



Broadcasting Code Review: Section Three

Crime, Disorder, Hatred and Abuse

Statement

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About this document

In January 2016 Ofcom published a consultation on our proposed amendments to the rules and guidance for Section Three of the Broadcasting Code (“the Code”). This document sets out our conclusions having carefully considered all consultation responses.

Section Three of the Code reflects Ofcom’s statutory duty to secure that material that is likely to encourage or incite the commission of crime, or to lead to disorder is not included in television and radio services. Ofcom has a duty to review and revise the rules in the Code from time to time when we consider it appropriate.

The purpose of the review of Section Three of the Code is to ensure it is as clear as possible for broadcasters to understand.

This statement concludes Ofcom’s review and we will issue the revised rules in the Broadcasting Code on 9 May 2016, and publish the accompanying guidance notes.

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Section 1

Executive Summary

- 1.1 This statement sets out Ofcom’s conclusions on changes to Section Three of the Broadcasting Code (“the Code”) and the accompanying guidance. The changes to the Code will come into force at 10:00 on Monday 9 May 2016.

Background

- 1.2 On 13 January 2016 Ofcom published a consultation on proposed amendments to the rules in Section Three of the Code. This section implements our statutory duty to prohibit the broadcast of material likely to encourage or incite the commission of crime, or to lead to disorder. Ofcom has a duty to review and revise the Code from time to time when we consider it appropriate.
- 1.3 Ofcom takes the broadcast of content that is likely to encourage or incite the commission of crime or to lead to disorder extremely seriously.
- 1.4 There is also a broad range of content which may not amount to an incitement to crime but is problematic and potentially extremely harmful to audiences. Material containing hate speech and extremist views are examples of the types of material likely to raise serious issues of harm or offence.
- 1.5 The review aims to ensure that when broadcasters cover topics such as extremism and hate speech, the rules and guidance are as clear as possible about what content is and is not acceptable under the Code.
- 1.6 The consultation closed on 18 March 2016 and we received nine responses from stakeholders.

Summary of consultation proposals

- 1.7 We proposed to change the title of Section Three from “Crime” to “Crime, Disorder Hatred and Abuse” to reflect the addition of the new rules that cover a broader range of content under the harm and offence standards objectives that are now considered under this section.
- 1.8 Ofcom did not propose altering the wording of Rule 3.1 as it reflects our standards objective relating to crime as set out in statute. We instead proposed providing clarity and assistance to broadcasters through the addition of ‘notes’ and ‘meanings’ under Rule 3.1. These provide information on the types of material which may be captured under this rule and examples of significant contextual factors which broadcasters should take into account when complying broadcast material.
- 1.9 Rule 3.1 states:

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

We proposed the following notes to appear in the Code under Rule 3.1:

“Under Rule 3.1, “material” may include but is not limited to:

- *content which directly or indirectly amounts to a call to criminal action or disorder;*
 - *material promoting or encouraging engagement in terrorism or other forms of criminal activity or disorder; and/or*
 - *hate speech which is likely to encourage criminal activity or lead to disorder.”*
- 1.10 We also proposed new Rules 3.2 and 3.3 to reflect our standards objective to provide adequate protection to members of the public against harmful or offensive material. These proposed rules are designed to deal with content such as hate speech, and abusive or derogatory treatment which may not in itself amount to material likely to encourage or incite the commission of crime or to lead to disorder. Ofcom proposed ‘notes’ and ‘meanings’ to supplement these rules and provide additional information for broadcasters.
- 1.11 The proposed new Rules 3.2 and 3.3 state:
- 3.2 *Material which contains hate speech must not be included in television and radio programmes except where it is justified by the context.*
- 3.3 *Material which contains abusive or derogatory treatment of individuals, groups, religions or communities, must not be included in television and radio services except where it is justified by the context. (See also Rule 4.2).*
- 1.12 A new accompanying guidance document for this section of the Code was also published for consultation.

Overview of responses

- 1.13 Overall there was wide support in principle for the proposed amendments to the Code and guidance. There was a broad view among respondents that the additional notes in the Code and new guidance would be helpful to broadcasters.
- 1.14 Noor TV and Dunya News agreed fully with the proposed amendments to the Code and guidance.
- 1.15 The Ahmadiyya Muslim Community UK, BT Plc, ITN and Channel 4 agreed in principle with the proposed amendments to the Code and guidance, and provided additional comments and suggestions of where further clarity could be achieved.
- 1.16 ITV (with the support of STV and UTV) supported the objective to provide clarity and considered the proposed additional notes in the Code and guidance for Rule 3.1 helpful, but expressed concerns with the introduction of Rules 3.2 and 3.3. Similarly, the BBC welcomed the intention of the review but questioned whether this intention was best served through the introduction of Rules 3.2 and 3.3.
- 1.17 Global Radio raised concern that the proposed wording of Rule 3.3 could capture a broad range of material and could cause broadcasters to be overly cautious.
- 1.18 In Section 3 below we set out further detail of the proposals, key substantive points raised by stakeholders through the consultation and Ofcom’s response to these.

Conclusion

- 1.19 Having carefully considered all responses, we have decided to proceed with the changes proposed to the Code rules and we have made some modifications to our original draft of the guidance document.
- 1.20 The new rules will be issued on 9 May 2016 in a revised Broadcasting Code, together with a new accompanying guidance document for the Section.

Section 2

Background

Statutory objectives

- 2.1 As part of its duties and functions in relation to broadcasting under section 319 of the Communications Act 2003 (“the Act”), Ofcom has a duty to set such standards for broadcast content as appear to it best calculated to secure the standards objectives. One of the standards objectives (section 319(2)(b)) is that “material likely to encourage or to incite the commission of crime or to lead to disorder is not included in television or radio services.” This is reflected in Section Three of the Code.
- 2.2 Rule 3.1 states:

“Material likely to encourage or incite the commission of crime or to lead to disorder must not be included in television or radio services.”
- 2.3 Ofcom has a duty to review and revise the Code from time to time when we consider it appropriate. This section of the Code has not been reviewed since it was introduced in 2005.
- 2.4 Ofcom must act compatibly with broadcasters’ and audiences’ right to freedom of expression as set out in Article 10 of the European Convention for Human Rights (“ECHR”), and the right to freedom of thought, conscience and religion (Article 9 of the ECHR).
- 2.5 Ofcom must also secure that generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material (section 319(2)(f) of the Act).
- 2.6 The Audiovisual Media Services (“AVMS”) Directive sets out the European Union framework for the regulation of television services. Article 6 of the Directive says: “Member States shall ensure by appropriate means that audiovisual media services provided by media service providers under their jurisdiction do not contain any incitement to hatred based on race, sex, religion or nationality.”

