of community radio services. Although we welcome the Licensee's latest plans to address the issues faced by the station within a very clear time frame, Ofcom puts the Licensee on notice that we will monitor its output in the near future. Should any similar compliance issues be identified, we will consider taking further regulatory action, which may include the imposition of a statutory sanction.

**Breaches of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence held by Tees Valley Christian Media (licence number CR000098).**

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<sup>2</sup> Issue 282 of Ofcom's Broadcast Bulletin can be viewed at:  
[http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb282/Issue\\_282.pdf](http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb282/Issue_282.pdf).

## In Breach

### Broadcasting licensees' late and non-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 licensees failed to pay their annual licence fees by the required payment date. These licensees have therefore breached 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	Licence Number	Service Name
GTFM (South Wales) Ltd	CR000004BA	GTFM
Radio St Austell Bay Community Interest Company	CR000115BA	Radio St Austell Bay
Rinse FM	CR000225BA	Rinse FM

#### Breaches of Licence Conditions 3(1) and (2) in Part 2 of the Schedule of the relevant licences.

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<sup>1</sup>[http://stakeholders.ofcom.org.uk/binaries/consultations/socp/statement/charging\\_principles.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/socp/statement/charging_principles.pdf)

<sup>2</sup> [http://www.ofcom.org.uk/content/about/annual-reports-plans/tariff-tables/Tariff\\_Tables\\_2015\\_16.pdf](http://www.ofcom.org.uk/content/about/annual-reports-plans/tariff-tables/Tariff_Tables_2015_16.pdf)

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

## Broadcast Fairness and Privacy cases

### Not Upheld

#### Complaint by Mr Dulani Simpson

*The Murder Detectives, Channel 4, 30 November 2015*

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#### Summary

Ofcom has not upheld Mr Dulani Simpson's complaint of unjust or unfair treatment and of unwarranted infringement of privacy in the programme as broadcast.

The programme was part of a documentary series which followed the police investigation of the murder of Mr Nicholas Robinson in Bristol. Mr Simpson complained that he was treated unjustly or unfairly in the programme as broadcast because it implied that he was associated with the Bristol Blood Gang and was a suspect in the murder investigation. He also complained that his privacy was unwarrantably infringed in the programme as broadcast because he was named in the programme and details of his stabbing and resulting injuries were included in the programme.

Ofcom found that:

- The programme was not misleading or unfair in its representation of Mr Simpson.
- On balance, and in the particular circumstances of this case, Mr Simpson did not have a legitimate expectation of privacy with regards to the information included in the programme about him. Therefore, it was not necessary for Ofcom to consider whether any infringement into his privacy was warranted.

#### Programme summary

On 30 November 2015, Channel 4 broadcast the first episode of *The Murder Detectives*, a three-part factual documentary series which followed the Avon and Somerset Constabulary as its officers investigated the murder of 19 year old Mr Nicholas Robinson in Bristol. The programme followed a number of police officers involved in the case including the detective in charge of the investigation and a local uniformed police officer, PC Williams, who was familiar with the local community in the area in which Mr Robinson was murdered. The programme makers followed the police officers as they undertook their investigation. This included an examination of the murder scene and interviews with Mr Robinson's friends and family as the police tried to establish a motive for his murder.

The programme showed that one line of inquiry pursued by the police was whether Mr Robinson was murdered in connection with one of the gangs in the area. Shortly after Mr Robinson's murder, a police officer was shown reviewing the CCTV footage of the scene of the crime and stated that the murder suspect could be seen leaving the scene. While CCTV footage of a man leaving a stairwell was shown, the police officer stated:

*"You will see a red flash, just on the top of his trousers as though it is tucked in and it does give the appearance of a red bandana. Red bandanas are associated with the 'Blood Gang'".*

PC Williams speculated as to whether there was *“some sort of gang element”* to the murder and he was shown talking to members of the community to try and find out information that might be relevant to the investigation. PC Williams stated that the gangs were out in *“stronger numbers”* following the murder of Mr Robinson.

Later, Detective Chief Inspector Andy Bevan, the Senior Investigating Officer in the case, explained that a glove had been found at the murder scene and while CCTV footage was shown, he explained that when the murder suspect arrived at the scene *“he is wearing a glove on his right hand, when he leaves no glove on his right hand”*. Shortly after, DCI Bevan explained he had a *“full DNA hit in the glove that was found at the scene. It is one in one billion. Shaquille Thompson”*. He then explained that PC Williams was familiar with Mr Thompson and was going to act as a *“spotter”*.

PC Williams was then shown sitting at a computer with another officer, Detective Inspector Neil Meade. PC Williams asked DI Meade to *“tap in ‘Bristol Blood Gang’ then and see what it throws up, they post under that”*. The two police officers were then shown watching a music video on the screen. PC Williams stated:

*“That’s Dulani Simpson there, pre getting stabbed. [pause] He’s been stabbed in the stomach, so he’s had a colostomy bag. [pause] He’s scarred from waist to sternum”*.

Between each statement made by PC Williams there was a pause of approximately two seconds.

DI Meade then said:

*“This is why it is so good to have someone like you on board, because you know who all these people are”*.

Images from the music video were then shown and PC Williams stated:

*“Right, so that is Shaquille Thompson there. He is an ever present. He has been arrested lots of time. I do know enough about him to know he has been involved in gang related violence. I don’t think he thinks about consequences”*.

Another police officer was then shown explaining that Mr Thompson had *“links to the Blood Gang”* and DI Meade stated *“He has got previous, been involved with knives... So he’s definitely good for this sort of action”*. DCI Bevan stated *“He is dangerous...[A] dangerous man, we need to find him”*.

Mr Thompson was shown following his arrest for Mr Robinson’s murder. He was questioned, but later released when CCTV footage confirmed Mr Thompson’s alibi for the time of the murder and a police officer confirmed *“He hasn’t done it”*.

Later in the programme a second suspect, Mr Luchiano Barnes, was investigated by the police. The programme explained that Mr Barnes had flown to New York shortly after Mr Robinson’s murder, CCTV footage of Mr Barnes at an airport was shown and the programme ended.

By way of background, Mr Barnes was later convicted of the murder of Mr Robinson.

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

### Complaint

#### *Unjust or unfair treatment*

- a) Mr Simpson complained that he was treated unjustly or unfairly in the programme as broadcast because:
  - i) The programme implied that he was associated with the Bristol Blood Gang. Mr Simpson said that he had never been involved in gangs and this was a "defamation of my character".
  - ii) He was named in the programme when he was not a suspect in the investigation into the murder of Mr Robinson. Mr Simpson said he had nothing to do with the murder and had never been charged or questioned in connection with it.

#### *Unwarranted infringement of privacy*

- b) Mr Simpson complained that his privacy was unwarrantably infringed in the programme as broadcast because he was named in the programme and details about him being stabbed and his resulting injuries were included in the programme.

By way of background, Mr Simpson explained that during the course of the programme the police were shown typing "Blood Gang into YouTube which bought up a music video that I am not in". Mr Simpson said that the police then stated "That's Dulani Simpson [referring to the video] before he got stabbed and went into great detail about my scars and resulting condition because of this".

Mr Simpson also said that he had received death threats because of the programme and that his family were in danger "because of Channel 4's ineptitude". He said that he understood that the police were "doing their job".

### The broadcaster's response

Before addressing the specific heads of complaint, Channel 4 began by providing background information on the programme. It stated that the programme featured a subject matter "of the most serious public interest" and that it did not treat Mr Simpson unjustly or unfairly or unwarrantably infringe his privacy.

Channel 4 explained that the programme was "uniquely shot as a drama – a ground-breaking police series followed in real time and inside the mind of the detectives". It said that the programme showed the story of a young man's senseless death, his family's pain and the police's determination to achieve justice for them, and highlighted the terrible consequences of knife crime and gang culture in Britain's urban centres. It said that knife crime was an increasing and serious social problem.

Channel 4 said that the series had been critically acclaimed and listed various positive press reviews about the programme.

Channel 4 then addressed each of the heads of complaint in turn.

### *Unjust or unfair treatment*

- a) Channel 4 said that the reference by the Avon and Somerset Constabulary to the complainant was fair and accurate and fully justified in the context of the programme.
- i) Channel 4 said that at the relevant point in the programme, the police were searching for an individual named Mr Shaquille Thompson in connection with the murder of Mr Robinson. Channel 4 outlined the relevant segment of the programme where the police were shown searching through online videos in an effort to identify Mr Thompson (as outlined in detail above in the “Programme summary”).

It reiterated that the overarching public purpose of the series was the subject of knife crime and the corrosive effect it was having in Britain’s urban societies. It pointed out that this was recognised in the press and gave the example of an article in *The Daily Mail*<sup>1</sup>. It said that this article had made specific reference to the particular above segment of the programme. The article stated that the programme “...brought home the value of the cop on the beat”. It said that PC Williams (otherwise known as “Sarge”):

“...knew the community. He knew how the community would close in on itself, but also knew it had “*a conscience*”. He had seen all these boys grow up and when someone did come forward to offer a name, they offered it to Sarge. Much was also told in small, telling details, as when Sarge was looking at film footage of the kids from the neighbourhood and casually pointed out “*he’s had a colostomy*” and “*he’s got a scar from waist to sternum*”. No one escapes the impact of knife crime, in other words”.

Channel 4 pointed out that the complainant stated in his complaint that he had “...never been involved with gangs...” and “...[the] *police typed Blood Gang into Youtube, which brought up a music video that I am NOT in*”. However, it said that the Avon and Somerset Constabulary had confirmed to the programme makers that Mr Simpson had “...an association with known members of the Bristol Blood Gang over a sustained period of time (and that he was frequently seen in the same company)”. It also said that, at the relevant point in the programme, the police officers had been going through several online videos. It said that:

“Given the list of people they commented upon who had suffered from knife wounds, they clearly weren’t watching just the subsequent music video which only featured the prime suspect at the time, Shaquille Thompson”.

It said that Blood Gang members had frequently produced and uploaded rap videos and other non-music videos via YouTube over the last six to seven years. Channel 4 stated that the particular video that the police were watching and commenting upon at the relevant point in the programme was called ‘Fedz Get Bad Up In Bristol’ (published on 7 March 2012). Channel 4 provided Ofcom with a copy of this clip, which it said: “...despite the

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<sup>1</sup> <http://www.dailymail.co.uk/home/event/article-3344390/The-Murder-Detectives-reviewed-Deborah-Ross-documentary-DECADE-goes-to.html>

protestations of the Complainant clearly does feature him and other individuals who have criminal and gang connections”.

Channel 4 said the clip showed several young people, including Mr Simpson, “...baiting a neighbourhood beat officer, PC Chris Adams, while he’s on patrol”. Channel 4 then: listed various individuals shown in the clip who it said were known Blood Gang members; explained they had criminal convictions; and, provided further links to online videos in which the individuals had appeared, posted under ‘Blood Gang’ or ‘Bristol Blood Gang’.

Channel 4 further referred Ofcom to another YouTube video, posted under ‘Bristol Blood Gang’ on 5 April 2011, in which Mr Simpson appeared and which it said clearly associated Mr Simpson with the Bristol Blood Gang. It said that the video’s title ‘Bristol Blood Gang’ was an “unequivocal” reference to the Bristol Blood Gang. It said that Mr Simpson could again be seen “clearly associating with Blood Gang members”. Channel 4 then went on to describe the clip in further detail, including listing which gang members were featured, including Mr Thompson, and what some of their criminal offences were. Channel 4 pointed out that one of the individuals stated in the video “and you know it’s Blood Gang you dumb prick”. Another individual said “Get Simpsy on it”, i.e. he was instructing the camera operator to film Mr Simpson.

Channel 4 said that Mr Simpson was “well-known” to the Avon and Somerset Police and that Channel 4 and the programme makers understood that he had an “extensive criminal record”. Channel 4 said that data protection legislation prevented Channel 4 and the programme makers from being able to access the full extent and details of Mr Simpson’s criminal record, but that it was a matter of public record that he had three separate convictions of wilfully obstructing the police in the execution of their duty. However, it referred Ofcom to reports in the press of Mr Simpson’s last known criminal conviction for obstruction in December 2014. It was reported, for example, by the *Bristol Post* newspaper on 7 September 2014 that Mr Simpson tried to prevent PC Williams from arresting a suspect, Mr Dehaney Wright, who was wanted for an attempted murder. Channel 4 said that Mr Simpson was charged with perverting the course of justice, but that the prosecution accepted his guilty plea for the lesser offence of obstructing a police officer in the execution of his duty.

Channel 4 said that Mr Wright featured in numerous online videos posted under “Blood Gang” and was a “close associate” of Blood Gang members. The broadcaster said that it was also worth noting that at the time Mr Simpson tried to stop Mr Wright from being arrested, he was in the company of another individual who was found guilty of the same offence. This individual also appeared in an online Blood Gang video and had a criminal background.

- ii) Channel 4 said with regards to Mr Simpson being named in the programme, it did not imply that he was involved in the murder of Mr Robinson. It said that it was obvious from the context of the programme that “...he was not and was never a suspect in the Police’s investigation into the murder of Nicholas Robinson”. It said that at the relevant point in the programme, it was clear that at that point in the police’s investigation they were seeking Mr Thompson as being the prime suspect in connection with the murder. It said that there were numerous shots and references in the programme which made this clear, one example being when the police established a DNA match for the glove found at the scene of the crime and one of the police officers stated: “*Basically*

*we've got a full DNA hit in the glove that was found at the scene. It's one in one billion...Shaquille Thompson".* Although Mr Thomson was arrested, but then released in connection with the murder, Channel 4 said that the series made it clear that Mr Luchiano Barnes was eventually charged and convicted for the murder of Mr Robinson.

The broadcaster also said that the complainant had produced no evidence that he had received death threats because of the reference to him in the programme or that his family had been put in danger because of it.

#### *Unwarranted infringement of privacy*

- b) Channel 4 said that it refuted that Mr Simpson's stabbing was a matter of confidentiality. It said that his stabbing was a matter of public record. It said that Mr Simpson was identified and full details of the stabbing were reported in the press during the subsequent public trial of the defendant charged with carrying it out. Channel 4 also said that Mr Simpson had been content for his stabbing to be referred to during the court proceedings at which he was convicted of obstructing a police officer in the execution of his duty.

