



# Broadcasting Code Review

Section Three: Crime

Consultation

Publication date: 13 January 2016

Closing Date for Responses: 18 March 2016

## About this document

Section Three of the Broadcasting 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 also has a duty to review and revise the rules in the Code from time to time when we consider it appropriate.

Ofcom is conducting a review of Section Three to ensure it is as clear as possible for broadcasters to understand.

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## Section 1

# Executive Summary

## Background

- 1.1 Under section 319 of 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. One of the standards objectives (section 319(2)(b)) is that “material likely to encourage or incite the commission of crime or lead to disorder is not included in television or radio services.” This is reflected in Section Three of the Code.
- 1.2 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.
- 1.3 The current 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.”*
- 1.4 The first breach of a rule in Section Three – for the broadcast of material likely to encourage or incite the commission of crime or lead to disorder – was recorded in 2012. To date we have found four broadcasters in breach of Rule 3.1.
- 1.5 Given our enforcement activity under this rule and the high risk of harm associated with the relevant content, we consider there is a need to ensure Section Three is as clear as possible, while having regard to broadcasters' and audiences' right to freedom of expression. Ofcom is therefore conducting a review of this section of the Code.

## Summary of proposals

- 1.6 Ofcom does not propose altering the wording of Rule 3.1 as it reflects our standards objective in this area as set out in statute. We instead propose providing clarity and assistance to broadcasters through the addition of ‘notes’ and ‘meanings’ under Rule 3.1. These will 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.
- 1.7 We propose the addition of new Rules 3.2 and 3.3 based on our standards objective to provide adequate protection to members of the public against harmful or offensive material. These proposed rules deal with content such as hate speech, and abusive or derogatory treatment that may not in itself amount to material likely to encourage or incite the commission of crime or to lead to disorder. ‘Notes’ and ‘meanings’ are proposed to supplement these rules and provide additional information for broadcasters.
- 1.8 Section Three currently contains five further rules regarding the portrayal of crime and criminal proceedings. We do not propose making any amendments or additions to these rules.

- 1.9 The full proposals are explained in Section 3 of this document, and an illustrative version of the proposed amended Code is set out at Annex 5.
- 1.10 We propose to publish updated guidance alongside the revised Section Three of the Code to assist broadcasters in interpreting and applying them. The guidance notes will contain information to assist broadcasters in complying material for broadcast and draw broadcasters' attention to previous relevant breach cases.
- 1.11 The proposals for guidance are explained in Section 4 of this document, and a full version of the guidance notes is set out at Annex 6.
- 1.12 The proposed revisions to the Code do not seek to 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".

## Next steps

- 1.13 We invite stakeholders to submit their views on the proposed amendments to the Code and relevant guidance by 18 March 2016.
- 1.14 We will review our proposed amendments in light of the comments we receive and issue a statement setting out any changes as soon as possible afterwards.
- 1.15 Stakeholders should note that, until Ofcom has issued its statement and any revised Code, the current version of the Code remain in force.

## Section 2

# Introduction

## Background and statutory duties

- 2.1 As part of its duties and functions in relation to broadcasting under section 319 of the Communications Act 2003 (“the Act”), Ofcom is required to draw up a code for television and radio services, setting standards as appear to it best calculated to secure a number of standards objectives for the content of programmes. The standards Ofcom has set are contained in the Ofcom Broadcasting Code (“the Code”).
- 2.2 One of the standards objectives in the Act (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.
- 2.3 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.”*
- 2.4 Section Three of the Code currently contains five further rules regarding the portrayal of crime and criminal proceedings.
- 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 In setting, or revising, broadcasting standards Ofcom must have regard to the following matters under section 319(4) of the Act:
  - 2.6.1 the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally, or in programmes of a particular description;
  - 2.6.2 the likely size and composition of the potential audience for programmes included in television services generally, or in television services of a particular description;
  - 2.6.3 the likely expectation of the audience as to the nature of a programme’s content and the extent to which the nature of a programme’s content can be brought to the attention of potential members of the audience;
  - 2.6.4 the likelihood of persons who are unaware of the nature of a programme’s content being unintentionally exposed, by their own actions, to that content;
  - 2.6.5 the desirability of securing that the content of services identifies when there is a change affecting the nature of a service that is being watched or listened to and, in particular, a change that is relevant to the application of the standards set under this section; and

- 2.6.6 the desirability of maintaining the independence of editorial control over programme content.
- 2.7 Ofcom has a duty to review and revise the Code from time to time when we consider it appropriate. Section Three of the Code has not been reviewed since it was introduced in 2005.

## European Legislation

- 2.8 The Audiovisual Media Services (“AVMS”) Directive sets out the European Union framework for the regulation of television services.
- 2.9 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.”