Regulatory objectives

- 2.7 The first breach of Rule 3.1 was recorded in 2012. To date, we have recorded breaches by four broadcasters for material likely to encourage or incite the commission of crime or to lead to disorder. We take the broadcast of such content extremely seriously and will always consider whether to impose a sanction on a broadcaster where such a breach has occurred.
- 2.8 Given our enforcement activity under Rule 3.1 to date and the high risk of harm associated with the relevant content engaged with this rule, we consider there is a need to ensure Section Three is as clear as possible for broadcasters.
- 2.9 Against this background, Ofcom also recognises the significant national and international concern about the risks associated with extremist content made available across a range of platforms.

- 2.10 There is a broad range of content capable of causing serious harm that may not result in an incitement to crime, for example, hate speech and abusive treatment. Such material would normally be considered under the harm and offence rules in Section Two of the Code. Ofcom believes there is merit in drawing attention to some of these more serious types of harm in Section Three.
- 2.11 The objective of the review was to ensure that broadcasters understand the importance and sensitivity of the rules in this area and to make more explicit for broadcasters the types of content that is covered by the Code. Importantly, we want to ensure that when broadcasters wish to cover topics such as extremism in a responsible manner, the Code and accompanying guidance provide clarity on how to do so without breaching the rules.
- 2.12 The revisions to the Code do not change our current approach to regulating this type of content. We continue to be bound by our duties in the Act to secure the standards objectives that “material likely to encourage or incite the commission of crime or to lead to disorder is not included in television or radio services”, and that “generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material”.

Section 3

Consultation proposals and responses

- 3.1 Ofcom issued a consultation on the proposed amendments to the Rules and guidance for Section Three in January 2016. The consultation asked stakeholders whether they agreed with the proposed amendments.
- 3.2 We received nine consultation responses and have taken into account all views and issues raised in reaching our conclusions. Most respondents stated that they agreed in full or in principle with the proposed amendments to the Code and guidance. Set out below are the full proposals, the substantive points raised by stakeholders through the consultation, and Ofcom's response to these.

Section title

- 3.3 We proposed amending the title of Section Three of the Code from "Crime" to "Crime, Disorder, Hatred and Abuse" to reflect the proposed inclusion of two additional rules in this section based on our standards objective to provide adequate protection against harmful and offensive material. We consider this further below.

Foreword

- 3.4 We proposed the addition of a foreword to this section of the Code to make clear to the reader the purpose of the rules and to clarify that the Code does not prohibit broadcasters from exercising freedom of expression or restrict audiences' rights to receive information and ideas. For example, we made it clear that the proposed changes did not prohibit broadcasters from reporting on or interviewing people or organisations with extreme or challenging views in news and current affairs coverage.

Stakeholder responses

- 3.5 A number of broadcasters stressed the importance of protecting broadcasters' right to freedom of expression and audiences' right to receive information and ideas within this section of the Code. Ofcom's acknowledgment of this in the proposed wording of the foreword was welcomed by ITN and Channel 4.
- 3.6 ITN thought the guidance extremely helpful in setting out the desire by Ofcom not to limit freedom of expression, and welcomed Ofcom highlighting news and current affairs as having specific interest in presenting controversial viewpoints.
- 3.7 Channel 4 noted its concern if the application of the revised Code were to disproportionately restrict the freedom of broadcasters or excluded potential interviewees of subject areas. Channel 4 favoured a situation in which freedoms and rights could be safeguarded by appropriate challenge and context, and resisted any interpretations which might erode or undermine those principles.

Ofcom response:

- 3.8 Ofcom agrees with the points raised by stakeholders about freedom of expression. As stated in the proposed foreword, the Code does not prohibit broadcasters from reporting on or interviewing particular people or organisations, subject to appropriate

context being provided. **As such, we will adopt the wording of the proposed foreword in the final version of the Code.**

Rule 3.1

3.9 We did not propose altering the wording of Rule 3.1 as it reflects the standards objective relating to crime, as set out in statute.

3.10 Rule 3.1 states:

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

3.11 We proposed providing clarity and assistance to broadcasters through the addition of ‘notes’ and ‘meanings’ under Rule 3.1. These provide information on the types of material which may be captured under this rule and examples of significant contextual factors which broadcasters should take into account when complying broadcast material.

3.12 Ofcom proposed the following additions:

Note:

Under Rule 3.1, “material” may include but is not limited to:

- *content which directly or indirectly amounts to a call to criminal action or disorder;*
- *material promoting or encouraging engagement in terrorism or other forms of criminal activity or disorder; and/or*
- *hate speech which is likely to encourage criminal activity or lead to disorder.*

Meaning of “terrorism”: *see the definition in section 1 of the Terrorism Act 2000, which is also summarised in Ofcom’s guidance to this section of the Code.*

Meaning of “hate speech”: *all forms of expression which spread, incite, promote or justify hatred based on intolerance on the grounds of disability, ethnicity, gender, gender reassignment, nationality, race, religion, or sexual orientation.*

Meaning of “crime”: *this may relate to any offence under law that is punishable by imprisonment or by a fine.*

Meaning of “disorder”: *this includes but is not limited to the criminal offence of civil disorder.*

Meaning of “likely to encourage or to incite the commission of crime or to lead to disorder”:

A portrayal of crime, or of incitement to crime, will not necessarily result in a breach of Rule 3.1. The likelihood of content inciting crime or leading to disorder will depend on the nature of the material as well as the context in which it is presented to the audience.

Significant contextual factors under Rule 3.1 may include (but are not limited to):

- *the editorial purpose of the programme;*
- *the status or position of anyone featured in the material; and/or*
- *whether sufficient challenge is provided to the material.*

For example, there may be greater potential for material to encourage or incite the commission of crime if a programme sets out to influence the audience on a subject or theme, or provides an uncritical platform for an authoritative figure to advocate criminal activity or disorder.

There may be less potential for a breach of Rule 3.1 if opposing viewpoints and sufficient challenge are provided to people or organisations who advocate criminal activity or disorder, or where a programme seeks to provide an examination of or commentary on criminal activity or disorder in the public interest.

Other examples of contextual factors are provided in Ofcom's guidance to this Section of the Code.

Stakeholder responses

- 3.13 The Ahmadiyya Muslim Community UK, Dunya News, ITN, and Noor TV fully supported the proposed amendments. BT Plc, Channel 4, and ITV expressed agreement in principle with the proposed additions.
- 3.14 ITV stated that it has always considered Rule 3.1 as clear; however, it considered the proposed additional notes and guidance for Rule 3.1 helpful given the recorded breaches in this area. It did suggest that these breaches indicated a lack of general knowledge of compliance by the broadcasters involved, rather than a lack of clarity in the rule.