Channel 4 said that the programme makers had felt it was editorially important to broadcast the police officer's specific remarks because it helped to establish the disturbing frequency of stabbings among young men in Bristol. It reiterated that "the series had the serious and important public purpose of spreading public awareness of the huge impact and consequences of knife crime for both victims and their families and the perpetrators and their families".

Channel 4 said that during the sequence in which Mr Simpson was named, as outlined above, it was clear that PC Williams and DI Meade were looking at a collection of videos - "effectively scouring the internet". It said that they clearly listed a number of individuals who had been affected by knife crime. It said that the fact that it was a list of individuals was clearly recognised in *The Daily Mail* article referred to above:

"[PC Williams] had seen all these boys grow up and when someone did come forward to offer a name, they offered it to Sarge. Much was also told in small, telling details, as when Sarge was looking at film footage of the kids from the neighbourhood and casually pointed out "*he's had a colostomy*" and "*he's got a scar from waist to sternum*". No one escapes the impact of knife crime, in other words".

Channel 4 said that after pointing out Mr Simpson "*pre getting stabbed*", PC Williams then went on to mention two other unidentified individuals who had also been stabbed – one having a colostomy bag and the other having scarring from "*waist to sternum*". It said that, although Mr Simpson suggested that the references to the other individuals were a reference to him, he failed to give any clarification as to whether the details relating to the other two individuals also, by coincidence, applied to his own case. Channel 4 said that neither the programme makers nor the police believed this to be the case as the circumstances of the stabbings were different in the relevant cases (see the "Supplemental material" section below).

The broadcaster also said that the details of the stabbing of Mr Simpson had been widely published and reported in the press. Channel 4 said that during the trial of the defendant accused of stabbing Mr Simpson, Mr Simpson's stabbing



and his injuries were extensively reported. One example it provided were details given in an article in the *Bristol Post*<sup>2</sup> newspaper:

“The prosecution says that the defendant, in the course of a struggle with the complainant in the butcher’s shop, produced a knife and used it to inflict deep and life-changing injuries to Mr Simpson’s chest, hip/buttock area...The casualty was having difficulty breathing and had an elevated heart rate and extremely low blood pressure, the court heard. He had 670 millilitres of blood drained from his chest and underwent complex surgery which included removal of a damaged section of lung and repair to nerve damage”.

Channel 4 reiterated that the complainant had been happy for the details of his stabbing to be referred to in open court during the proceedings in which he pleaded guilty for obstructing a police officer in December 2014. The proceedings were reported in the *Bristol Post*, where Mr Simpson’s barrister was quoted: “He’s been in no further trouble. He was stabbed in 2011 and there are major on-going complications”.

Channel 4 said that insofar as there was any intrusion into Mr Simpson’s privacy, which it denied, it was fully warranted in the public interest.

### **Supplemental material**

On 24 February 2016, Ofcom asked Mr Simpson for clarification as to what, exactly, his “resulting condition” was as a result of him being stabbed. This was in response to the point raised by Channel 4 in its submissions that it was unclear from his complaint whether the details relating to the other two individuals also, by coincidence, applied to his own case.

On 1 March 2016, Mr Simpson replied to Ofcom by email. He confirmed that his “resulting condition” was that he was unable to walk properly after suffering nerve damage. He confirmed that he did not have a condition that required him to use a colostomy bag, but said that he had been caused further embarrassment because of the inaccurate information included in the programme.

### **Ofcom’s Preliminary View**

Ofcom prepared a Preliminary View on this case that Mr Simpson’s complaint should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View, however neither chose to do so.

### **Decision**

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

In carrying out its duties, Ofcom has regard to the need to secure that the application of these standards is in the manner that best guarantees an appropriate level of

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<sup>2</sup> <http://www.bristolpost.co.uk/Pair-tried-stop-PC-arresting-man-suspected-murder/story-25502518-detail/story.html>

freedom of expression. Ofcom is also obliged to have regard, in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate and consistent and targeted only at cases in which action is needed.

In reaching its decision, Ofcom carefully considered all the relevant material. This included a recording of the programme as broadcast, both parties' written submissions, and supporting documentation.

#### *Unjust or unfair treatment*

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

In assessing whether Mr Simpson had been treated unjustly or unfairly we had particular regard to Practice 7.9 of the Code. This states that before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

- i) We considered Mr Simpson's complaint that the programme implied that he was associated with the Bristol Blood Gang.

From the programme, Ofcom noted the following comments relating specifically to Mr Simpson:

PC Williams stated:

*"If you tap in Bristol Blood Gang, then see what it throws up, they post under that. That's Dulani Simpson there, pre getting stabbed".*

DI Meade then stated:

*"This is why it is so good to have someone like you on board, because you know who all these people are".*

We also noted that Mr Simpson did not appear in the online video footage included in the programme.

In our view, PC Williams' comments would have given viewers the impression that he considered that Mr Simpson was associated with the Bristol Blood Gang, that, as Channel 4 outlined in its submission, comprised of various members with criminal backgrounds. We considered that this was a serious claim which had the clear potential to materially and adversely affect viewers' opinion of Mr Simpson.

We next considered whether the inclusion of the allegation resulted in unfairness to Mr Simpson. Ofcom acknowledged the broadcasters' right to freedom of expression and that they must be able to broadcast programmes of matters of interest to viewers freely, including the ability to express views and critical opinions without undue constraints. However, this freedom comes with responsibility and an obligation on broadcasters to comply with the Code and, with particular reference to this case, avoid unjust or unfair treatment of individuals or organisations in programmes.

Ofcom recognised that there was a factual dispute between the two parties as to whether Mr Simpson was a member or, at least, associated with the Bristol Blood Gang. We noted that Mr Simpson stated in his complaint that “I have never been involved in gangs”. We also took into account the broadcaster’s response and accompanying material which it said demonstrated that Mr Simpson had appeared in multiple online videos produced and uploaded by the Bristol Blood Gang and was associated with various members of the gang. We considered that the material presented by the broadcaster, outlined in detail above in the “Summary of the complaint and the broadcaster’s response” section, suggested, in our view, that Mr Simpson did appear to have at least some connection with the Bristol Blood Gang. In particular, we noted that he appeared in an online video posted on 5 April 2011 entitled “Bristol Blood Gang”.

Given the above factors we considered that it was not misleading for PC Williams to have made the comments in the programme on the particular online footage, which in our view, led to an inference that there was an association between Mr Simpson and the Bristol Blood Gang.

We therefore did not consider that Mr Simpson had been treated unjustly or unfairly in the programme as broadcast in this respect.

- ii) With regards to Mr Simpson’s complaint that he was named in the programme when he was not a suspect in the investigation into the murder of Mr Robinson, we noted that immediately prior to Mr Simpson being named in the programme, DCI Bevan stated:

*“Basically, we’ve got a full DNA hit in the glove that was found at the scene. I mean it’s one in one billion. Shaquille Thomson”.*

PC Williams and DI Meade were then shown searching through online videos for Mr Thompson. It was at this point that PC Williams pointed out Mr Simpson in one of the videos. Immediately following this, PC Williams identified Mr Thomson. The police officers then discussed Mr Thompson and DCI Bevan stated:

*“Dangerous man [referring to Mr Thompson], we need to find him”.*

Mr Thomson was then shown being arrested and questioned by the police. Later in the programme, it was discovered that he had an alibi for the time of the murder and he was released.

A second suspect was then investigated, Mr Barnes. The programme ended as police began their search for Mr Barnes, who the series later revealed was convicted of the murder of Mr Robinson.

Ofcom noted that Mr Simpson was referred to in the programme as a victim of knife crime. At no point was he named as a suspect in the investigation into the murder of Mr Robinson, and, given the material included in the programme and outlined above, we did not consider that viewers were likely to have understood that Mr Simpson was at any time a suspect in the investigation into the murder of Mr Robinson.

Given the above factors, Ofcom considered that there was no unjust or unfair treatment in this respect.

### *Unwarranted infringement of privacy*

- b) Ofcom considered Mr Simpson's complaint that his privacy was unwarrantably infringed in the programme as broadcast because he was named in the programme and details of his being stabbed and his resulting injuries were included in the programme.

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

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

In addition to this Rule, Section Eight (Privacy) of the Code contains "practices to be followed" by broadcasters when dealing with individuals or organisations participating in, or otherwise directly affected by, programmes, or in the making of programmes. Following these practices will not necessarily avoid a breach of Rule 8.1 and failure to follow these practices will only constitute a breach where it results in an unwarranted infringement of privacy.

In considering this head of the complaint, Ofcom also had regard to Practice 8.6 which states that if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

Ofcom began by assessing whether or not Mr Simpson had a legitimate expectation of privacy with regard to the information included about him in the programme. The Code's statement on the meaning of "legitimate expectation of privacy" makes clear that such an expectation:

"...will vary according to the place and nature of the information, activity or condition in question, the extent to which it is in the public domain (if at all) and whether the individual concerned is already in the public eye. There may be circumstances where people can reasonably expect privacy even in a public place..."

As set out in detail above at head a) and the "Programme summary" section, PC Williams made the following comments in the programme:

*"If you tap in Bristol Blood Gang, then see what it throws up, they post under that. That's Dulani Simpson there, pre getting stabbed. [pause] He's been stabbed in the stomach, so he's had a colostomy bag. [pause] He's scarred from waist to sternum".*

We noted that Mr Simpson was identified in the programme in that he was named and information given that he had been stabbed. However, Ofcom considered that there is nothing particularly private or sensitive in the revealing of an

individual's name in itself. Whether there is a legitimate expectation of privacy in connection with an individual being identified, in our view, depends on the nature of the information revealed about that individual. In this case, therefore, we went on to consider the nature of the information revealed about Mr Simpson in the programme, i.e. the fact that he had been stabbed, and his resulting injuries.

In relation to Mr Simpson having been stabbed, Ofcom took the view that, ordinarily, information relating to an individual's health, or about a particularly traumatic event in their lives, could reasonably be considered to be sensitive and/or private to them. However, in this particular case, although Mr Simpson had suffered a serious physical injury, Ofcom understood, from the broadcaster's statement that this information, i.e. that Mr Simpson had been stabbed, was already in the public domain in that it had been reported in newspaper articles and was readily available online.

We also noted, however, that a person is not necessarily deprived of having a legitimate expectation of privacy in connection with information that has been put into the public domain in the past. Each case must be considered on its own merits. In this case we therefore also took into account the fact that Mr Simpson had given his own barrister permission to refer to his being stabbed in open court in 2014 (i.e. Mr Simpson had consented to putting this information into the public domain).

We also acknowledged the fact that, although the information was in the public domain in terms of being reported in local newspapers around the time of the original court proceedings in 2012, regarding Mr Simpson being stabbed, and those following in December 2014, regarding the charges brought against Mr Simpson for obstructing a police officer in the execution of his duty, the information was subsequently broadcast in the programme on national television, which would have given it greater exposure than it would have been likely to have received in the local press. However, we also noted that the programme was broadcast in 2015, a relatively short time after the information would have already been made public.

With regards to Mr Simpson's complaint that his "resulting condition" had been disclosed in the programme as broadcast, Ofcom considered, having examined the footage broadcast and taken into account Channel 4's statement and Mr Simpson's email of 1 March 2016, that PC Williams was not referring to Mr Simpson when he said "*He's been stabbed in the stomach, so he's had a colostomy bag. [pause] He's scarred from waist to sternum*". Given that the complainant had confirmed that these were not the injuries he had sustained, we considered that this information could not constitute private information about Mr Simpson.

Having carefully considered all of the factors above, we considered that, on balance, and in the particular circumstances of this case, Mr Simpson did not have a legitimate expectation of privacy with regards to the information included about him in the programme.

Having come to the view that Mr Simpson did not have a legitimate expectation of privacy in relation to the filming of the footage of him, it was therefore unnecessary for Ofcom to consider whether any infringement of Mr Simpson's privacy was warranted.

Therefore, we concluded that there was no unwarranted infringement of Mr Simpson's privacy in the broadcast of the information in these circumstances.

**Ofcom has not upheld Mr Simpson's complaint of unjust or unfair treatment and of unwarranted infringement of privacy in the programme as broadcast.**

## Not Upheld

### Complaint by Miss Shelley Hill on behalf of Mr Paul Little

*Council House Crackdown, BBC1, 23 July 2015*

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#### Summary

Ofcom has not upheld this complaint of unwarranted infringement of privacy made by Miss Shelley Hill on behalf of Mr Paul Little.

This programme included a series of investigations into suspected social housing fraud and showed footage of Mr Little as he spoke with council officials about his housing situation. Mr Little's voice was heard and part of his body was shown, but his face was obscured.

Ofcom found that Mr Little had a legitimate expectation of privacy with regard to the filming of him and the subsequent broadcast of the footage, however, Ofcom considered that, on balance, the broadcaster's right to freedom of expression and the public interest in filming and broadcasting the material of him in the circumstances of this case outweighed his legitimate expectation of privacy. Therefore, we concluded that Mr Little's privacy was not unwarrantably infringed in connection with the obtaining of footage of him and its subsequent inclusion in the programme as broadcast.

#### Programme summary

On 24 July 2015, BBC1 broadcast an edition of *Council House Crackdown*, a series that followed council investigators as they attempted to reclaim properties owned by the council and housing associations from tenants whom they suspected were cheating the system so that these properties could be given to those who needed them.

During part of the programme featuring the complainant, the presenter joined Housing Officer, "Will" who was investigating the tenant of a property in Lambeth, south London.

Will explained to the presenter that this was a case in which he believed, potentially, that the property was being sublet. He said it had come to his attention because of:

*"The fact that the tenant [Mr Little], who is in this property, hadn't actually contacted us in the last two years. Now, based on the other activities that we see tenants on a day-to-day basis, it kind of sent off [sic] alarm bells".*

The presenter then said: *"Further enquiries revealed that the tenant [Mr Little] had actually bought a house outside London".*

Later in the programme, Will explained to the presenter that, as part of his investigation, he had to find out whether Mr Little had bought his property outside of London for investment purposes only, or if Mr Little was actually living in his new property whilst subletting his Lambeth flat. Will explained to the presenter that it was legal for council tenants to own other properties as long as they used the subsidised social housing property as their main home.

As Will and the presenter were talking, close-up footage of a document including information on Mr Little's property outside London was shown. Some of the information, including the address of the property, was obscured. However, the document showed that the property was: *"Previously listed for sale on [blurred] 2014"* at *"£250,000"* and that it was a *"two bed, end terrace"*.