Ofcom response:

- 3.15 Ofcom licenses approximately 2,000 television and radio services, many of which are small broadcasters. It is important that the Code and guidance are as clear as possible to all licensed UK broadcasters on what content is and is not acceptable under the Code, and to avoid any risk of misinterpretation.
- 3.16 **Ofcom will therefore include the proposed notes section introducing meanings and examples on the face of the Code in the final version of the Code.**

Rules 3.2 and 3.3

- 3.17 We proposed the addition of new Rules 3.2 and 3.3 based on the standards objective to provide adequate protection to members of the public against harmful or offensive material.
- 3.18 These proposed rules deal with content such as hate speech, and abusive or derogatory treatment which may not in itself amount to material likely to encourage or incite the commission of crime or to lead to disorder. We proposed 'notes' and 'meanings' to supplement these rules and provide additional information for broadcasters.
- 3.19 Ofcom proposed the following additions:
- 3.2 *Material which contains hate speech must not be included in television and radio programmes except where it is justified by the context.*

- 3.3 *Material which contains abusive or derogatory treatment of individuals, groups, religions or communities, must not be included in television and radio services except where it is justified by the context. (See also Rule 4.2).*

Meaning of “context” under Rule 3.2 and Rule 3.3:

Key contextual factors may include, but are not limited to:

- *the genre and editorial content of the programme, programmes or series and the likely audience expectations. For example, there are certain genres such as drama, comedy or satire where there is likely to be editorial justification for including challenging or extreme views in keeping with audience expectations, provided there is sufficient context. The greater the risk for the material to cause harm or offence, the greater the need for more contextual justification;*
- *the extent to which sufficient challenge is provided;*
- *the status or position of anyone featured in the material;*
- *the service on which the material is broadcast; and*
- *the likely size and composition of the potential audience and likely expectation of the audience.”*

Stakeholder responses to the proposed new Rule 3.2

- 3.20 The Ahmadiyya Muslim Community UK suggest that the threshold for the new rule should be based on intolerance rather than hate as it is easier to demonstrate how views expressed promote intolerance of other groups. This should not however impinge on the right to robustly debate any particular views or beliefs.

Ofcom response:

- 3.21 We define the meaning of “hate speech” in the proposed revisions as: “all forms of expression which spread, incite, promote, or justify hatred based on intolerance on the grounds of disability, ethnicity, gender, gender reassignment, nationality, race, religion or sexual orientation.” Ofcom recognises that intolerance may be an important consideration when assessing material in this area. If material involving intolerance potentially meets the definition of hate speech, we will investigate and, if necessary, take appropriate regulatory action.
- 3.22 **We believe the current wording of Rule 3.2 is sufficient to capture problematic material which promotes hatred, but does not in itself amount to material likely to encourage or to incite the commission of crime or to lead to disorder.**

Stakeholder responses to the proposed new Rule 3.3

- 3.23 ITV raised concern that the proposed new Rule 3.3, and in particular the reference to “individuals”, might encourage complaints about almost any sort of derogatory comment about anyone, irrespective of context.
- 3.24 Global Radio commented that the wording of the proposed Rule 3.3 was unspecific and could capture a broad range of material. Global requested that Ofcom provide additional guidance on the types of “derogatory treatment” that might fall foul of the rule to ensure it did not result in an overly cautious approach being adopted by broadcasters.

- 3.25 ITN considered the inclusion of “justified by the context” as vital to the proposed amendments to both Rules 3.2 and 3.3 and urged Ofcom to retain these key contextual factors in any future iteration of the Code.

Ofcom response:

- 3.26 The revisions to the Code do not change our current approach to regulating this type of content and the proposed new wording of Rule 3.3 is not designed to capture a broader range of material than would have previously been considered. We continue to be bound by our duties in the Act to ensure that “material likely to encourage or incite the commission of crime or to lead to disorder is not included in television or radio services”, and to secure that “generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material”.
- 3.27 **Ofcom will retain the proposed wording in Rules 3.2 and 3.3 which requires permissible material to be “justified by the context”. Our guidance note makes clear that the consideration of context (including, for example, the genre and audience expectation of the material) would be taken into account by Ofcom under this rule.**

Stakeholder responses on the positioning of Rules 3.2 and 3.3

- 3.28 While ITV took no issue in principle with the new Rules 3.2 and 3.3, it did not believe there to be any pressing need to introduce them. Similarly, the BBC welcomed the intention of the review, but doubted whether this intention was best served through the proposed new rules.
- 3.29 ITV considered there to be a risk in making the “currently clear and straightforward Section Three” less clear. The BBC raised a similar line of argument, stating a case for confining Section Three “to matters of comparable gravity”.
- 3.30 ITV argued that material that might amount to “hate speech” or “abusive and derogatory treatment” could already be considered under Rules 2.1 and 2.3, or under Rule 3.1. It also noted that Rule 4.2 already deals with abusive treatment of religious views and beliefs within religious programmes. Since Section Three relates to crime, ITV suggested that the new rules and related guidance would sit better in Section Two given that they relate to harm and offence issues.
- 3.31 The BBC commented that the reference to “abusive and derogatory treatment of individuals, groups, religions or communities” might encompass material from genres such as comedy and reality programmes – which lies squarely within the standards objective of harm and offence, under Section Two.
- 3.32 The BBC submitted that it believed this to be the first occasion it was aware of in which Ofcom has proposed introducing rules reflecting one standards objective (as set out in section 319 of the Communications Act 2003) in a section of the Code reflecting another. It considered that the arrangement of the Code broadly according to standards objectives has contributed to regulatory clarity.
- 3.33 The BBC suggested, in the interests of clarity, to instead note in Section Two that certain sources of offence may rise to the level of crime, and for these cases Section Three should be prescribed. Failing that, the BBC recommended the Code should

specify that the new Rules 3.2 and 3.3 apply to matters which could give rise to prosecution.

Ofcom response:

- 3.34 Ofcom has carefully considered the points raised by the BBC and ITV but is not persuaded that the addition of Rules 3.2 and 3.3 or their position in Section Three of the Code lessens the seriousness of the section or makes it unclear. Rules 3.2 and 3.3 are designed to deal with content which may contain hate speech and abusive or derogatory treatment which does not amount to material likely to encourage or incite the commission of crime or disorder. Rule 3.1 would not therefore apply to this type of material, but it is nonetheless capable of causing very serious harm and/or offence.
- 3.35 The rules in Section Two apply to a broad range of content that may cause harm and/or offence. To provide clarity for broadcasters, and reflect the likely seriousness of any potential harm and/or offence caused by the broadcast of hate speech or abusive or derogatory treatment, we believe there is merit in including these new rules in Section Three. This also reflects European legislation where this is a specific requirement to ensure services do not contain incitement to hatred based on race, sex, religion or nationality¹.
- 3.36 It is important to note that it is not uncommon for a section of the Broadcasting Code to reflect more than one of the standards objectives as set out in statute. Indeed, the majority of sections under the Broadcasting Code already do this².
- 3.37 We also consider that the amendment of the title of Section Three from “Crime” to “Crime, Disorder, Hatred and Abuse” makes clear that this section has been broadened to reflect a wider set of standards objectives.
- 3.38 **In light of the above, we have decided to proceed to include new Rules 3.2 and 3.3 as proposed within the newly named Section Three of the Code.**

Stakeholder responses to the meaning of “context” under Rule 3.2 and 3.3

- 3.39 The Ahmadiyya Muslim Community UK noted that with specific reference to the meaning of “context” under proposed Rules 3.2 and 3.3, Ofcom is required to consider the likely size and composition of the audience for a programme or series. However it said that, in its view, the size of the audience at the time of broadcast may be irrelevant given that most content can be uploaded onto the internet.
- 3.40 The Ahmadiyya Muslim Community UK commented that overseas broadcasters have edited programmes to make them comply with UK regulations. However editing will not fully remove the context or harmful effect and the original material is often available in full on the internet. It suggested that Ofcom should extend its Code and guidance to include material broadcast via the internet available in the UK.

Ofcom response:

- 3.41 While Ofcom recognises the potential risk to audiences of harmful material shown online, our role in relation to internet services is limited. We regulate television

¹ Article 6 of the AVMS Directive.

² Including Sections One, Two, Five, Nine and Ten of the Broadcasting Code.

channels delivered over the internet that meet the definition of a licensable television service. We also regulate notified on-demand programme services (ODPS) when they are established in the UK; but we have no statutory powers to regulate any other online content.

Guidance

- 3.42 We published a proposed guidance document alongside the proposed revisions to Section Three of the Code to assist broadcasters in interpreting and applying them. The guidance notes contain information to assist broadcasters in complying material for broadcast and draw broadcasters' attention to previous relevant cases.
- 3.43 Below are the substantive points raised by stakeholders in response to various aspects of the proposed guidance document.

“Context”

- 3.44 The BBC suggested that the requirement that certain views should always be challenged and placed in context may be restrictive. The BBC hoped that Ofcom would allow for exceptions where particular circumstances or public interest considerations justify them. For example, it said if a particular extremist utterance, in a pre-recorded form, had become a news story there may be legitimate editorial justification for broadcasting the recordings but it might not be possible to challenge the speaker directly. The BBC suggested a change to read “challenged and/or placed in context” to introduce a degree of flexibility.
- 3.45 Channel 4 agreed with Ofcom's guidance at A6.31 drawing attention to genres such as drama, comedy or satire where there is likely to be editorial justification for including challenging or extreme views in keeping with audience expectation.
- 3.46 ITN stressed the importance of continuing to look at any alleged breaches on a case by case basis and always taking into account the context.

Ofcom response:

- 3.47 Ofcom accepts the BBC's comments about placing views in context in addition to providing challenge. **The guidance document has been amended to read “challenged and/or placed in context”.**
- 3.48 Ofcom agrees with the comments made by ITN and Channel 4. Material permissible under these rules will always be required to be justified by the context, and any cases in this area will be considered on their individual facts. Genre is a key contextual factor which will always be taken into account.

Sports coverage

- 3.49 BT Plc raised concern about how Ofcom would assess complaints under Rules 3.2 and 3.3 about live sporting events. As a sports broadcaster BT Plc raised the risk that some fixtures can contain sectarian or racist chanting by fans despite the broadcaster conducting risk assessments and implementing contingencies to deal with such challenges. BT Plc requested reassurance from Ofcom that the constraints of broadcasting live sporting events would be taken into consideration and suggested that additional guidance for broadcasters in this area would be useful.

Ofcom response:

- 3.50 As noted above, Ofcom is not changing its approach to regulating content in this area, as currently considered under Section Two of the Code. Ofcom will always take into account all relevant contextual factors, including the nature of live sporting events and any steps taken by the broadcaster to minimise the risk of non-compliance with the Code. **Paragraph 1.16 of the guidance notes gives more information on the range of contextual factors Ofcom takes into account. This is consistent with how we currently regulate content of this nature. Broadcasters should refer to this guidance when complying material for broadcast.**

Portrayals of crime and criminal proceedings

- 3.51 ITV opposed the additional wording in the proposed guidance that Rule 3.5 “covers any form of payment to the criminal for their contribution including payment of their expenses” (A6.29). ITV stated it would be an unwarranted restriction on freedom of expression if interviews with criminals were unable to occur because of an inability to reimburse them for any reasonable expense for taking part in the programme.
- 3.52 ITV and the BBC raised concern about the requirement in the proposed guidance to declare on air when a payment has been made to a convicted or confessed criminal for a programme contribution relating to their crimes (A6.51). The BBC argued that the proposed new wording would restrict broadcasters’ ability to include contributions which would be in the public interest. It suggested that the existing guidance, which it described as less restrictive, was preferable here.

Ofcom response:

- 3.53 Ofcom accepts that the additional wording to paragraph A6.49 in the proposed guidance is unnecessarily restrictive and has clarified that the payment of expenses can only occur when it is in the public interest to do so. We have considered the concerns raised regarding paragraph A6.51 in the proposed guidance and also accept that the requirement to declare on air when a payment has been made to a convicted or confessed criminal may have undesired consequences. **We have therefore modified the wording in the guidance.**

Other issues raised

- 3.54 The Ahmadiyya Muslim Community UK suggested that there should be provisions for action to be taken to bar an individual from appearing in the media if they have been shown to be promoting hate. It argued that there should be a form of regulation against those who ‘channel hop’.

Ofcom response:

- 3.55 As outlined in the guidance, the Code does not prohibit particular people or organisations from appearing on television and radio services just because their views or actions have the potential to cause offence. The broadcaster must comply with the Code by challenging and/or placing in context those views or actions as appropriate.

Impact assessment

- 3.56 Ofcom is not changing its approach to the types of content it regulates as a result of the Code revisions. The additional notes added to the Code do not change the

meaning of Rule 3.1, and should therefore be beneficial to broadcasters and audiences.

- 3.57 The new Rules 3.2 and 3.3 likewise do not reflect an intended change to material which may be transmitted, but serve to clarify Ofcom's position. Again, we consider the impact is likely to be positive for broadcasters and audiences.
- 3.58 We do not consider that the amendments to the Code will result in a negative impact on any consumer groups or any of the groups with protected characteristics, as defined by the Equality Act 2010. We consider it likely that clarifying Ofcom's position on hate speech promotes equality, since it should reduce the risk of hate speech being broadcast.
- 3.59 The breaches recorded under Rule 3.1 to date have involved religious services serving Muslim and Sikh communities. Importantly, the Section Three rules can apply to all content, regardless of any particular religion or view it features. We note in this regard that breaches are rare and that the majority of religious services, including services targeting those communities, benefit audiences by contributing to a diverse broadcasting landscape, without raising any issues under Section Three of the Code.