Later in the programme, the following exchange between Will and the presenter took place:

Presenter: *"If this person in particular wanted to buy 10 houses and live off all the rental income, as long as they didn't live in one of them, they get to keep the social housing?"*

Will: *"And that can be one of the frustrating parts of the job. People can buy properties, but they can still live in our property and still rent them out and get the income from that as well"*.

Later, the presenter explained that the investigators needed to visit both properties simultaneously *"to establish exactly where the tenant is living"*.

Will said that they would be carrying out three visits on the properties and that, if there was no one at the properties on each of these occasions, they would serve a Notice of Seeking Possession.

The presenter and Will were then shown visiting Mr Little's council flat in Lambeth, while the other investigator visited the property outside London. The presenter explained that the first visit to the council flat had proved unsuccessful as no one had answered the door and that during a second visit to the flat, a man, who was not Mr Little, but his brother, had opened the door and told Will that Mr Little was *"away on holiday"*.

Will explained that Mr Little called him about a week and a half before to request two communal entrance door fobs to get entry into the block. The presenter then explained that: *"the investigator suspected that the fobs could actually be for the brother recently found at the flat"*.

The presenter then said:

*"Armed with these new developments, Will is keen to push ahead with a third and final visit to both addresses"*.

Later in the programme, in the 'coming-up-next' teaser shown prior to another story, footage of the investigators was shown as they knocked on the door of Mr Little's house outside London. As Mr Little opened the door, one of the investigators said to him: *"I'm here in relation to your property in Lambeth. You've got a council flat in Lambeth?"*

The programme later returned to the story concerning Mr Little and Will explained that he would be visiting both properties for a third and final time. Another investigator, "Ben", was shown as he prepared to visit Mr Little's property outside London along with an official from the relevant local council.

Later in the programme, both housing officers were filmed as they visited the respective properties. Will explained that no one had answered the door at the Lambeth property.



Footage was shown of Ben and the council official knocking at the door of the house outside London, followed by footage of Mr Little as he opened the door. The footage showed Mr Little as he stood in the doorway of the property. Only his right arm was visible as he held the door open. Ben introduced himself to Mr Little and handed over his business card. Ben then said:

*“Hello. My colleague here is from...I’m from Lambeth...Are you Mr [bleep]? You live here? Er, basically I’m here in relation to your property in Lambeth, you’ve got a council flat in Lambeth as well?”*

Mr Little replied: *“yeah”*.

As footage of Ben, the council official and Mr Little was shown, the presenter explained that if Mr Little admitted that he was at fault, he could avoid going to court about the matter.

During the conversation, Mr Little’s arms were filmed as he took Ben’s business card, and his voice was not disguised as he spoke. The following exchange between Mr Little and Ben then took place:

Ben: *“Explain to me what’s happening at the moment with your circumstances.*

Mr Little: *Well, my brother is in there at the moment, but I’m on the verge of giving it back.*

Ben: *Right. When did you move out of that?*

Mr Little: *Erm, that’s the thing, I’ve been in and out. Just before Christmas I moved in, partially in here. I’m doing building work at the moment, so it’s...*

Ben: *Yep. As far as I am concerned, you haven’t told Family Mosaic<sup>1</sup> or the council that you’ve moved out of the Lambeth address, but that’s your intention?*

Mr Little: *Yeah, it is. Yeah”*.

Footage of the upper part of Mr Little’s body (his face was blurred out) was shown as he stood in the doorway of his property and answered Ben’s questions. Footage of the front door and the front wall of Mr Little’s house was also included in the programme, but the number and the street name were not visible, nor referred to.

Later in the programme and in relation to Mr Little’s situation, Ben said:

*“Do I believe him? I’m sure he is more or less on the right track with it, but really, I don’t think that from November to late April now, he should’ve told us already, he should’ve told the housing association already”*.

Footage of Mr Little’s body was shown again as he was closing the door to his property after the officers left.

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<sup>1</sup> The Housing Association from which Mr Little rented the Lambeth flat.

Later in the programme, Ben and Will were filmed on the phone with each other. Ben told Will that he was successful in getting a response from Mr Little and that Mr Little had confirmed that he moved into his new house before Christmas and was “*on the verge*” of informing the council, but that “*he just hadn’t got around to it yet*”. Will added that Mr Little “*certainly sounded like he’s going to give the keys back pretty sharpish*”.

Following this, Will said that he was:

*“relieved that we’ve actually found this tenant [Mr Little] at a property elsewhere. He’s admitted all of these things as well and it means now that we are going to get this property back”.*

Towards the end of the programme, after another story was discussed, the presenter concluded the programme and footage of the council investigators talking with Mr Little at his doorstep was shown again.

No further footage or reference was made to Mr Little. His face was not shown and he was not named in the programme.

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

- a) Miss Hill complained that Mr Little’s privacy was unwarrantably infringed in connection with the obtaining of material included in the programme as broadcast because he was filmed without his consent and without prior warning. Miss Hill explained that the programme makers began filming as soon as Mr Little opened the front door.

In response to this head of complaint, the BBC said that the programme’s producer/camera operator accompanied two council investigators to Mr Little’s address outside London. The broadcaster provided Ofcom with the unedited footage of a conversation which took place between Mr Little and the council investigator at Mr Little’s doorstep. The BBC said that the camera operator filmed from the road in open view and that when Mr Little answered the door, the following exchange was recorded on camera:

Council investigator: *“Firstly, I’m here to have a chat with you about a couple of matters but I need to tell you that I’m being filmed at the moment or we’re being filmed by the BBC so I don’t know if you...”*

Mr Little: *Have I done something wrong?*

Council investigator: *Well, we need to ask you some questions about some matters...as I say, we’re being filmed by the BBC [gestures to camera], that’s what that’s about.*

Mr Little: *OK.*

Council investigator: *Are you happy...can we come in and have a chat with you?”.*

The broadcaster said that at this point Mr Little withdrew indoors and spoke to Miss Hill, who could not be seen. The BBC said that Mr Little returned to the doorstep and said: “*No, can we do it here?*”.

The BBC said that, after the conversation between Mr Little and the council investigators had concluded, the camera operator knocked on the door and spoke to Mr Little. The broadcaster explained that the camera operator did not have a camera with her and that this conversation was not filmed. It said that she spoke to both Mr Little and Miss Hill. The BBC said she asked Mr Little if he was willing for his contribution to be included in the programme unobscured and whether he would be prepared to provide an interview to present his point of view. According to the BBC, Mr Little declined to give any comment or interview and Miss Hill requested that Mr Little be rendered completely anonymous in the programme.

The broadcaster said that it did not believe that Mr Little's privacy was infringed in the course of obtaining the material of him for broadcast. It said that the fact that the doorstep conversation was being recorded by the BBC was made clear to him. The broadcaster added that Mr Little did not raise any objection and did not, at any point, ask for the filming to cease.

- b) Miss Hill also complained that Mr Little's privacy was unwarrantably infringed in the programme as broadcast because footage of a conversation between Mr Little and the two council officials, which took place at his house, was included in the programme without his consent.

In response, the BBC said that there was no information included in the programme which could have enabled Mr Little to have been identified outside the circle of his family and friends who may have already known that he had been approached and filmed. The broadcaster explained that at Mr Little's property in Lambeth, no door number or street sign was shown. Further, it said that all walking shots of the council investigators were cut to shots of Mr Little's property, so that it could not be assumed that the street where the walking shot was filmed (even if it could be identified) was the street where Mr Little's property was located. Similarly, at his property outside London, the broadcaster explained that no door number or street name was shown and walking shots, not filmed in the street where Mr Little's house was located, were edited in the same way.

The BBC said that no information was provided on the paperwork seen in the Lambeth investigator's office which would have allowed the property outside London to be identified. The only information disclosed in the programme was that the property had been sold in 2014, the price for which it had been sold and the fact it was a two-bedroom end-of-terrace property. The BBC said that all that was said of its location was that it was outside London. The broadcaster submitted that it did not believe that this information was sufficient to enable the identification of the property.

The broadcaster also said that the sequence in which Mr Little appeared was obscured in accordance with the request it said that Miss Hill had made on his behalf (and in his presence). The BBC explained that Mr Little's face was obscured completely, as was the logo identifying his employer on his T-shirt. The broadcaster added that it did not consider it necessary to alter Mr Little's voice in order to conceal his identity, because he said little in the broadcast sequence and in their view he had no distinctive accent or mannerisms.

The BBC submitted that Mr Little was anonymised in accordance with Miss Hill's expressed wishes (see above) and therefore the broadcaster said that it did not believe there was an infringement of his privacy. It said that if, however, Ofcom

took the view that Mr Little's privacy was infringed, the BBC considered that the infringement was minimal and that it was justified by the public interest in broadcasters making programmes such as this to investigate the incidence and investigation of fraud and abuse in the social housing sector and the obvious anti-social consequences of such fraud and abuse.

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

Ofcom prepared a Preliminary View on this case that the complaint should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View, and both decided to do so. The representations of the parties are summarised below.

#### *The complainant's representations*

Miss Hill said that the BBC failed to provide Ofcom with a full and accurate record of correspondence, and that what the BBC had sent "appears to be a heavily cut version" of her side of the correspondence. Miss Hill alleged that the BBC had been untruthful in its statement to Ofcom regarding her request for Mr Little's identity to be rendered completely anonymous. She said she had never made this request and that the correspondence between her and the BBC showed that she had at all times made it clear that she did not want the footage of their situation to be included in the programme in any way at all. Miss Hill added that she and Mr Little assumed that the BBC would need their consent to include any footage relating to them in the programme and that it would not use it against their wishes.

Miss Hill said that the very first walking shot was carried out in the same street as Mr Little's flat in London. This was contrary to what she believed the BBC had said in its submissions to Ofcom. Miss Hill also said the filming of the council official on the phone with the other council official following Mr Little's interview was conducted outside their house on their street.

She did not agree with Ofcom's Preliminary View that the breach of Mr Little's privacy was justified on grounds of public interest because, as the council members had confirmed, Mr Little was "not actually doing anything wrong" and said that the BBC had been provided with this information long before the programme was broadcast. Miss Hill said that the programme did not need to include the story about Mr Little in order to show how investigations were carried out.

With regards to the council officer's comment in the unedited footage ("with or without the cameras makes no difference"), Miss Hill said that they thought that this remark was in relation to the programme makers entering their property.

Miss Hill said that when "you open the front door to your property, you do not expect there to be a camera present" nor to be told that the BBC are filming the interaction. Miss Hill added that it was not made clear that filming would continue throughout the interaction; nor that the filming would be able to capture what was being said. Miss Hill said that if Mr Little had known this, he would never have provided so many personal details. Miss Hill said she remained convinced that Mr Little had been doorstepped and that Ofcom's Preliminary View did not give sufficient weight to this point.

Miss Hill said that Mr Little was very distressed by the whole situation but was aware that if he appeared unwilling to answer questions it would indicate that he had done something wrong or had something to hide, which was not the case. Miss Hill said

that this was the reason he continued to answer what was asked of him, despite his distress.

The BBC's point about Mr Little not having any accent or unusual mannerisms was very subjective, in Miss Hill's view. Miss Hill said that "having an accent is a regional matter and what is considered an accent to one person, clearly would not be considered an accent by another". She said that Mr Little's voice was easily recognisable due to its depth. For this reason, and all the other points she had mentioned, she said that the infringement of privacy was not "minimal" as stated by the BBC.

#### *The broadcaster's representations*

The broadcaster said that, as far as it was aware, it has disclosed all correspondence between the BBC and the complainant, as requested by Ofcom. It said that if Miss Hill believed there was other correspondence which had not been disclosed, she was free to make it available to Ofcom herself.

The BBC said that, contrary to what Miss Hill stated in her representations, it did not say in its statement that the walking shots were not carried out in the streets where the properties were located. It said that, in the case of both properties, no door number or street sign was shown and that the walking shots of the investigator were cut to shots of the property so that it could not be assumed that the street where the walking shot was filmed, even if it could be identified, was the street where the property was located.

#### **Decision**

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

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

In reaching this decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast, a transcript of it, the unedited footage of the exchange that took place between the complainant and the council investigator (which was not included in the programme as broadcast but submitted by the BBC in their response) and both parties' written submissions and supporting material, including the correspondence between the BBC and the complainant. Ofcom also took into account the representations made by Miss Hill and by the BBC in response to its Preliminary View on this complaint. However, as explained further below, we concluded that the representations did not materially affect the outcome of Ofcom's decision not to uphold the complaint.

In Ofcom's view, the individual's right to privacy has to be balanced against the competing right of the broadcaster to freedom of expression. Neither right as such has precedence over the other and where there is a conflict between the two it is necessary to intensely focus on the comparative importance of the specific rights.

Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate. This is reflected in how Ofcom applies Rule 8.1 of the Code which states that any infringement of privacy in programmes, or in connection with obtaining material included in programmes must be warranted.

- a) Ofcom first considered the complaint that Mr Little's privacy was unwarrantably infringed in connection with the obtaining of material of him in the programme as broadcast because he was filmed without his consent and without prior warning.

In assessing this head of the complaint, Ofcom had regard to Practice 8.5 which states that any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted. Ofcom also had regard to Practice 8.9 which states that the means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme.

Before assessing whether Mr Little's privacy was unwarrantably infringed in connection with the obtaining of footage of him, we first considered the complaint that Mr Little had been doorstepped by the programme makers who accompanied the two council officials to Mr Little's house to interview him about his housing circumstances (i.e. whether he was subletting his council flat while living in another property). For the purpose of Practice 8.11, "doorstepping" is defined in the Code as the "filming or recording of an interview or attempted interview with someone, or announcing that a call is being filmed or recorded for broadcast purposes, without any prior warning". Practice 8.11 suggests that it should not take place unless "a request for an interview has been refused or it has not been possible to request an interview or there is a good reason to believe that an investigation will be frustrated if the subject is approached openly, and it is warranted to doorstep".