Section 4

Revised Code Rules and guidance

- 4.1 The final amendments to Section Three of the Code are outlined in full below.
- 4.2 This comes into effect from 10:00 on 9 May 2016.
- 4.3 To assist those who work in broadcasting, as well as viewers and listeners who wish to understand broadcasting standards, guidance to accompany the Code is issued by Ofcom on the Ofcom website and is reviewed regularly.
- 4.4 The guidance provides information on individual rules and how Ofcom considers material against them.
- 4.5 The guidance also draws broadcasters' attention to cases which have previously been found in breach of the rules and decisions which have been published in Ofcom's Broadcast and On Demand Bulletin. These examples are updated regularly and may be helpful in demonstrating how we interpret and apply a particular Code rule to broadcast material.
- 4.6 The guidance can be found at Annex 1.

Section Three: Crime, Disorder, Hatred and Abuse

(Relevant legislation includes, in particular, sections 3(4)(j), 319(2)(b) and 319(2)(f) of the Communications Act 2003, Article 6 of the Audiovisual Media Services Directive, and Article 10 of the European Convention on Human Rights.)

Foreword

This section of the Code covers material that is likely to incite crime or disorder, reflecting Ofcom's duty to prohibit the broadcast of this type of programming.

There are also rules in this section covering material containing hatred, abusive and derogatory treatment, and portrayals of crime and criminal proceedings. These are relevant to Ofcom's duty to provide adequate protection for members of the public from the inclusion in television and radio services of offensive and harmful material. (See also Section Two: Harm and Offence).

The rules in this section are intended to reflect broadcasters' right to freedom of expression and audiences' right to receive information and ideas. For example, broadcasters may wish to report on or interview people or organisations with extreme or challenging views in news and current affairs coverage, which is clearly in the public interest. There are various editorial approaches broadcasters can take to provide context when featuring extreme and/or offensive views in broadcast material, some of which are set out below.

As with other sections of the Code, no rule should be read in isolation but in the context of the whole Code and the supporting notes provided. Broadcasters should also refer to Ofcom's published guidance for more information on complying material under this Section.

Principle

To ensure that material likely to encourage or incite the commission of crime or to lead to disorder is not included in television or radio services.

Rules

Incitement of crime and disorder

- 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.

Note:

Under Rule 3.1, “material” may include but is not limited to:

- content which directly or indirectly amounts to a call to criminal action or disorder;
- material promoting or encouraging engagement in terrorism or other forms of criminal activity or disorder; and/or
- hate speech which is likely to encourage criminal activity or lead to disorder.

Meaning of “terrorism”: see the definition in section 1 of the Terrorism Act 2000, which is also summarised in Ofcom’s guidance to this section of the Code.

Meaning of “hate speech”: all forms of expression which spread, incite, promote or justify hatred based on intolerance on the grounds of disability, ethnicity, gender, gender reassignment, nationality, race, religion, or sexual orientation.

Meaning of “crime”: this may relate to any offence under law that is punishable by imprisonment or by a fine.

Meaning of “disorder”: this includes but is not limited to the criminal offence of civil disorder.

Meaning of “likely to encourage or to incite the commission of crime or to lead to disorder”: A portrayal of crime, or of incitement to crime, will not necessarily result in a breach of Rule 3.1. The likelihood of content inciting crime or leading to disorder will depend on the nature of the material as well as the context in which it is presented to the audience.

Significant contextual factors under Rule 3.1 may include (but are not limited to):

- the editorial purpose of the programme;
- the status or position of anyone featured in the material; and/or
- whether sufficient challenge is provided to the material.

For example, there may be greater potential for material to encourage or incite the commission of crime if a programme sets out to influence the audience on a subject or theme, or provides an uncritical platform for an authoritative figure to advocate criminal activity or disorder.

There may be less potential for a breach of Rule 3.1 if opposing viewpoints and sufficient challenge are provided to people or organisations who advocate criminal activity or disorder, or where a programme seeks to provide an examination of or commentary on criminal activity or disorder in the public interest.

Other examples of contextual factors are provided in Ofcom’s guidance to this Section of the Code.

Hatred and Abuse

Note:

Rules 3.2 and 3.3 reflect the standards objective on the provision of adequate protection for members of the public from the inclusion of offensive and harmful material (section 319(2)(f) of the Communications Act 2003).

3.2 Material which contains hate speech must not be included in television and radio programmes except where it is justified by the context.

Broadcasters' attention is drawn to sections 22 and 29F of the Public Order Act 1986, which sets out criminal offences arising from the broadcast of material stirring up hatred relating to race, religion, or sexual orientation.

3.3 Material which contains abusive or derogatory treatment of individuals, groups, religions or communities, must not be included in television and radio services except where it is justified by the context. (See also Rule 4.2).

Meaning of "context" under Rule 3.2 and Rule 3.3:

Key contextual factors may include, but are not limited to:

- the genre and editorial content of the programme, programmes or series and the likely audience expectations. For example, there are certain genres such as drama, comedy or satire where there is likely to be editorial justification for including challenging or extreme views in keeping with audience expectations, provided there is sufficient context. The greater the risk for the material to cause harm or offence, the greater the need for more contextual justification;
- the extent to which sufficient challenge is provided;
- the status or position of anyone featured in the material;
- the service on which the material is broadcast; and
- the likely size and composition of the potential audience and likely expectation of the audience.

Portrayals of crime and criminal proceedings

3.4 Descriptions or demonstrations of criminal techniques which contain essential details which could enable the commission of crime must not be broadcast unless editorially justified.

3.5 No payment, promise of payment, or payment in kind, may be made to convicted or confessed criminals whether directly or indirectly for a programme contribution by the criminal (or any other person) relating to his/her crime/s. The only exception is where it is in the public interest.

3.6 While criminal proceedings are active, no payment or promise of payment may be made, directly or indirectly, to any witness or any person who may reasonably be expected to be called as a witness. Nor should any payment be suggested or made dependent on the outcome of the trial. Only actual expenditure or loss of earnings necessarily incurred during the making of a programme contribution may be reimbursed.

3.7 Where criminal proceedings are likely and foreseeable, payments should not be made to people who might reasonably be expected to be witnesses unless there is a clear public interest, such as investigating crime or serious wrongdoing, and the payment is necessary to elicit the information. Where such a payment is made it will be

appropriate to disclose the payment to both defence and prosecution if the person becomes a witness in any subsequent trial.

- 3.8 Broadcasters must use their best endeavours so as not to broadcast material that could endanger lives or prejudice the success of attempts to deal with a hijack or kidnapping.

Annex 1

Code guidance: Crime, Disorder, Hatred and Abuse

Guidance

General application

A1.1 Ofcom provides this guidance to assist broadcasters and other stakeholders in interpreting and applying Section Three of the Broadcasting Code (“the Code”).

A1.2 The guidance provides:

- information and guidance on individual rules and how Ofcom considers material against them; and
- summaries and web links to cases which have previously been published in Ofcom’s Broadcast and On Demand Bulletin³. Broadcasters may find these examples helpful when considering how to interpret and apply a particular Code rule.

A1.3 Every complaint or case will be dealt with on a case by case basis according to the individual facts of the case.

A1.4 We draw broadcasters’ attention to the legislative background to the Code as set out in the beginning section of the Code. In particular:

“Broadcasters are reminded of the legislative background that has informed the rules, of the principles that apply to each section, the meanings given by Ofcom and of the guidance issued by Ofcom, all of which may be relevant in interpreting and applying the Code. No rule should be read in isolation but within the context of the whole Code including the headings, cross references and other linking text.”

A1.5 This section of the Code does not prohibit particular people or organisations from appearing on television and radio services regulated by Ofcom just because their views or actions have the potential to cause offence. To do so would, in our view, be a disproportionate restriction of the broadcaster’s right to freedom of expression and the audience’s right to receive information and ideas.

A1.6 This is especially the case in news and current affairs programming, where broadcasters may wish to give coverage to or interview people or organisations with extreme and very challenging views as part of their legitimate and comprehensive coverage of on-going news stories. For example, broadcasters should be and are able to report on terrorist groups that pose potential terror threats internationally and domestically. This is clearly in the public interest. However, where people or

³ From time to time, Ofcom will add and update the weblinks to precedent cases within this guidance document. Broadcasters should refer regularly to the Ofcom Broadcast and On Demand Bulletin (available at: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/>) for the most up to date information about Ofcom’s decisions under the Code. Note: Ofcom’s Broadcast Bulletin was renamed to the Broadcast and On Demand Bulletin in January 2016.

organisations are given the chance to articulate their views on television or radio, broadcasters must always ensure that they comply with the Code by challenging and placing in context those views as appropriate.

A1.7 Meanings for this section

As set out in the Code:

- A1.7.1 “Crime” may relate to any offence under law that is punishable by imprisonment or by a fine.
- A1.7.2 “Disorder” may include but is not limited to the criminal offence of civil disorder.
- A1.7.3 “Hate speech” is all forms of expression which spread, incite, promote or justify hatred based on intolerance on the grounds of disability, ethnicity, gender, gender reassignment, nationality, race, religion, or sexual orientation.
- A1.7.4 “Terrorism”⁴ is the use or threat of action which:
- involves serious violence against a person;
 - involves serious damage to property;
 - endangers a person's life, other than that of the person committing the action;
 - creates a serious risk to the health or safety of the public or a section of the public; or
 - is designed seriously to interfere with or seriously to disrupt an electronic system,

where the use or threat is designed to influence the government or an international governmental organisation or to intimidate the public or a section of the public, and the use or threat is made for the purpose of advancing a political, religious or ideological cause.

A1.8 Broadcasters should have regard to the list of proscribed terror groups or organisations in the UK⁵. This document lists the terrorist groups or organisations banned under UK law and is updated regularly by the Home Office. Ofcom often refers to this list where relevant when considering whether material is problematic under the Code. The fact that an organisation is on the list is likely to inform any decision taken in this area. It is important to note, however, that material may breach the Code even if it features individuals, groups, or organisations who are not on this list. On the other hand, use of material relating to a proscribed group does not necessarily mean that the programme will breach Rule 3.1 and broadcasters are encouraged to consider the contextual factors set out under this rule.

⁴ As per section 1 of the Terrorism Act 2000.

⁵ <https://www.gov.uk/government/publications/proscribed-terror-groups-or-organisations--2>

Rule 3.1: Incitement of crime and disorder

A1.9 Rule 3.1 reflects the standards objective in statute to prohibit the broadcast of material likely to encourage or to incite the commission of crime or lead to disorder.

The seriousness of Rule 3.1

A1.10 A high risk of harm will be involved in many cases which engage Rule 3.1. Ofcom takes the broadcast of this type of content extremely seriously. If Ofcom records a breach of Rule 3.1 we will consider whether to revoke the broadcaster's licence or to impose a form of statutory sanction, such as a financial penalty.

A1.11 We recorded the first breach for the broadcast of material likely to encourage or incite the commission of crime or lead to disorder in 2012. We have to date found four broadcasters in breach of this rule.

Assessing the *likely* effect

A1.12 Ofcom is required to assess the likelihood of material encouraging or inciting the commission of crime or of leading to disorder. The use of the word "likely" in Rule 3.1 means that Ofcom is not required to identify any causal link between the content broadcast and any specific acts of criminal behaviour or disorder.

A1.13 In assessing the *likely* effect on the audience, the editorial context in which the material is presented to the audience is significant as well as the nature of the material. In particular we would carefully consider the content of any statements and how they were made, and whether the material contained any direct or indirect calls to action.

A1.14 Material may contain a *direct* call to action – for example, an unambiguous, imperative statement calling viewers to take some form of potentially criminal or violent action. Material may contain an *indirect* call to action if it includes statements that cumulatively amount to an implicit call to act. For example, material which promotes or encourages criminal acts, or material which gives a clear message that an individual should consider it their duty to commit a criminal act.

A1.15 The filming of criminal activity is not in itself, necessarily, encouragement or incitement in the context of Rule 3.1.

"Context" under Rule 3.1

A1.16 A range of contextual and editorial factors can either increase or lessen the likelihood that broadcast material could incite crime or disorder under Rule 3.1 and it is important that broadcasters are aware of them, as set out below:

a) The editorial purpose of the programme

For example, there may be greater potential to encourage or incite criminal action when a programme sets out to influence the audience on a subject or theme, or when a programme provides an uncritical platform for an authoritative figure. Broadcasters should therefore ensure challenge and/or context is provided to controversial views as necessary.

b) The status or position of any individual(s) featured in the material

Material may be found more likely to amount to a call to action where the contributor(s) is in a position of respect and authority to members of the audience. Appropriate challenge should therefore be provided

c) Whether sufficient challenge is provided

For example, where there is a legitimate journalistic purpose for including interviews with controversial people or organisations in news or current affairs programming, the inclusion of opposing viewpoints and challenge to extreme statements can serve to mitigate the likelihood of incitement.