Ofcom noted that the programme was an investigative documentary programme in which the presenter was filmed as he followed housing fraud investigation teams across the UK. We understood that, as part of some of those investigations, housing officers visited tenants and properties who were under suspicion to find out more information about the tenants' living arrangements. It was in this context that the council officials were filmed in the programme as they visited Mr Little at his second property to establish if he lived there and if so the reason why he had retained his council property in Lambeth. From viewing the programme as broadcast and the unedited footage of Mr Little, we noted that Mr Little was filmed as he opened the door to the two council officials. We noted Miss Hill's representations that the presence of the camera and the BBC was unexpected. We also noted that she said that Mr Little was given no prior warning about the interview and that it was not made clear that the filming would continue throughout the interaction or that it would be able to capture what was being said. However, we observed from the unedited footage that Mr Little was informed twice by one of the officials that the conversation was being filmed by the BBC, the second time gesturing towards the street where the programme makers were standing to film the exchange. Further, it was the council officials rather than the programme makers who were carrying out the investigation and conducting the doorstep interview with Mr Little as an integral part of that investigation. The programme makers were not taking any active part in the interview; they were there to film in an observational capacity and it was in this context that the footage was obtained. Taking these elements into account, we considered that

the filming by the programme makers did not amount to doorstepping for the purposes of Practice 8.11.

Ofcom then considered the extent to which Mr Little had a legitimate expectation of privacy in the particular circumstances in which the material included in the programme was obtained. The test applied by Ofcom is objective: it is fact sensitive and must always be assessed in light of the circumstances in which the individual finds him or herself. Ofcom therefore approaches each case on its facts.

With regard to the filming itself, Mr Little was filmed as he stood in the front doorway of his home as he opened the door and responded to questions put to him by the council officials. Ofcom recognises that a person may have a legitimate expectation of privacy in circumstances such as this where the filming and subsequent broadcast relate to footage of them standing in the doorway to their home. As noted above, while we recognised that the programme makers filmed Mr Little as soon he opened the door to the council officials, we considered that it had been made sufficiently clear to Mr Little at the start of his exchange that the conversation was being filmed by the BBC. It further appeared to us that the filming was conducted openly and from a publicly accessible space (i.e. from the street outside of Mr Little's property).

While we noted from viewing the unedited footage that it appeared that Mr Little was willing to answer the council officials' questions, we also took into consideration Miss Hill's comment that Mr Little had found the situation to be distressing and that he did not want to seem unwilling to answer questions for fear that this might indicate he had done something wrong or had something to hide, which was not the case. We noted that the filming captured a conversation in which Mr Little disclosed potentially private information in response to a series of questions asked by one of the officials investigating the potential misuse of his council flat. This included information about his marital status and the name of the mortgage provider for the second home he owned. Given the potentially private nature of this information and the fact that Mr Little was filmed standing inside his own front door, we considered that he had a legitimate expectation of privacy in relation to the obtaining of the material of him.

Having found that Mr Little had a legitimate expectation of privacy in the filming of him, Ofcom then considered whether the programme makers had secured Mr Little's consent to obtain this material. Ofcom acknowledged that there was disagreement between the parties about whether Mr Little's consent had been secured for the filming at his doorstep. In particular, we noted Miss Hill's statement in the correspondence between herself and the BBC prior to the broadcast, in which she said that the programme makers "did not ask permission to film, show any identification, inform us of the programme she [the programme maker] was filming for or ask us to sign any consent form".

We carefully viewed the unedited footage of Mr Little and the council officials and noted that one of the officials clearly explained (and subsequently reiterated) to Mr Little that the BBC was filming, and he turned round to indicate the presence of the camera in the street.

We noted that one of the two council officials asked Mr Little if they "could come in and have a chat" with him, at which point Mr Little went inside the house to speak to someone who was out of view before coming back with his response. The BBC said this person was Miss Hill. This conversation was out of earshot of

the programme makers and was not therefore captured in the audio recording that accompanied the footage. However, when Mr Little came back to the door, he said: "No, can we do it here?" (i.e. conduct the interview on the doorstep rather than inside the house) and the council official could be heard on the unedited footage to say "Well, with or without the cameras, that's not a great problem". We noted Miss Hill's representations that they presumed this remark was in relation to the council officials entering the property, but that in any case it was not made clear to them by the programme makers that they were going to continue filming or that the filming would be able to capture the conversation between the council official and Mr Little. Ofcom was not able to ascertain the meaning or significance of the council official's remark in the context of looking at the issue of consent, particularly as the conversation between Mr Little and Miss Hill inside the house could not be heard in the footage.

Taking all the factors above into account, we took the view that, although Mr Little chose to continue his conversation with the council investigator on his doorstep, it was unclear whether Mr Little was aware that the conversation was still being filmed. Given this, we were unable to conclude that Mr Little had actively consented to being filmed.

In these circumstances we went on to assess whether any consequent infringement into Mr Little's privacy was warranted. In doing so, we assessed the broadcaster's competing right to freedom of expression and the audience's right to receive information and ideas without unnecessary interference.

The Code states that "warranted" has a particular meaning which is that where broadcasters wish to justify an infringement of privacy as warranted, they should be able to demonstrate why, in the particular circumstances of the case, it is warranted. If the reason is that it is in the public interest then the broadcaster should be able to demonstrate that the public interest outweighs the right to privacy. Examples of public interest could include revealing or detecting crime, protecting public health and safety, exposing misleading claims by individuals or organisations or disclosing incompetence that affects the public.

We noted that the BBC said that if Ofcom takes the view that Mr Little's privacy was infringed it considered "that the breach was minimal and was justified by the public interest in broadcasters making programmes such as this which investigate the incidence and investigation of fraud and abuse in the social housing sector which have obvious anti-social consequences". In Ofcom's view there is a genuine public interest in making a programme such as this. It was clear that the programme's purpose was to show council officials as they investigated potential frauds in the social housing sector and filming Mr Little - a social tenant suspected of illegally subletting his council flat - as he opened the door to the council officials was important as it helped to illustrate the type of interaction that officials routinely engage in when investigating these issues. Therefore Ofcom concluded that any infringement of Mr Little's legitimate expectation of privacy in connection with the obtaining of this material was warranted in the particular circumstances of this case.

Ofcom also considered whether, in accordance with Practice 8.9, the means of obtaining the material had been proportionate in all the circumstances and in particular to the subject matter of the programme. We took the view that because part of the programme was about council officials investigating tenants who were potentially engaged in illegal behaviour, the filming of Mr Little was justified in order to show how such investigations are planned and executed by council



officials. Further, and as noted above, we observed that the filming of Mr Little had been conducted openly. We noted Miss Hill's comment that Mr Little found the situation distressing. The footage showed that Mr Little was initially surprised by the council officers, but he did not appear to be distressed, nor did he appear unwilling to answer the questions put to him. Given this, and taking into account the public interest, Ofcom considered that the means of obtaining the material had been proportionate.

Having taken all the above factors into consideration, Ofcom considered that on balance, the broadcaster's right to freedom of expression and the public interest in making a programme of this nature outweighed any legitimate expectation of privacy in relation to the filming that took place.

Therefore we found that there was no unwarranted infringement of Mr Little's privacy in connection with the obtaining of the material included in the programme.

- b) Ofcom next considered the complaint that Mr Little's privacy was unwarrantably infringed in the programme as broadcast because footage of a conversation between Mr Little and the two council officials, which took place at his house, was included in the programme without his consent.

In assessing this head of the complaint, Ofcom had regard to Practices 8.2, 8.4 and 8.6 of the Code. Practice 8.2 states that information which discloses the location of a person's home or family should not be revealed without permission, unless it is warranted. Practice 8.4 states that broadcasters should ensure that actions filmed or recorded in, or broadcast from, a public place, are not so private that prior consent is required before broadcast from the individual concerned, unless broadcasting without their consent is warranted. Practice 8.6 states that, if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

In considering whether or not Mr Little's privacy was unwarrantably infringed in the programme as broadcast, Ofcom first assessed the extent to which Mr Little had a legitimate expectation of privacy with regard to the broadcast of footage of him included in the programme without his consent. As noted above, the test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective: it is fact sensitive and must always be assessed in light of the circumstances in which the individual concerned finds him or herself.

Again, we noted the context in which Mr Little had been filmed. The filming took place openly, but the interview between the council officials and Mr Little took place in the doorway of Mr Little's house. As set out in the "Programme summary" section above, the programme included footage of Mr Little on his doorstep as he explained to the council investigators that his brother was living in his council flat in Lambeth, and that he had partially moved out, but had not duly informed the housing association of this fact.

As noted under head a) above, Ofcom recognises that a person may have a legitimate expectation of privacy in circumstances such as this where the filming and subsequent broadcast relate to footage of them standing in the doorway to their home. In this particular case, the footage showed Mr Little being questioned on his doorstep in the context of an investigation by local council officials into a possible social housing fraud, i.e. whether he was illegally subletting his council

flat. We considered that appearing in a programme about housing fraud and being questioned by council officials in relation to a potential criminal offence (misuse of social housing) gave rise to a legitimate expectation of privacy. In particular, given the nature of the investigation (about potential misuse of social housing) and the information included in the programme about Mr Little's personal circumstances, we considered that the information could reasonably be considered as personal and sensitive in nature to Mr Little, and therefore attract a legitimate expectation of privacy.

We then assessed whether Mr Little was identifiable in the programme as broadcast. Ofcom recognised that Mr Little was not identified by name in the programme and that the programme makers took a number of steps to obscure his identity. In particular, Mr Little's face was obscured and the logo on his t-shirt, which identified his employer, was also obscured.

We also noted that the programme did not disclose the precise location of either of Mr Little's properties (the numbers of the properties and streets names were not visible in any shots). In relation to the flat in Lambeth, we noted Miss Hill's comments in her representations to Ofcom that the very first walking shot was carried out in the same street as Mr Little's flat in London. In relation to Mr Little's house outside of London, we noted that Miss Hill said that footage of the council official as he was on the phone to the other council official following Mr Little's interview was filmed outside their house on their street. However, we noted that the BBC said in its response to Ofcom Entertainment Decision and clarified in its representations on our Preliminary View, that "in the case of both properties, no door number or street sign was shown and that the walking shots of the investigator were cut to shots of the property so that it could not be assumed that the street where the walking shot was filmed, even if it could be identified, was the street where the property was located". In any case, Ofcom did not consider that the exact location of either properties would have been evident to viewers as there was nothing in the shots of the flat in Lambeth or in the shot of the council official on the phone near the property outside of London that could reasonably connect the location of the streets with the location of these properties.

Turning to other relevant factors, we noted that Mr Little's voice was audible and not disguised in the programme and that footage of the front door, porch and the side of Mr Little's house were clearly visible in the programme. The BBC explained that Mr Little's voice was not altered because he said little in the broadcast sequence of him and had no distinctive accent or mannerisms, whereas Miss Hill commented that Mr Little had a very easily recognisable voice due to its depth. Whether or not Mr Little's voice was easily recognisable, we considered that the inclusion of Mr Little's unaltered voice together with footage of his front door, porch and side of his house, and the inclusion of personal information pertaining to his housing situation, were sufficient, when considered together, to make Mr Little identifiable to people who knew him.

Having considered that Mr Little had a legitimate expectation of privacy in the broadcast footage of him and that he was identifiable, even if only to a limited extent, Ofcom then considered whether the programme makers had secured Mr Little's consent to include this material in the programme.

We noted the correspondence between Mr Little's partner, Miss Hill, and the BBC after the filming had taken place, in which Miss Hill referred to the fact that the programme makers had told her at the time of filming that the BBC could not guarantee that the footage would not be broadcast. We also noted that the

broadcaster responded that no personal information would be shown “*as agreed with the producer at the time*”. Similarly, we noted from the BBC’s statement in response to the complaint that it said that the sequence in which Mr Little appeared “*was obscured in accordance with the request made on his behalf (and in his presence) by Ms Hill*”. However, we noted that Miss Hill said in her representations to Ofcom that she had never made any such request and that in her correspondence with the BBC, on behalf of her partner Mr Little, she repeatedly referred to the fact that she asked for the footage of Mr Little not to be used at all. Taking these factors into account, Ofcom was unable to conclude whether Mr Little had actively consented to the broadcast of footage of him. In these circumstances, Ofcom went on to consider whether it was warranted for the broadcaster to include the relevant footage in the programme as broadcast.

In determining whether or not the infringement of Mr Little’s privacy was warranted in the circumstances, we carefully balanced Mr Little’s right to privacy with the broadcaster’s right to freedom of expression and the audience’s right to receive the information without unnecessary interference. In particular, we considered whether there was a sufficient public interest or other reason to justify any infringement of Mr Little’s privacy in broadcasting the footage of Mr Little.

As set out above at head a), Ofcom considered that there was a genuine public interest in a programme about the work of social housing fraud investigators, notwithstanding Miss Hill’s view that there was no public interest in broadcasting the footage of Mr Little because he had been found to have done nothing wrong. In particular, we considered that there was a public interest in broadcasting footage of Mr Little, as it enabled the broadcaster to illustrate the type of interaction that council officials routinely engage in with tenants when carrying out investigations into the potential misuse of social housing. Whether or not Mr Little had been found to have done anything wrong, Ofcom noted that the footage of Mr Little provided an example of an investigation with a successful outcome.

Therefore, taking all of the factors above into account, Ofcom concluded that, on balance, the broadcaster’s right to freedom of expression and the public interest in broadcasting an investigative programme about the work of social housing fraud investigators outweighed any legitimate expectation of privacy Mr Little had as a result of the limited extent to which he may have been identifiable in the programme.

Ofcom’s decision is therefore that there was no unwarranted infringement of Mr Little’s privacy in the inclusion of footage of him in the programme as broadcast.

**Ofcom has therefore not upheld Miss Hill’s complaint, made on behalf of Mr Little, of unwarranted infringement of privacy in connection with the obtaining of material included in the programme, and in the programme as broadcast.**

## On Demand cases

**APPEAL BY FRANK HOLLINS AGAINST A NOTICE OF DETERMINATION THAT THE PROVIDER OF THE SERVICE “PANTIES PULLED DOWN” (AS AT THE SITE [WWW.PANTIESPULLEDDOWN.CO.UK](http://WWW.PANTIESPULLEDDOWN.CO.UK)) HAS CONTRAVENED SECTIONS 368BA (REQUIREMENT TO NOTIFY AN ON-DEMAND PROGRAMME SERVICE), AND 368D(3)(ZA) (REQUIREMENT TO PAY A FEE) OF THE COMMUNICATIONS ACT 2003.**

### OFCOM’S DECISION

#### **Section 1 – Summary of Ofcom’s Decision**

1. This document sets out Ofcom’s Decision in respect of the Appeal by Frank Hollins (the Appellant) against a determination by the Authority for Television On Demand (ATVOD) (the Determination). ATVOD determined on 26 February 2015 that the service Panties Pulled Down (the Service or Panties Pulled Down) at the site [www.pantiespulledown.co.uk](http://www.pantiespulledown.co.uk) was at the relevant time an “on-demand programme service” (ODPS) as defined by Part 4A of the Communications Act 2003 (the Act).
2. Ofcom has reached this Decision, in accordance with the relevant procedures<sup>1</sup> which were in place when ATVOD’s Determination was made<sup>2</sup>. Ofcom has made its own assessment of the Service and considered: ATVOD’s Determination; audiovisual material provided by ATVOD; the submissions provided to us by the Appellant in its appeal; relevant legislation including the Act and the Audiovisual Media Services Directive (the AVMS Directive); relevant research by Ofcom; and previous Ofcom decisions on appeals regarding ATVOD scope determinations.
3. Ofcom’s Decision is that, at the time of ATVOD’s Determination, the Service (as described further below) did not fulfil the criteria set out in section 368A(1)(a) of the Act. Ofcom therefore proposes to quash ATVOD’s determination of 26 February 2015 that the Service was at the relevant date an ODPS and replace it with our determination.