Broadcasters should ensure presenters or other people featured in a particular programme, as appropriate, challenge contributors or place contributors' views and comments in context to ensure they are not given the freedom to broadcast statements which are likely to encourage or to incite the commission of crime or lead to disorder.

d) Religious content

Broadcasters should take care to avoid the broadcast of unambiguous statements which support acts of violence where those statements derive from or are presented as reflecting religious texts and theological belief. This is especially relevant if such statements are presented as the correct and only interpretation of these texts. By presenting such views as established orthodoxy and suggesting there is no scope for interpretation, there is an increased risk that the audience may understand the statements as calls to action to commit crime or disorder.

e) Providing a platform

Television and radio services should not provide a platform for people to express views, unchallenged, which might be likely to encourage crime or lead to disorder, including hate speech. When considering whether or not to give someone with extreme political or religious views the opportunity to appear in a programme, broadcasters should carefully assess in advance the risk of a potential breach of the rules in this section. They should consider, for example, the possible effect on viewers or listeners of any statements that the potential contributor has either made in pre-recorded material or that they are likely to make in a live broadcast.

f) Risk assessments and monitoring live output

We advise broadcasters to conduct risk assessments in advance of live transmission, when it is likely that a presenter or contributor will express extreme views in a live programme. Appropriate measures to mitigate risks arising from this might include briefing any presenters or contributors about relevant Code requirements, or using a time delay to ensure that any potentially non-compliant material can be edited or stopped before it is transmitted.

Broadcasters should also have appropriate procedures in place to monitor or intervene as necessary during the broadcast of live material to prevent potential breaches of Rule 3.1. This means, for example, that during live broadcasts, the broadcaster should ensure that it has staff in control of transmissions who have an adequate knowledge of the language being used in such broadcasts. Presenters or

production staff should also be able to understand the significance of what is being broadcast so they can intervene promptly as necessary.

Precedent cases

- A1.17 This guidance document is updated whenever breaches of Section Three, or notable decisions in this area, are recorded to ensure broadcasters have available up to date precedent cases. So far Ofcom has recorded four breaches under Section Three, all against Rule 3.1.
- A1.18 The breaches recorded under Rule 3.1 to date have involved religious services. Importantly, the Section Three rules can apply to all content, regardless of any particular religion or view it features. For example, far right discourse or propaganda may be considered problematic under Section Three if broadcast on television or radio without sufficient contextualisation.
- A1.19 We draw broadcasters' attention to decisions Ofcom has made previously involving incitement to crime. There are clear similarities in the material found in breach to date: these all contained direct call/s to action to commit violent crime; the incitement was aimed towards a group with protected characteristics (three were religiously motivated, one was against homosexual people); in three cases an individual of status or with authority to the audience was involved; and there was insufficient or no challenge to the views contained within all cases.
- A1.20 Links to Ofcom's previous decisions in which breaches were recorded for the broadcast of material likely to encourage or incite the commission of crime or lead to disorder are set out below. Ofcom will always consider whether to impose a statutory sanction (including a financial penalty) when there is a breach of Rule 3.1.⁶

Breaches and sanctions

A1.21 Rehmatul Lil Alameen, DM Digital

Breach Finding: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb205/obb205.pdf>

DM Digital was a satellite channel primarily aimed at an Asian audience in the UK. This programme consisted of an Islamic scholar who delivered a live televised lecture from Pakistan about Islamic theology with reference to the shooting dead in early 2011 of the Punjab governor Salmaan Taseer by his bodyguard Malik Mumtaz Qadri.

During the broadcast, the scholar unambiguously stated that all Muslims had a duty to kill anyone who criticises or insults the Prophet Mohammed and also praised the killing of Salmaan Taseer.

We recorded serious breaches against DM Digital Television Limited under Rule 3.1 (incitement to crime), 4.1 (responsibility in religious programmes), 4.2 (religious abuse), 5.4 (Licensee's views in programmes) and 5.5 (due impartiality).

Not in breach cases

⁶ Ofcom's sanction adjudications can be found on Ofcom's website: <http://stakeholders.ofcom.org.uk/enforcement/content-sanctions-adjudications/>

A1.22 Report on Al Shabaab, Channel 4 News

Finding: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb2521/obb253.pdf>

This news bulletin featured a report from a training camp in Somalia of the proscribed terrorist organisation Al Shabaab. In the report was an interview with an Al Shabaab leader, Sheikh Ali Dhere, during which he appeared to invite young British Muslims to join Al Shabaab. We considered there was a strong public and news interest for Channel 4 to examine: the role of Al Shabaab in the 2013 Westgate Shopping Mall attack in Kenya; the extent to which UK nationals had joined this group; and whether the UK might be a future target for Al Shabaab. We concluded that Channel 4 provided sufficient context in the report and surrounding content. In particular, we concluded that Sheikh Ali Dhere's comments were contextualised by balancing content which would have served to emphasise the negative ramifications of Al Shabaab's philosophy and actions. Ofcom found the material not in breach of Rule 1.3 (appropriate scheduling), Rule 2.3 (potentially offensive material must be justified by the context) and Rule 3.1 (incitement to crime).

A1.23 Undercover Mosque, Channel 4

Finding: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb97/issue97.pdf>

Undercover Mosque was an edition of Channel 4's investigative current affairs series Dispatches. The programme reported the observations of an undercover reporter who visited a number of Mosques and Islamic organisations in Britain. The programme stated that it had discovered extremism being preached in the UK.

The programme featured secretly filmed footage of teaching in Mosques and Islamic organisations that appeared to condone taking violent or criminal action in the name of Islam. While the programme contained strong emotive language, Ofcom did not consider that the transmission of these clips, when taken in the context of an investigative documentary, could have amounted to an incitement to crime.

Rules 3.2 and 3.3: Hatred and Abuse

A1.24 These rules reflect the standards objective set out in statute requiring the application of generally accepted standards to provide adequate protection for members of the public from offensive and harmful material⁷.

A1.25 The rules should be read in conjunction with: 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 2.4 (programmes must not include material which condones or glamorises violent, dangerous, or seriously antisocial behaviour), and Rule 4.2 (religious views should not be subject to abusive treatment). Broadcasters should also refer to the guidance issued for these sections.

⁷ The relevant standards objective states: "that generally accepted standards are applied to the content of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material."

A1.26 Rules 3.2 and 3.3 require material to be justified by the context. This means that the decision to broadcast material at all must be justified, and the way in which the material is presented to the audience must be justified.

Generally accepted standards for Rules 3.2 and 3.3

A1.27 We recognise that some programming may include material that has the potential to be harmful or offensive. Ofcom will assess material in this area against a background of generally accepted standards in the UK, but will take into account all relevant circumstances when assessing content.

A1.28 Broadcasters and the public view and listen to material measured against a background of generally accepted standards. Ofcom's understanding of "generally accepted standards" is underpinned by relevant Ofcom research. Generally accepted standards will change over time and will also vary according to the context. Ofcom takes into account the nature of the audience receiving a service as well as other relevant factors such as, for example, when a channel is only broadcast outside the UK.

A1.29 Ofcom recognises there are certain genres such as drama, comedy or satire where there is likely to be editorial justification for including challenging or extreme views in keeping with audience expectations, provided there is sufficient context. The greater the risk the material may cause harm, the greater the need for more contextual justification.

A1.30 The Code does not prohibit any person or organisation from appearing on television and radio services regulated by Ofcom just because their views or actions have the potential to cause offence. However, where people or organisations are given the chance to articulate their views on television or radio, broadcasters must always ensure that they comply with the Code by challenging and placing in context those views as appropriate.

"Hate speech"

A1.31 The meaning of "hate speech" in Rule 3.2 is given at the start of this document. The cases where Ofcom has previously recorded breaches of Rule 3.1 (see above) have, for the most part, concerned variations of what can be described as "hate speech". These cases resulted in a breach under Rule 3.1 as they all contained a direct or indirect call to action and were therefore 'likely' to encourage or to incite the commission of crime. Were similar material to amount to "hate speech" but not contain a direct or indirect call to action, it may be likely to breach Rule 3.2.

A1.32 Broadcasters' attention is drawn to sections 22 and 29F of the Public Order Act 1986, which set out criminal offences relating to broadcasts of material stirring up hatred relating to race, religion, or sexual orientation.

A1.33 In the context of Rule 3.2, Ofcom consider examples of the types of issues that may form the basis of hate speech by one person or group against another to include, but are not limited to, disability, ethnicity, gender, gender reassignment, nationality, race, religion, or sexual orientation.

"Abusive or derogatory treatment"

A1.34 Under Rule 3.3, the abusive or derogatory treatment of individuals, groups, religions or communities may be in an individual programme or programmes taken as a whole.

- A1.35 When considering “abusive treatment” of religions, Ofcom takes a similar approach to material as under Rule 4.2 (religious views within religious programming must not be subject to abusive treatment). We would consider if the material included statements which sought to revile, attack or vehemently express condemnation towards individuals, groups, religions or communities, without sufficient justification by the context.
- A1.36 Importantly, the Code does not prohibit legitimate criticism of any religion or its founder. There is scope within the Code for the followers of one religion to engage in religious debate with, or criticise, other religions provided such criticism does not amount to pejorative abuse.
- A1.37 Ofcom also acknowledges that licensees have the right to broadcast programmes that contain particular personal interpretations of the role of different nations and communities through history. However, in doing so any potential offence has to be justified by the context.
- A1.38 The use of language (including offensive language) is constantly developing. Whether language is offensive, or deemed abusive or derogatory depends on a number of factors. Language is more likely to be offensive if it is contrary to audience expectations. Sensitivities can vary according to generation and communities/cultures. Offensive material (including offensive language) must be justified by the context (see also Rule 2.3 in the Broadcasting Code). The latest research conducted by Ofcom can be viewed [on our website](#).
- A1.39 Broadcasters should be aware that there are areas of offensive language and material which are particularly sensitive. Racist terms and material should be avoided unless their inclusion can be justified by the context. Broadcasters should take care in their portrayal of culturally diverse matters and should avoid stereotyping unless editorially justified.
- A1.40 Broadcasters should be aware of any links to matters of current or recent public or community sensitivity, and the potential susceptibility of the audience. For example, recent international, national or local events, or notable periods such as religious festivals might increase the potential for the material to cause harm or offence.

Relevant precedent cases

- A1.41 Before the introduction of Rules 3.2 and 3.3 on [insert date], Ofcom recorded some breaches of material under Section Two and Section Four which are relevant.
- A1.42 The cases below were found in breach of Rule 4.2: “The religious views and beliefs of those belonging to a particular religion or religious denomination must not be subject to abusive treatment”.

Global Khatm-E-Nabuwat Movement, Takbeer TV:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb222/obb222.pdf>

Debate Night, Ummah Channel:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb196/obb196.pdf>

Tafheem al Masyal, Takbeer TV:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb184/obb184.pdf>

Seal of the Prophets, Ummah Channel:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb167/issue167.pdf>

- A1.43 The cases below were found in breach of Rule 2.4: “Programmes must not include material (whether in individual programmes or in programmes taken together) which, taking into account the context, condones or glamorises violent, dangerous or seriously antisocial behaviour and is likely to encourage others to copy such behaviour.”

Sister Ruby Ramadan Special, Radio Asian Fever:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb207/obb207.pdf>

Aden Live: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb191/obb191.pdf>

Maranam Muttuppulli Alla and Vanakathukuriyavarkal, Global Tamil Vision:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb136/Issue136.pdf>

- A1.44 Ofcom regularly publishes complaints bulletins which provide information on matters members of the public have found harmful or offensive and Ofcom’s decision.

Rules 3.4 to 3.8: Portrayals of crime and criminal proceedings

- A1.45 Caution may be required in programmes showing relatively common but criminal behaviour such as shoplifting, car or computer-related crime. This is to ensure that broadcasts do not include or demonstrate any particular techniques that would assist with the commission of crime.

Payments to criminals

- A1.46 Rule 3.5 refers to payments made to convicted or confessed criminals for a programme contribution related to their crimes. Family members, friends and associates may be paid in money or in kind for a contribution to a programme about the crime but not if it is known that such payment will benefit the criminal.
- A1.47 The application of Rule 3.5 relates to both the on-screen participation of convicted or confessed criminals, or any other contribution (for example, research or the provision of information) related to their crimes. It covers any form of payment to such criminals for their contribution, including payment of their expenses; however such payments may be made when it is in the public interest.
- A1.48 This rule would not automatically disqualify anyone convicted of a crime being paid for a programme contribution, as long as that contribution was not about his/her crime.
- A1.49 In cases when a broadcaster has good reason to consider it in the public interest for a payment to be made to a convicted or confessed criminal for a programme contribution relating to their crimes, there may be occasions where it is appropriate to

inform the audience that a payment (and how much) has been made to a contributor. Ofcom believes there may be benefits to the audience, in terms of transparency, of declaring on-air when a payment has been made to a convicted or confessed criminal about his or her crime for a contribution to a programme. The larger the payment made, the more likely it is for it to be appropriate to declare on air that a payment has been given.

Payments while criminal proceedings are active

A1.50 Expenditure refers to legitimate costs (expenses) reasonably incurred in the production or pre-production of a programme or part of programme; for example, travel and subsistence.