#### **Section 2 – Summary of the Legal Framework**

4. The AVMS Directive is a European Directive amongst the purposes of which is to provide a level of protection in accordance with that which consumers of ODPSs might expect; and to provide a measure of fair competition across Member States between those providing:
  - a) traditional (linear) television broadcasting services; and
  - b) on-demand services that are essentially the same, or sufficiently similar, and which compete for viewers and advertisers.
5. The Audiovisual Media Services Regulations 2009 gave effect to the AVMS Directive in the UK by inserting Part 4A into the Act. Part 4A was amended by

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/tv-ops/vod/appeals-procedures.pdf>

<sup>2</sup> As discussed in paragraphs 11 and 12 below, the co-regulatory regime for non-advertising content on OPDS ceased to have effect from 31 December 2015.

The Audiovisual Media Services Regulations 2010 and by the Audiovisual Media Services Regulations 2014, and creates the statutory regime for the regulation of ODPSs.

6. A service is only an ODPS if it satisfies the defining criteria in section 368A(1) of the Act which states:

*“... a service is an “on-demand programme service” if –*

- (a) its principal purpose is the provision of programmes the form and content of which are comparable to the form and content of programmes normally included in television programme services;*
- (b) access to it is on-demand;*
- (c) there is a person who has editorial responsibility for it;*
- (d) it is made available by that person for use by members of the public; and*
- (e) that person is under the jurisdiction of the United Kingdom for the purposes of the Audiovisual Media Services Directive”.*

7. Section 368A(1)(a) of the Act provides for a composite definition, to be applied in light of the AVMS Directive, to determine whether services are within the scope of regulation. It can be characterised as comprising a *“principal purpose part”* - whether there is a service the “principal purpose” of which is the provision of audiovisual material; and a *“comparability part”*- whether the form and content of programmes comprising that service is comparable with the form and content of programmes normally included in linear broadcast television services.

8. All parts of the composite definition referred to above must be considered and met for a service to be an ODPS. There must be a service whose principal purpose is the provision of programmes, the form and content of which are comparable to the form and content of programmes normally included in television programme services.

9. Broadly, the composite definition referred to above requires those assessing a service to:

- a. look at what is provided as a whole and consider whether there is anything which is a service whose principal purpose is the provision of audiovisual material; and
- b. if so, it is necessary to consider whether, taken as a whole, the service is one whose principal purpose is providing comparable programmes<sup>3</sup> (which is a question that focuses on the audiovisual material that comprises the principal purpose of the service).

10. Section 368BA(1) of the Act provides for an advance notification requirement on the part of persons providing an ODPS.

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<sup>3</sup> That is, comparable in form and content to the form and content of programmes normally included in television programme services.

11. As part of a co-regulatory regime that applied until 31 December 2015, ATVOD was designated by Ofcom as the “appropriate regulatory authority” to carry out certain functions under section 368B of the Act<sup>4</sup> (the “Designation”). As part of that Designation, ATVOD had power to decide whether a service was an ODPS<sup>5</sup>. Where ATVOD determined that a service was an ODPS, its provider was subject to a requirement to notify ATVOD and pay a fee. The provider had to also ensure the ODPS met a limited number of regulatory requirements. ATVOD’s decisions on such matters were “*subject to appeal to Ofcom in accordance with Ofcom’s relevant procedures*”.
12. Whilst Ofcom decided to end the co-regulatory regime for non-advertising content on ODPS with effect from 31 December 2015, ATVOD’s Determination in this case was made on 26 February 2015, whilst the Designation was still in force. That Determination remains valid notwithstanding the end of the co-regulatory regime, and Ofcom now exercises the power to decide whether a service is an ODPS on a sole basis. Consequently, it is appropriate to continue to consider this matter as an appeal under the procedures in place when the decision was made.
13. As set out in those procedures<sup>6</sup>, Ofcom’s decision in any appeal, “... *may*:
  - (a) *uphold ATVOD’s decision; or*
  - (b) *quash ATVOD’s decision in whole or in part and remit the decision back to ATVOD with reasons for it to reconsider in light of those reasons;*
  - (c) *substitute Ofcom’s decision for that of ATVOD...*”
14. In interpreting section 368A, Ofcom necessarily has regard to relevant provisions of the Directive. This is because that section of the Act implements the Directive insofar as that Directive defines the scope of on demand services which should be subject to regulation. The Directive contains both operative provisions (Articles) and explanatory provisions (Recitals) which define and explain both the purpose of regulation and the scope of on demand services that are subject to it.
15. Recital 24 of the AVMS Directive states that:

*“It is characteristic of on-demand audiovisual media services that they are ‘television-like’, i.e. that they compete for the same audience as television broadcasts, and the nature and the means of access to the service would lead the user reasonably to expect regulatory protection within the scope of this Directive. In the light of this and in order to prevent disparities as regards free movement and competition, the concept of a programme should be interpreted in a dynamic way taking into account developments in television broadcasting”.*

16. Recital 21 of the AVMS Directive states:

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<sup>4</sup> [http://stakeholders.ofcom.org.uk/binaries/enforcement/vod-services/ATVOD\\_revised\\_Designation.pdf](http://stakeholders.ofcom.org.uk/binaries/enforcement/vod-services/ATVOD_revised_Designation.pdf)

<sup>5</sup> Paragraph 6(ii) of the Designation. This also makes clear that any such decision is “subject to appeal to Ofcom in accordance with Ofcom’s relevant procedures.”

<sup>6</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/tv-ops/vod/appeals-procedures.pdf>

*“For the purposes of this Directive, the definition of an audiovisual media service should cover only audiovisual media services, whether television broadcasting or on-demand, which are mass media, that is, which are intended for reception by, and which could have a clear impact on, a significant proportion of the general public. Its scope should be limited to services as defined by the Treaty on the Functioning of the European Union and therefore should cover any form of economic activity, including that of public service enterprises, but should not cover activities which are primarily non-economic and which are not in competition with television broadcasting, such as private websites and services consisting of the provision or distribution of audiovisual content generated by private users for the purposes of sharing and exchange within communities of interest”.*

17. This Decision also takes into account relevant precedents to inform Ofcom’s assessment of this case. These precedents include our Sun Video decision (the Sun Decision)<sup>7</sup> and other relevant cases referred to within this document.
18. In light of the provisions set out above and following the approach adopted by Ofcom in previous appeals, we also consider it necessary, when considering whether a service is an ODPS, to take a step back and consider in light of all the circumstances:
  - a) whether the relevant audiovisual material is likely to compete for the same audience as linear television broadcasts; and
  - b) whether the nature of that material and the means of access to it would lead users to reasonably expect regulatory protection within the scope of the AVMS Directive.

### **Section 3 – Determination under Appeal**

#### **ATVOD’s Determination**

19. On 14 July 2015 ATVOD wrote to the Appellant informing him of his statutory obligation to notify provision of an ODPS and setting out the statutory criteria which define an ODPS. After an initial investigation of the Service the ATVOD Executive considered that the Service raised issues under Rules 1<sup>8</sup> and 4<sup>9</sup> and subsequently conducted a full investigation on 3 December 2014. Following this investigation, on 15 December 2015 ATVOD informed the Appellant of its Preliminary View that the Service was an ODPS in respect of which a notification had not been given and a fee not paid. Following receipt of the Appellant’s submissions on the Preliminary View, ATVOD conducted a further investigation on the 10 February 2015 finding the service to be the same in all material respects as it was on the 3 December 2014, other than the addition of new content. Therefore ATVOD issued its Determination on 26 February 2015 that the Service was an ODPS for the purposes of Part 4A section 368A(1) of the Act and that a notification had not been given and a fee not paid.

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<sup>7</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/vod-services/sunvideo.pdf>

<sup>8</sup> Notification of intention to provide an ODPS

<sup>9</sup> Payment of required fee

20. ATVOD also considered the remaining criteria of section 368A(1) of the Act, criteria (b) to (e), and set out how the Service fulfilled each of these. ATVOD concluded the Service was, on 3 December 2014 and 10 February 2015, an ODPS.
21. In summary, ATVOD's Determination<sup>10</sup> stated that:
- a) the Service contained programmes the form and content of which was comparable to that of programmes included in television programme services, specifically on broadcast adult channels;
  - b) the videos were the principal benefit of a subscription to the service, despite the availability of still images.
22. The Determination set out the Appellant's right to request an appeal to Ofcom as set out in paragraphs 6(ii) and 7(xvii) of the Designation. ATVOD also directed the Appellant to Ofcom's appeals procedures<sup>11</sup>.

### The Appeal

23. The Appellant wrote to Ofcom on 21 March 2015 requesting an appeal against the Determination. The Appellant stated that he did not consider that the service constituted an ODPS as defined in section 368A of the Act and that he was therefore not required to notify the service to ATVOD or pay a fee.
24. The Appellant argued that section 368A(1)(a) was not satisfied as the principal purpose of the Service was not the provision of video the form and content of which was TV-like, and that the Service was primarily non-economic. In summary, the Appellant argued that:
- a) The limited nature of the video content compared to the number of still photo sets (said by the Appellant to consist of 2,185 photo sets of 202 models and 402 videos) indicated that the provision of video content was not the principal purpose of the Service.
  - b) The length of the videos, which varied between 3 and 15 minutes and averaged 9 minutes, and the fact that they had no script, no plot, no opening or closing credits and no music and were mostly near identical in theme, indicated that they were not comparable to linear TV programmes.
  - c) Consideration of the characteristics identified in *On demand video services: understanding consumer choices*, prepared by Essential Research for Ofcom in October 2012 (the Essential research)<sup>12</sup> militates against the conclusion that the form and content of the videos available on the Service was comparable to the form and content of programme normally included in adult linear television.

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[http://www.atvod.co.uk/uploads/files/Rules\\_14\\_FD\\_Panties\\_Pulled\\_Down\\_FOR\\_PUBLICATI  
ON.pdf](http://www.atvod.co.uk/uploads/files/Rules_14_FD_Panties_Pulled_Down_FOR_PUBLICATI<br/>ON.pdf)

<sup>11</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/tv-ops/vod/appeals-procedures.pdf>

<sup>12</sup> [http://stakeholders.ofcom.org.uk/binaries/broadcast/tv-ops/vod/Research\\_Report.pdf](http://stakeholders.ofcom.org.uk/binaries/broadcast/tv-ops/vod/Research_Report.pdf)



- d) The Service is primarily non-economic in nature within the meaning of Recital 21 of the Directive (referred to in paragraph 16 above), in that it is an outlet for the Service Provider's interest in glamour photography with the purposes of sharing and exchange within communities of interest, and has a limited subscriber base (56 members) and generates limited revenue (gross monthly sales of around \$1400).
  - e) Given the limited nature of the video content and its context on the PPD website, and the limited nature of its reach, the Service cannot be said to be comparable to or in competition with linear TV programming broadcasting.
25. The Appellant therefore argued that, interpreting the statutory definition of ODPS purposively in line with the provisions of the Directive, particularly Recital 21, the Service cannot be said to satisfy the requirements for an OPDS.
26. The Appellant also argued that, as the Audiovisual Media Services Regulations 2009 were made under section 2(2) of the European Communities Act 1972, they can go no further than strictly necessary to implement the requirements of the AVMS Directive and must be construed purposively in line with the Directive.

#### Ofcom's Preliminary View

27. On 20 November 2015, Ofcom set out its Preliminary View on the Appeal, which was that ATVOD's Determination should not be upheld and that the Appellant was not, in respect of the Service, the provider of an ODPS on 3 December 2014 and 10 February 2015. Ofcom provided the Preliminary View to the Appellant and ATVOD and gave them the opportunity to make representations. ATVOD made written representations on 2 December 2015, Ofcom's consideration of which is set out below. The Appellant did not make any representations.

#### ATVOD's Representations

28. ATVOD noted that Ofcom's Preliminary View did not make specific mention of an Ofcom Appeal Decision from 2014 on the service Frankie and Friends<sup>13</sup> which was found to be an OPDS. ATVOD raised concerns that, given that both services "mixed a large number of photos sets with a significant quantity of video material", reaching different conclusion on scope in this case may create some uncertainty as to which services are in scope of the regulation and which are not.
29. ATVOD queried whether Ofcom had followed the same approach in assessing the principal purpose of Panties Pulled Down as they followed in assessing the principal purpose of Frankie and Friends. ATVOD argued that Ofcom had taken the following approach in assessing the principal purpose of Frankie and Friends and deciding that that the provision of the 79 videos was the principal purpose of the Frankie and Friends service, even though the website also offered 12,000 still images:
- a) Ofcom concluded that the website was a single service (there was a strong thematic connection between the audiovisual content and other material on the website);
  - b) Ofcom found that the service had a substantial video offering;

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<sup>13</sup> [http://stakeholders.ofcom.org.uk/binaries/enforcement/vod/services/Frankie\\_and\\_Friends\\_Decision.pdf](http://stakeholders.ofcom.org.uk/binaries/enforcement/vod/services/Frankie_and_Friends_Decision.pdf)

- c) Ofcom considered that the videos were one of the primary means by which the website offered a service to users; and
  - d) Ofcom concluded that the videos did not require accompanying material to be fully appreciated.
30. ATVOD considered that if Ofcom had followed the same approach in this case, it was difficult to see how it could have concluded that the principal purpose of the Service was not the provision of audiovisual material. ATVOD said that the main distinction between Frankie and Friends and the Service was that “on FAF [Frankie and Friends] the videos and photo-sets [were] less integrated”, but did not consider that this explained the different conclusion reached by Ofcom in this case.
31. ATVOD said that it noted that there was a lack of reference to, and apparent inconsistencies with, the recent ruling by the European Court of Justice (“CJEU”) in the *New Media Online GmbH* case.<sup>14</sup> In particular, ATVOD said that in the *New Media Online* case, the CJEU looked at whether video is “*incidental*” and “*complementary*” to the news reporting activity. ATVOD said that it considered that, as Ofcom had suggested in its Preliminary View that the Service’s video content has an independent nature, it was difficult to reconcile its conclusion with the CJEU judgment.
32. ATVOD also said that it considered that there was a risk that the approach proposed by Ofcom in its Preliminary View risked creating a loophole for UK adult websites, because a service provider wishing to offer pornographic video content without being subject to regulation under the Act would only need to ensure that the service also includes a substantial quantity of pornographic still images which are given equal prominence to the video material and which are distributed evenly throughout the service.

#### **Section 4 – Ofcom’s Decision**

33. As set out above, the substantive grounds on which the Appellant based its Appeal to Ofcom were in relation to section 368A(1)(a) of the Act. The Appellant did not specifically dispute ATVOD’s finding that the Service met the other criteria of section 368A(1).

#### **Ofcom’s Assessment**

34. Taking the approach outlined above, Ofcom has reviewed the whole and constituent parts of the Appellant’s website at the time ATVOD made its Determination. Ofcom viewed screen grabs taken by ATVOD at the time of its Preliminary View, video evidence captured by ATVOD at the time of its Determination and documentation provided by the Appellant at the point of its appeal.
35. Ofcom also undertook a review of the website at [www.pantiespulleddown.co.uk](http://www.pantiespulleddown.co.uk) between March and April 2015 following receipt of the Appellant’s appeal submission. At this time, the design and content of the website did not appear to

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<sup>14</sup> Judgment of the CJEU in Case C-347/14 *New Media Online GmbH v Bundeskommunikationssenat*, 21 October 2015

be significantly different compared to the video capture evidence gathered by ATVOD.

### Principal Purpose Assessment

36. Ofcom's approach to applying the principal purpose test in section 368A(1)(a) of the Act is set out in greater detail in the Sun Decision.<sup>15</sup> Taking as reference the characteristics identified in Sun Video as relevant (as listed below), Ofcom's assessed the Service against those criteria before drawing conclusions on the whole.

### Homepage (pre-paywall)

37. ATVOD's evidence shows that the homepage of the Service featured still images of semi-naked females in sexualised poses organised below the headings "Latest Updates" and "Best Rated Models". Under the "Best Rated Models" heading were seven further images, one larger than the rest labelled "Model of the Week". Text below each of these images showed the name of the model and the rating they had from users of the Service. There were six equally sized images under the "Latest Updates" heading, each with text beneath giving a description of the scene and indicating the type of content i.e. "10 minute video" or "Photo set". The text below two of the images indicated video was available and four indicated photos were available.
38. There was a banner along the top of the page summarising site content as "Sexy UK panty and milfs. Exclusive photos sets and video."
39. At the top of the homepage, running from left to right, was a series of eight icons promoting different aspects of the Service. These icons did not act as links but merely promoted the type of content that could be found elsewhere on the site. From left to right these icons were labelled "1600 px High Rez photos", "Slideshow multioptional", "ZIP Gallery archives", "Streaming Video", "Download Video", "MP4 H.264/MEPG-4", "WMV Windows Media" and "Secure & confidential".

### Homepage (post paywall)

40. Upon entering details of the paid membership, a homepage, similar in style and layout to the pre-paywall homepage, was accessed. It included the same set of images under the same "Latest Updates" heading as on the initial homepage. Ofcom noted that the video content was promoted alongside the photographic content under the same headings. The text below each image indicated the availability of video in two cases and the availability of photos in four. The icons from the pre-paywall homepage were replaced with a series of five links reading "Home", "Our Models", "Top Rated", "Search" and "Favourites." Over the rest of the page was a series of 60 still images organised evenly below the headings "Recent Panty Updates", "Top 20 Rated Scenes" and "Top 20 Rated Images".

### Presentation and Styling

41. Ofcom noted that the audiovisual material was not promoted independently of the photographic content and that both the photographic and video material were available under the "Top Rated" page and under each of the individual pages of

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<sup>15</sup> See paragraph 90.

the models. Neither, did the Service brand or promote itself as a TV or video service.

### Cataloguing and accessing

42. Ofcom notes that the very nature of an on-demand programme service is to have a catalogue of content from which a viewer can select a programme to view. Our review of the catalogue, and the manner in which it is accessed, takes into account both its extent (i.e. the amount of audiovisual material) and the way the content has been organised with the intention of assessing whether the service in question has the principal purpose of providing video content.
43. Ofcom noted in this context that the photographic and video content on the Service were displayed simultaneously on pages dedicated to each model or on the “Top Rated” page where all the content was ordered by the rating awarded by users of the Service. Each page displayed a range of images of women in sexualised poses. On the model’s pages, text below each image indicated if video or photos were available. The images acted as links to pages where a user could download a video, view an embedded video or select individual photos from that particular set. Ofcom noted that the organisation of photographic and video content across the service in this way did not promote any one type of content over another and that in browsing the site a user would be likely to come across and make use of both the video content and the photographic content.
44. A user could also search for content under specific categories. Ofcom noted ATVOD’s observation that there was a search facility which allowed a user to search for content by a range of categories, one of which was “Movie Clips”. Ofcom noted a search using this category returned results of all the video content on the site and excluded the non-video material. Ofcom noted ATVOD’s assessment that no such equivalent search facility was available for the photographic content and the Appellant’s submission in response that, in using the search facility, still photos were the “default” and that “if you do not select movies you get only stills”. Ofcom’s review of the search facility showed that if a user searched using categories other than “Movie Clips” to perform a search, video content was returned alongside photographic content.
45. In reviewing the search facility Ofcom noted that if a user selected the “movie clips” category to perform a search, the Service returned video content organised on the relevant page by date of upload. The search results were presented as a series of still images which acted as links to the particular video. Once a user clicked on a given still image to access a video they were then taken away from the search results section of the Service to the page where the video is held. From this page there were no navigational links back to the search results (other than the back button on the browser) but there were links to more content (including photographic content) from the model featured in the video they had accessed.
46. In Ofcom’s view, the degree of integration between the photographic and video content meant that it could be distinguished from those where there is less integration between the photographic and video content- for example, the service Ofcom assessed in 2014 called Frankie and Friends.<sup>16</sup> As is noted in

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<sup>16</sup>[http://stakeholders.ofcom.org.uk/binaries/enforcement/vodservices/Frankie\\_and\\_Friends\\_Decision.pdf](http://stakeholders.ofcom.org.uk/binaries/enforcement/vodservices/Frankie_and_Friends_Decision.pdf)

Ofcom's Decision in this case, the video content on Frankie and Friends was collated in one standalone section accessed through a Members' Video Galleries and appeared nowhere else on the site. Nor were there navigational links between the audiovisual material in the Members' Video galleries and the other non-audiovisual content, namely photographs. Further, once a user had selected a genre under the Videos Galleries heading, in order to then navigate to a genre under the Photo Galleries heading that user would have to first return to the members' landing page. This is in contrast to the Panties Pulled Down website on which links to the photographic content and the video content were presented side by side under pages dedicated to either the model or to the ratings awarded by users of the Service.

#### Completeness, Independence of Material and Content and Access Links

47. Ofcom considered that, while the videos were of relatively short duration (varying in length between 3 and 15 minutes, with the average length being 9 minutes), the majority of the videos were self-contained and could be understood without reference to the other material on the Service. They had a basic but complete narrative structure depicting a sexual act until the point of its completion. For example the video on the Service "LILLY ROSE: VIDEO SCENE", added on 29 October 2014, shows the model sitting at a dressing table in lingerie. Over the course of the video she undresses and begins to masturbate using her underwear as an aid. The video concludes with the model placing the underwear in her mouth. Further, in the video "JESS WEST: VIDEO SCENE", added on 22 September 2014, the model is shown sitting on a sofa in her underwear. She comments on what she is about to do and then commences to undress before masturbating and penetrating herself with a dildo. The video concludes with her performing oral sex on the dildo.
48. This 'completeness' of the material is also relevant to the argument advanced by the Appellant regarding the lack of auto-play function on the service. The Appellant stated that the Service "includes no auto-play functionality and users are required to manually select another video upon the conclusion of the one they are viewing". The Appellant noted that the lack of an auto-play function was a feature in Ofcom's conclusion that the service Urban Chick Supremacy Cell<sup>17</sup> ("UCSC") was not an ODPS. Ofcom notes that the lack of auto-play function on the UCSC service was relevant in that case because the videos on the service "did not contain a complete narrative and...were frequently short sections of longer sessions of sado-masochistic activity". Whilst Ofcom acknowledged that no auto-play function was present on the Panties Pulled Down Service, the content did, as described, comprise standalone videos unlike in the UCSC case. Moreover, we do not consider the presence or lack of an auto-play function to be determinative as this will depend on the nature of the service considered as a whole.
49. Ofcom also noted once a user had navigated from the collections of photos and videos into a specific video, there was then no link between that video and the other non-audiovisual content. Some of the settings of the videos were the same as the photos and featured the same models, but the poses captured in the pictures did not directly match the action in the videos i.e. they were not a 'version' of the videos.

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<sup>17</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/vod-services/ucsc.pdf>

50. As noted above, the videos were available alongside photographic content of the same models undertaking similar sexual acts. Ofcom considered that an individual video could be viewed and understood independently of other material on the site, including the photographic material. However, Ofcom also noted that a user would ordinarily have to navigate to a given video through an individual model or through a rating awarded by users of the service as described in paragraph 37, or would have to use the search function as described at paragraphs 44 and 45. Whilst it is not possible to say whether any one user, on any particular occasion, would have chosen to engage with the photographic material or video material, Ofcom considered that a user would generally always be presented with video and photographic material without either form of content being given any particular prominence. Ofcom therefore considered that it would be difficult in practice for a user of the website to navigate through the website to view the video content independently of the photographic content, which suggested that the photographic material was not, in this particular case, ancillary to the video material. As such, Ofcom considered that there were links between the video content and the photographic content made available on the Panties Pulled Down website and that the video content and photographic content complemented each other.

#### Balance of material

51. There is no threshold for determining the point at which an amount of video available on a service means that the principal purpose of a service can be said to be making available audiovisual material, such that it can be seen as in competition with linear TV. From the Appellant's submission, Ofcom noted that the Service included 402 videos with an average length of nine minutes (see paragraph 39 for detail on "Duration"). Ofcom also noted the Appellant's submission that there were 2,185 photo-sets each containing many tens of still images. Ofcom considered this amount of video content a substantial offering but notes it was made available alongside a substantial offering of photographic content. Further, Ofcom notes that both were regularly refreshed: Ofcom notes four new videos were made available in April 2015 and two new videos were made available in May 2015 and that pictures were also uploaded regularly, with eight photo sets made available April 2015 and three in May 2015.

#### Overall Decision on principal purpose

52. As described in Section 2, in assessing the principal purpose of any service the assessment takes into account various factors including the independence, prominence, completeness, presentation and substance of the audiovisual content available as well as all other relevant offerings of the Service.
53. Ofcom considers that in this case it was finely balanced as to whether or not it could be said that the 'principal purpose' of the Service was to offer audiovisual material.
54. On the one hand, we considered that, in view of the fact that both the photographic and video content was regularly refreshed, and the number of videos included on the website were seen as constituting a substantial offering, the provision of audiovisual material could be seen as a key purpose of the Service. In addition, it does not appear to Ofcom that the audiovisual content could be considered to be ancillary to the other material included on the website, such as the photographic content or any text or graphics. We also note that

users of the Service could search specifically for the video content at the exclusion of the photographic content.

55. However, we also consider that in this case, looking at the video content in the overall context of the Service, there was no greater prominence given, in terms of cataloguing or accessing of the content, or the presentation or style of the Service, to the photographic or video content, and both were distributed evenly throughout the website. Additionally, the integration of material across the site resulting from its organisation by model and rating meant that there were clear links between the video and photographic material and that they complemented each other, rather than indicating that the video offering was an independent service. Therefore, we consider the Service serves as a portal for accessing both photographic and/or video content of an adult nature depending on the user's preferences.
56. We considered that, on balance, the video content made available on the Appellant's website is not offered on an independent basis nor is it significantly distinct from the photographic content, but instead is one integrated element of the overall offering which also included the photographic stills and accompanying text. Ofcom therefore considers that the provision of the video content made available through the Panties Pulled Down website does not in itself constitute a service having the required principal purpose.
57. In considering the principal purpose of the Service, Ofcom has also had regard to the recent ruling from the Court of Justice of the European Union ("CJEU") on the *New Media Online* case, which ATVOD had referred to in its representations on our Preliminary View.
58. In this case, the CJEU considered the question of whether the website of an Austrian newspaper, which included a catalogue of around 300 videos, fell within the scope of the AVMS Directive as an OPDS. In this context, the CJEU made some comments about the criteria that should be applied in assessing the principal purpose of a service making videos available in the electronic version of a newspaper, but its observations have broader implications for the interpretation of this criterion under the AVMS Directive. In particular, the CJEU observed that:
- "preference must be given to a substantive approach which...consists of examining whether the principal purpose of the service at issue, in itself and regardless of the framework in which it is offered, is the provision of programmes to inform, entertain or educate the general public"* (paragraph 33 of the Judgment).
59. The CJEU further observed that if the service offered in the videos subdomain of the online newspaper website had *"form and content which is independent of that of the written press articles...that service falls within the scope of the Directive"*. However, it considered that if, instead, *"that service appears to be indissociably complementary to the journalistic activity of that publisher, in particular as a result of the links between the audiovisual offer and the offer in text form, it does not fall within the scope of that directive"* (paragraph 34).
60. In this context, we note that we do not consider that the video content on the Service is ancillary to the other material on the Service. We do, however, conclude that there are clear links between the video content and photographic content on the website, such that we consider that the provision of video content through the website should not be regarded as the provision of a service having

the required principal purpose. We therefore consider that our conclusion on principal purpose is consistent with the approach of the CJEU in the *New Media Online* case.

61. In light of that assessment, Ofcom did not need to consider in further detail the Appellant's arguments in relation to whether the nature of the video content on the Service was comparable to adult linear TV programmes in accordance with the comparability part of the definition in section 368A(1)(a).

#### Purposive Assessment: Regard to the AVMS Directive

62. Ofcom has, as set out above, had specific regard in this Decision to the provisions of the AVMS Directive. We have also taken a step back, and having more general regard to the relevant provisions of the Directive, considered whether the Service provided a service that the Directive seeks to bring within its regulatory scope.
63. As described in paragraph 14 to 16, the AVMS Directive includes Recitals intended to aid its interpretation. These Recitals make clear that, amongst other things, the scope of audiovisual media services intended to be regulated under the Directive is limited to those services that are "mass media" (Recital 21) and "compete for the same audience as television broadcasts" (Recital 24).
64. We note that the Appellant raised arguments regarding the need to interpret the provisions of section 368A(1)(a) purposively in accordance with the AVMS Directive and in particular in light of Recital 21 and 24. We consider below the arguments the Appellant raised in relation to these recitals.

#### Recital 21

65. Ofcom had regard to the Appellant's argument that the Service falls outside the scope of an OPDS because it is not a "mass media" service and is "primarily non-economic" within the meaning of Recital 21 of the Directive.
66. Ofcom noted that the Appellant argued that the "video content is primarily non-economic, generated by a private user for the purposes of sharing and exchange within communities of interest". The Appellant also stated that the Service had only 56 members and monthly gross sales of \$1,400 and therefore considered that "the economic dimension [of the Service] is as near zero as to make no substantive difference" and "so few members are not in accord with part of Recital 21...namely they have 'clear impact on a significant portion of the general public.'" The Appellant also argued that the Service had a limited, niche appeal and was therefore comparable to the UCSC service (which Ofcom had found not to be an OPDS).
67. In considering the Appellant's argument that the Service fell within Recital 21, Ofcom took into account its decision in the case of the service at UCSC, which Ofcom concluded was not an ODPS<sup>18</sup>.
68. We noted the Appellant's argument that the Service had a limited, niche appeal and was therefore comparable to the Service at UCSC. Ofcom noted the conclusion in the UCSC case that the content was of a "particularly niche appeal, made for and consumed by a very limited audience."

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<sup>18</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/vod-services/ucsc.pdf>



69. In light of the above, we acknowledged that the Service had a low membership and financial turnover. However, Ofcom considered that the fact that a service is viewed only by a limited number of people does not mean that it cannot be in competition with linear TV. We also note the wording of Recital 21 states the Directive covers services which "...*could* have a clear impact on, a significant proportion of the general public" (emphasis added). In our view the Service was capable of being accessed by a larger audience and did not consist of the "the provision or distribution of audiovisual content generated by private users for the purposes of sharing and exchange within communities of interest."
70. Taking all the above factors into account, we took the Decision that the Service was not "*primarily non-economic*" in nature within the meaning of Recital 21.

#### Recital 24 assessment

71. The Appellant argued that "the limited nature of the video content and context on the PPD website [the Service], and very limited nature of its reach, is a strong indication that the website is not...in competition with linear TV programming". Ofcom comments on the reach of the service in paragraphs 55 and 56 above.
72. Ofcom notes that Recital 24 provides further explanation as to the intended scope of the AVMS Directive and clarifies that one of the key purposes of the AVMS Directive is to maintain undistorted competition between linear TV broadcasting and 'TV-like' non-linear audiovisual services which compete for the same audience.
73. Ofcom took the view that the video content made available on the website is not an independent service but is an integrated element of the overall offering which also included the photographic stills and accompanying text, with the video content not being given prominence above, and being complementary to, the photographic content. Ofcom therefore considered that, assessing the Service as a whole, it was not likely to directly compete with adult television broadcasting services for the same audience.
74. Ofcom has also considered Recital 24's reference to [whether], "...the nature and the means of access to the service would lead the user reasonably to expect regulatory protection within the scope of this Directive." Ofcom notes Recital 24 makes clear that it is not just the "means of access" which are relevant but also the "nature" of the Service as well. Given that (as described above) the nature of the Service can be characterised as a web-based portal for accessing both photographic and/or video content of an adult nature depending on the user's preferences, Ofcom considered that a user would not reasonably expect regulatory protection under the AVMS Directive.
75. We note ATVOD's comments regarding the future of OFCOM approaches to UK adult websites that feature integrated video and photographic content. We understand the concern that the precedent set by this decision could potentially allow service providers of pornographic video content to ensure they are not subject to regulation by providing a service that includes a substantial amount of pornographic images which are given equal prominence to video material and which are distributed evenly throughout the service. Ofcom notes that websites vary aesthetically - in design, presentation and also in navigation. Ofcom will continue to assess services on a case by case assessment against the criteria for both the principal purpose assessment and comparability with television

programme services before drawing conclusions as to whether that service satisfies the criteria of an ODPS.

76. Ofcom also noted that the Appellant cited elements of Ofcom's 2012 research, *On-demand Services: Understanding Consumer Choice*<sup>19</sup>, commissioned from Essential Research in support of his arguments on the comparability of the material on his service, and the nature of the service itself. Ofcom is mindful of the fact that the study was a qualitative "snap shot" of user attitudes in 2012 in relation to stimulus material from services which offered video as their principle purpose. Given our assessment above, that the principle purpose of this service is not the provision of audiovisual material, we do not consider that a checklist approach to each of the factors discussed in the research is of particular relevance and we have dealt with any substantive issues of fact in our assessment above.

### **Section 5 – Conclusion**

77. For the reasons set out above, Ofcom considers that the Service was not a service the principal purpose of which was to provide audiovisual material which was comparable to the form and content of linear television programme services, and which was in competition with linear television programme services. Ofcom's Decision is that the Service was, therefore, not an ODPS within the meaning of section 368A(1) of the Act as at the time of ATVOD's Determination.
78. Consequently, Ofcom's Decision is that the Appellant was not in breach of the advance notification requirement under section 368BA of the Act, and the requirement to pay a fee under section 368D(3)(za).
79. Ofcom's Decision is therefore that the Appellant was not, for the reasons set out above, in respect of the Service, the provider of an ODPS at 3 December 2014 and 10 February 2015 and that the Appellant's appeal against ATVOD's Determination should be upheld and ATVOD's decision should be quashed.

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<sup>19</sup> [http://stakeholders.ofcom.org.uk/binaries/broadcast/tv-ops/vod/Research\\_Report.pdf](http://stakeholders.ofcom.org.uk/binaries/broadcast/tv-ops/vod/Research_Report.pdf)

## Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed between 18 April and 2 May 2016 and decided that the broadcaster or service provider did not breach Ofcom's codes, rules, licence conditions or other regulatory requirements.

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

Programme	Broadcaster	Transmission date	Categories
Paddy's Sunday Dinner	Metro Radio	27/03/2016	Generally accepted standards
Chasing Secrets	True Movies	02/02/2016	Offensive language
Sudie & Simpson	True Movies	03/02/2016	Offensive language
Multiple sponsorship credits	TLC (Norway)	n/a	Sponsorship credits

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

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

## Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 18 April and 2 May 2016 because they did not raise issues warranting investigation.

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

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

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Gogglebox	4Seven	15/04/2016	Race discrimination/offence	1
The Island with Bear Grylls	4Seven	21/04/2016	Generally accepted standards	1
News	All	16/04/2016	Outside of remit / other	1
Programming	All	n/a	Advertising minutage Outside of remit / other	1
Programming	Ary News	18/04/2016	Advertising minutage	1
Abused: The Untold Story	BBC 1	11/04/2016	Generally accepted standards	1
BBC News	BBC 1	16/04/2016	Outside of remit / other	2
BBC News	BBC 1	17/04/2016	Outside of remit / other	5
BBC News	BBC 1	11/04/2016	Offensive language	1
BBC News	BBC 1	28/04/2016	Generally accepted standards	1
EastEnders	BBC 1	31/03/2016	Violence and dangerous behaviour	1
EastEnders	BBC 1	11/04/2016	Generally accepted standards	5
EastEnders	BBC 1	19/04/2016	Age discrimination/offence	1
EastEnders	BBC 1	25/04/2016	Sexual orientation discrimination/offence	1
EastEnders	BBC 1	26/04/2016	Generally accepted standards	1
EastEnders	BBC 1	26/04/2016	Scheduling	1
EastEnders	BBC 1	27/04/2016	Outside of remit / other	1
Happy Valley	BBC 1	n/a	Outside of remit / other	1
Match of the Day	BBC 1	16/04/2016	Generally accepted standards	1
Party Election Broadcast by the Britain First Party	BBC 1	20/04/2016	Race discrimination/offence	3
Party Election Broadcast by the Green Party	BBC 1	27/04/2016	Race discrimination/offence	1
Party Election Broadcast by the Green Party	BBC 1	27/04/2016	Under 18s in programmes	3

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
The One Show	BBC 1	26/04/2016	Generally accepted standards	1
The Voice UK	BBC 1	02/04/2016	Voting	1
The Voice UK	BBC 1	09/04/2016	Voting	1
Undercover	BBC 1	24/04/2016	Violence and dangerous behaviour	1
The One Show / Too Much TV	BBC 1 / BBC 2	25/03/2016	Religious/Beliefs discrimination/offence	1
News	BBC 1 / ITV / Channel 4 / Sky News	12/04/2016	Due impartiality/bias	1
Reporting Scotland	BBC 1 Scotland	15/04/2016	Outside of remit / other	1
A Very Welsh Undertaking	BBC 1 Wales	25/04/2016	Generally accepted standards	1
Countryfile	BBC 2	17/04/2016	Scheduling	1
The Charge of the Light Brigade	BBC 2	06/04/2016	Animal welfare	1
The Real Marigold Hotel	BBC 2	n/a	Animal welfare	1
BBC News	BBC Channels	16/04/2016	Outside of remit / other	3
BBC News	BBC News Channel	15/04/2016	Generally accepted standards	1
BBC News	BBC News Channel	24/04/2016	Race discrimination/offence	1
Simon Mayo Drivetime	BBC Radio 2	06/04/2016	Generally accepted standards	3
Simon Mayo Drivetime	BBC Radio 2	08/04/2016	Generally accepted standards	1
The Chris Evans Breakfast Show	BBC Radio 2	21/04/2016	Generally accepted standards	1
Archive On 4	BBC Radio 4	16/04/2016	Offensive language	1
Woman's Hour	BBC Radio 4	15/04/2016	Gender discrimination/offence	1
5 Live Sport	BBC Radio 5 Live	06/04/2016	Generally accepted standards	1
Live Sport	BBC Radio 5 Live	06/04/2016	Race discrimination/offence	1
Sean Keaveny	BBC Radio 6	20/04/2016	Outside of remit / other	1
The Stephen Nolan Show	BBC Radio Ulster	07/04/2016	Crime	4
The Stephen Nolan Show	BBC Radio Ulster	12/04/2016	Generally accepted standards	1
Asian Network Comedy	BBC Red Button	06/04/2016	Generally accepted standards	1
Afternoon / Drivetime	BRFM 95.6FM	29/03/2016	Materially misleading	1
Capital Breakfast	Capital FM	31/03/2016	Commercial communications on radio	1
Programming	Capital FM	n/a	Drugs, smoking, solvents or alcohol	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Breakfast	Capital FM London	17/03/2016	Race discrimination/offence	1
Drive Time	Capital FM North East 105.6	14/04/2016	Transgender discrimination/offence	1
Airmeggedon	CBBC	23/04/2016	Violence and dangerous behaviour	1
Medical Detectives	CBS Reality	01/04/2016	Generally accepted standards	1
Strike It Rich	Challenge	26/03/2016	Race discrimination/offence	1
24 Hours in Police Custody	Channel 4	20/04/2016	Race discrimination/offence	4
Alan Carr: Chatty Man	Channel 4	19/04/2016	Generally accepted standards	1
Channel 4 News	Channel 4	26/04/2016	Generally accepted standards	2
Channel 4 News	Channel 4	27/04/2016	Religious/Beliefs discrimination/offence	1
Dispatches	Channel 4	25/04/2016	Offensive language	1
Gogglebox	Channel 4	15/04/2016	Outside of remit / other	1
Gogglebox	Channel 4	17/04/2016	Due impartiality/bias	1
Gogglebox	Channel 4	24/04/2016	Generally accepted standards	1
Hollyoaks	Channel 4	26/04/2016	Scheduling	1
Hollyoaks	Channel 4	n/a	Generally accepted standards	1
Indian Summers	Channel 4	17/04/2016	Outside of remit / other	1
Jimmy Carr	Channel 4	17/04/2016	Generally accepted standards	1
Location, Location, Location	Channel 4	24/04/2016	Religious/Beliefs discrimination/offence	1
Lookalikes	Channel 4	22/04/2016	Generally accepted standards	1
Ramsay's Kitchen Nightmares USA	Channel 4	18/04/2016	Offensive language	1
Sex Box	Channel 4	18/04/2016	Sexual material	1
Sex Box	Channel 4	18/04/2016	Sexual material	1
The Island with Bear Grylls	Channel 4	14/04/2016	Animal welfare	1
The Island with Bear Grylls	Channel 4	18/04/2016	Animal welfare	3
The Island with Bear Grylls	Channel 4	18/04/2016	Generally accepted standards	4
The Island with Bear Grylls	Channel 4	20/04/2016	Generally accepted standards	1
The Island with Bear Grylls	Channel 4	25/04/2016	Animal welfare	1
The Island with Bear Grylls	Channel 4	25/04/2016	Generally accepted standards	1
5 News Tonight	Channel 5	18/04/2016	Elections/Referendums	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
5 News Tonight	Channel 5	18/04/2016	Elections/Referendums	1
Can't Pay? We'll Take it Away!	Channel 5	15/04/2016	Materially misleading	1
Can't Pay? We'll Take it Away!	Channel 5	16/04/2016	Offensive language	7
Can't Pay? We'll Take it Away!	Channel 5	20/04/2016	Generally accepted standards	1
Going the Distance (trailer)	Channel 5	14/04/2016	Sexual material	1
Going the Distance (trailer)	Channel 5	15/04/2016	Sexual material	1
Ian Brady: 50 Years Behind Bars (pre-transmission)	Channel 5	03/05/2016	Outside of remit / other	1
On Benefits: Life on the Dole	Channel 5	21/04/2016	Generally accepted standards	1
Police Interceptors	Channel 5	25/04/2016	Generally accepted standards	1
Teenage Mutant Ninja Turtles	Channel 5	17/04/2016	Violence and dangerous behaviour	1
The Princess Bride	Channel 5	17/04/2016	Offensive language	1
The Wright Stuff	Channel 5	04/04/2016	Generally accepted standards	3
The Wright Stuff	Channel 5	15/04/2016	Generally accepted standards	1
The Wright Stuff	Channel 5	15/04/2016	Elections/Referendums	1
The Yorkshire Vet (trailer)	Channel 5	18/04/2016	Generally accepted standards	1
Tribal Teens... Here Comes Trouble	Channel 5	19/04/2016	Animal welfare	1
Tribal Teens: Here Comes Trouble	Channel 5	26/04/2016	Animal welfare	1
Violent Child, Desperate Parents	Channel 5	17/02/2016	Under 18s in programmes	2
Fort Boyard: Ultimate Challenge	CITV	16/04/2016	Animal welfare	1
Betsafe's sponsorship of primetime on Dave	Dave	07/04/2016	Sponsorship credits	1
Mock the Week	Dave	13/04/2016	Generally accepted standards	1
Marriage Today	Daystar	17/04/2016	Promotion of products/services	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Wheeler Dealers	Discovery	19/04/2016	Materially misleading	1
Filth	Film4	14/04/2016	Generally accepted standards	1
Nymphomaniac Vol 1	Film4	25/04/2016	Sexual material	2
Nymphomaniac Vol 2	Film4	26/04/2016	Sexual material	1
Family Guy	Fox	19/04/2016	Generally accepted standards	1
RPGTV Live Greyhound Racing	FrontRunner	06/04/2016	Generally accepted standards	1
Programming	Geo News	18/04/2016	Advertising minutage	1
Programming	Geo Tez	18/04/2016	Advertising minutage	1
Programming	Geo TV	18/04/2016	Advertising minutage	1
Traffic News	Heart FM (Scotland)	14/04/2016	Generally accepted standards	1
Pawn Stars	History	24/04/2016	Outside of remit / other	1
118118.com's sponsorship of movies on ITV	ITV	n/a	Sponsorship credits	1
Britain's Got Talent	ITV	09/04/2016	Offensive language	1
Britain's Got Talent	ITV	09/04/2016	Violence and dangerous behaviour	7
Britain's Got Talent	ITV	16/04/2016	Outside of remit / other	2
Britain's Got Talent	ITV	16/04/2016	Scheduling	1
Britain's Got Talent	ITV	23/04/2016	Gender discrimination/offence	1
Britain's Got Talent	ITV	23/04/2016	Offensive language	3
Britain's Got Talent	ITV	23/04/2016	Race discrimination/offence	1
Coronation Street	ITV	15/04/2016	Materially misleading	1
Coronation Street	ITV	18/04/2016	Drugs, smoking, solvents or alcohol	1
Emmerdale	ITV	11/04/2016	Generally accepted standards	1
Emmerdale	ITV	12/04/2016	Scheduling	1
Emmerdale	ITV	27/04/2016	Crime	1
Fierce	ITV	19/04/2016	Animal welfare	1
Good Morning Britain	ITV	25/04/2016	Elections/Referendums	1
HM Government advertisement for The National Living Wage	ITV	29/03/2016	Political advertising	1
ITV Evening News	ITV	11/04/2016	Due accuracy	1



<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
ITV Evening News	ITV	18/04/2016	Elections/Referendums	1
ITV Evening News	ITV	19/04/2016	Elections/Referendums	1
ITV Evening News	ITV	20/04/2016	Elections/Referendums	1
ITV Evening News	ITV	22/04/2016	Elections/Referendums	1
ITV News at Ten	ITV	14/04/2016	Due impartiality/bias	1
ITV News at Ten	ITV	27/04/2016	Due accuracy	1
Loose Women	ITV	20/04/2016	Race discrimination/offence	1
Loose Women	ITV	21/04/2016	Generally accepted standards	1
Loose Women	ITV	26/04/2016	Sexual orientation discrimination/offence	1
Lorraine	ITV	01/04/2016	Competitions	1
Lotto's sponsorship of Britain's Got Talent	ITV	09/04/2016	Sponsorship credits	1
Lotto's sponsorship of Britain's Got Talent	ITV	16/04/2016	Sponsorship credits	1
Lotto's sponsorship of Britain's Got Talent	ITV	n/a	Sponsorship credits	1
Marcella	ITV	04/04/2016	Generally accepted standards	13
Marcella	ITV	18/04/2016	Animal welfare	7
McCain's sponsorship of Emmerdale	ITV	n/a	Sponsorship credits	1
Nationwide's sponsorship of ITV documentaries	ITV	05/04/2016	Sponsorship credits	1
Party Election Broadcast by the Britain First Party	ITV	20/04/2016	Generally accepted standards	2
Party Election Broadcast by the Green Party	ITV	27/04/2016	Generally accepted standards	1
Party Election Broadcast by the Green Party	ITV	27/04/2016	Under 18s in programmes	3
River Monsters	ITV	17/04/2016	Animal welfare	1
The Durrells	ITV	03/04/2016	Scheduling	11
The Durrells	ITV	10/04/2016	Offensive language	3
The Durrells	ITV	24/04/2016	Offensive language	4

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
The Jeremy Kyle Show	ITV	29/03/2016	Materially misleading	1
The Jeremy Kyle Show	ITV	27/04/2016	Generally accepted standards	1
The Wine Show	ITV	23/04/2016	Scheduling	1
This Morning	ITV	28/04/2016	Outside of remit / other	1
This Morning	ITV	n/a	Outside of remit / other	1
Tipping Point	ITV	15/04/2016	Offensive language	1
Tipping Point	ITV	20/04/2016	Due impartiality/bias	1
Tonight	ITV	31/03/2016	Due impartiality/bias	1
You've Been Framed!	ITV	23/04/2016	Generally accepted standards	2
ITV News Central	ITV Central	15/04/2016	Elections/Referendums	1
ITV News London	ITV London	26/04/2016	Elections/Referendums	1
Welsh Leaders' Debate	ITV Wales	20/04/2016	Elections/Referendums	1
Westcountry News	ITV Westcountry	15/04/2016	Generally accepted standards	1
Britain's Got More Talent	ITV2	09/04/2016	Generally accepted standards	1
Britain's Got More Talent	ITV2	23/04/2016	Nudity	1
Britain's Got Talent	ITV2	24/04/2016	Offensive language	1
Celebrity Juice	ITV2	21/04/2016	Generally accepted standards	1
Coronation Street Omnibus	ITV2	16/04/2016	Race discrimination/offence	1
Paranoia	ITV2	24/04/2016	Sexual material	1
The Jeremy Kyle Show	ITV2	26/04/2016	Generally accepted standards	1
Carry on Loving	ITV3	26/03/2016	Gender discrimination/offence	1
Warner Leisure Hotels' sponsorship of Heartbeat	ITV3	15/04/2016	Sponsorship credits	1
The Only Way Is Essex	ITVBe	03/04/2016	Generally accepted standards	1
Våra pinsamma kroppar	Kanal 11	13/04/2016	Gender discrimination/offence	1
Programme trailers	Kanal 5	27/03/2016	Scheduling	1
David Mellor and Michael Crick	LBC 97.3FM	23/04/2016	Elections/Referendums	1
Iain Dale	LBC 97.3FM	19/04/2016	Elections/Referendums	1
James O'Brien	LBC 97.3FM	20/04/2016	Race discrimination/offence	1
James O'Brien	LBC 97.3FM	21/04/2016	Elections/Referendums	1
Mellow Magic	Magic FM	24/04/2016	Sexual orientation discrimination/offence	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Kismet Karma	MATV	08/03/2016	Materially misleading	1
Father Ted	More4	23/04/2016	Offensive language	1
Mumtaz Qadri	Muslim Ummah TV	29/02/2016	Crime	2
We Built the Titanic	National Geographic	28/04/2016	Offensive language	1
Without a Trace	Pick TV	15/04/2016	Violence and dangerous behaviour	1
Programming	PTV Global	18/04/2016	Advertising minutage	1
Programming	PTV Prime	18/04/2016	Advertising minutage	1
Breakfast Show	Radio Exe	15/04/2016	Outside of remit / other	1
Johnny Vaughan	Radio X	18/04/2016	Scheduling	1
Military Secret	Ren TV Baltic	11/02/2016	Due impartiality/bias	1
Renaissance	RT	13/04/2016	Due impartiality/bias	1
Programming	Samaa	18/04/2016	Advertising minutage	1
Game of Thrones	Sky Atlantic	22/04/2016	Generally accepted standards	1
Last Week Tonight with John Oliver	Sky Atlantic	18/04/2016	Generally accepted standards	1
Sky News	Sky News	14/04/2016	Due impartiality/bias	1
Sky News	Sky News	19/04/2016	Elections/Referendums	1
Sky News at 6 with Jeremy Thompson	Sky News	25/04/2016	Hypnotic and other techniques	1
Sky News Tonight with Adam Boulton	Sky News	25/04/2016	Due impartiality/bias	1
Sky News with Colin Brazier	Sky News	15/04/2016	Generally accepted standards	1
Sky News with Colin Brazier	Sky News	18/04/2016	Elections/Referendums	1
Sunrise	Sky News	15/04/2016	Elections/Referendums	1
Sunrise	Sky News	21/04/2016	Elections/Referendums	1
Super Sunday	Sky Sports 1	24/04/2016	Outside of remit / other	1
WWE Late Night Raw	Sky Sports 5	19/04/2016	Materially misleading	1
The Simpsons	Sky1	10/04/2016	Advertising minutage	1
The Simpsons	Sky1	25/04/2016	Generally accepted standards	1
The X Files	Spike	14/04/2016	Television Access Services	1
Takbeer Musalsal	Takbeer TV	29/02/2016	Crime	4
Jon Holmes	Talk Radio	15/04/2016	Generally accepted standards	1
Julia Hartley Brewer	Talk Radio	25/04/2016	Elections/Referendums	1
Extra Time	Talksport	17/04/2016	Due impartiality/bias	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
The Alan Brazil Sports Breakfast	Talksport	07/04/2016	Generally accepted standards	1
Bridging the Gap	Ummah Channel	04/04/2016	Due impartiality/bias	1
Get Me to the Church	W	11/04/2016	Animal welfare	1
Programming	WestSound	n/a	Outside of remit / other	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: <http://stakeholders.ofcom.org.uk/broadcasting/procedures/general-procedures/>

Licensee	Licensed service	Categories
The Pakistan Muslim Centre (Sheffield) Limited	Link 96.7 FM	Key Commitments

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

Programme name	Service name	Accessed date	Category of complaint	Number of complaints
The Big Fish Off	ITV Hub	n/a	Religious/Beliefs discrimination/offence	1
Game of Thrones	Sky Atlantic	18/04/2016	Television Access Services	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/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:

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
BBC News	BBC 1	05/04/2016	Due accuracy	1
BBC News at Six	BBC 1	06/04/2016	Due impartiality/bias	1
BBC News at Six	BBC 1	15/04/2016	Elections/Referendums	2
BBC News at Ten	BBC 1	20/04/2016	Due accuracy	1
Breakfast	BBC 1	26/04/2016	Elections/Referendums	1
News	BBC 1	n/a	Elections/Referendums	1
Regional News and Weather	BBC 1	23/04/2016	Undue prominence	1
The Andrew Marr Show	BBC 1	17/04/2016	Due impartiality/bias	1
World Championship Snooker - Extra	BBC 1	24/04/2016	Undue prominence	1
Into the Wild with Gordon Buchanan	BBC 2	12/04/2016	GAS - Materially misleading	1
Louis Theroux - Drinking to Oblivion	BBC 2	24/04/2016	Product placement	1
The Daily Politics	BBC 2	28/04/2016	Due impartiality/bias	1
BBC News	BBC Channels	n/a	Due impartiality/bias	1
BBC News	BBC Channels	n/a	Elections/Referendums	1
BBC News	BBC Radio 2	27/04/2016	Elections/Referendums	1
The World Tonight	BBC Radio 4	31/03/2016	Commercial communications on radio	1
Today	BBC Radio 4	25/04/2016	Due impartiality/bias	1
Advertisement	Channel 4	21/04/2016	Advertising content	1
Advertisement	Channel 4	29/04/2016	Advertising content	1
Advertisement	Channel 5	15/04/2016	Advertising content	1
Advertisement	Channel 5	18/04/2016	Advertising content	1
Advertisement	Channel 5	21/04/2016	Advertising content	2
Advertisement	Comedy Central	17/04/2016	Advertising content	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Advertisement	ITV	16/04/2016	Advertising content	5
Advertisement	ITV	18/04/2016	Advertising content	2
Advertisement	ITV	24/04/2016	Advertising content	1
Advertisement	ITV	25/04/2016	Advertising content	1
Advertisement	ITV	28/04/2016	Advertising content	1
Advertisement	ITV	n/a	Advertising content	1
Advertisements	ITV	22/04/2016	Advertising content	1
Advertisement	ITV3	24/04/2016	Advertising content	1
Advertisement	ITVBe	15/04/2016	Advertising content	1
Advertisement	n/a	21/04/2016	Advertising content	1
Advertisements	Sky Sports 2	21/04/2016	Advertising content	1
Advertisement	STV	26/04/2016	Advertising content	1
Advertisement	Talksport	25/04/2016	Advertising content	1

### Complaints about on demand services

Programme	Service name	Accessed date	Categories	Number of complaints
Party Election Broadcast by Women's Equality Party	YouTube	07/04/2016	Gender discrimination/offence	1
Party Election Broadcast by Women's Equality Party	YouTube	n/a	Gender discrimination/offence	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 18 April and 2 May 2016

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

Programme	Broadcaster	Transmission date
I Spit on Your Grave	Horror Channel	28 March 2016
The Jeremy Kyle Show	ITV	27 March 2016
Advertisements	NickToons	various
Aloha Vet	Pick	3 April 2016
Q Radio Breeze	Q Radio 96.7 FM	2 April 2016
Stage Fright	Sky Movies Premier	26 March 2016

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

### Investigations launched under the General Procedures for investigating breaches of broadcast licences

Licensee	Licensed Service
Scripps Networks International (UK) Limited	Travel Channel TV

For more information about how Ofcom assesses complaints and conducts investigations about broadcast licences, go to: <http://stakeholders.ofcom.org.uk/broadcasting/procedures/general-procedures/>