## Other relevant areas of legislation

- 2.10 As a public authority we have a duty under the Human Rights Act 1998 to ensure that we do not act in a way which is incompatible with the European Convention of Human Rights (‘the Convention’).
- 2.11 Article 10 of the Convention provides for the right to freedom of expression. It encompasses the broadcaster’s right to impart information and ideas and also the audience’s right to receive information and ideas, each without interference by public authority. The exercise of these freedoms, since it carries with it duties and responsibilities, may be restricted if the restrictions are: prescribed by law and necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health and morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary.
- 2.12 Ofcom must therefore seek an appropriate balance between the standards objectives which tend to restrict what may be broadcast on the one hand, and the broadcasters’ and audiences’ right to freedom of expression on the other.

## Regulatory objectives

- 2.13 Ofcom takes the broadcast of content that is likely to encourage or incite the commission of crime or to lead to disorder extremely seriously.
- 2.14 All recorded breaches of Section Three of the Code to date have been under Rule 3.1, as they involved material which amounted to a direct incitement to crime. The first breach of Rule 3.1 was recorded in 2012 and we have to date found four broadcasters in breach of this rule.
- 2.15 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.
- 2.16 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.

- 2.17 Our policy objective in this area is to ensure that broadcasters understand the importance and sensitivity of the rules in Section Three. Ofcom licenses approximately 2,000 television and radio services, a large proportion of which are smaller broadcasters whose compliance staff may be less experienced than the compliance teams working in larger longstanding broadcasters. These smaller broadcasters may be at risk of misinterpreting the Code.
- 2.18 We aim to make clearer for broadcasters the types of content that are prohibited in this area. 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.
- 2.19 This review therefore seeks to provide clarity. Our proposed revisions to the Code are not intended to change our current approach to regulating this type of content. 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”.

## Enforcement activity under Section Three

### How does Ofcom enforce Rule 3.1?

- 2.20 Ofcom is a post-transmission regulator and cannot intervene in broadcast content prior to transmission. We use complaints and monitoring to identify broadcasts which raise issue under the Code. Ofcom can act in relation to a broadcast post-transmission in the absence of any complaint.
- 2.21 When considering broadcast material under Rule 3.1, Ofcom is required to consider the likely effect on the audience of material included in a service. 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.

### What regulatory action has Ofcom taken in this area?

- 2.22 The first breach of Rule 3.1 was recorded in 2012 and we have since found breaches by a further three broadcasters. Each breach was a result of a complaint made to Ofcom. Due to the serious nature of a breach of Rule 3.1, and the potential harm associated with such content, Ofcom will consider whether to revoke a broadcaster's license or to impose a form of statutory sanction, such as a financial penalty.<sup>1</sup>
- 2.23 *Sister Ruby Ramadan Special 2011, Radio Asian Fever*<sup>2</sup>

Radio Asian Fever is a community radio station serving the South Asian communities of Leeds. The case involved two programmes in which a presenter (Sister Ruby) gave her interpretation of various Qur'anic scriptures. In the programme broadcast on 17 August 2011, Sister Ruby gave her views, based on her own understanding of scripture, on how people should react to and treat homosexuals. The presenter stated: “*Torture them, punish them, beat them and give them mental torture*” and

<sup>1</sup> Ofcom's sanction adjudications in this area can be found on Ofcom's website:

<http://stakeholders.ofcom.org.uk/enforcement/content-sanctions-adjudications/>

<sup>2</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb207/obb207.pdf>

*“punish them, both physically and mentally...beat them, humiliate them, admonish and curse them and beat them up”.*

Ofcom found that such statements breached Rule 3.1 because they were likely to encourage violent behaviour against homosexual people. Breaches were also recorded of Rules 2.3 (potentially offensive material must be justified by the context), 2.4 (the inclusion of material which condones or glamorises violent, dangerous or seriously antisocial behaviour), and 4.1 (responsibility in religious programmes).

#### 2.24 Rehmatul Lil Alameen, DM Digital<sup>3</sup>

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 stated unambiguously 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).

#### 2.25 Paigham-e-Mustafa, Noor TV<sup>4</sup>

This is a digital satellite television channel broadcasting programmes about Islam in a number of languages, including English, Urdu and Punjabi. This programme was an Urdu language programme about Islamic teachings. In response to the question “What is the punishment for the individual who shows disrespect for Prophet Mohammed?” the presenter praised particular individuals who had committed murder in the name of Islam. He also said it was acceptable, or even the duty of a Muslim, to murder anyone thought to have shown disrespect to the Prophet Mohammed.

Ofcom recorded serious breaches of Rule 3.1 (incitement to crime) and 4.1 (responsibility in religious programmes).

#### 2.26 Programme about the attack on Lieutenant-General Brar, Sangat TV<sup>5</sup>

Sangat TV is a digital satellite channel broadcasting religious and general entertainment content in English and Punjabi, primarily directed towards the Sikh community in the UK. This discussion programme featured eight panellists discussing a violent street attack which took place in London on 30 September 2012 on a former Indian Army officer, Lieutenant-General Brar. He had been the commander of the Indian armed forces who led Operation Bluestar, the Indian Army's controversial military operation against the Golden Temple at Amritsar in June 1984.

Ofcom found that the panellists made various statements that cumulatively constituted an indirect call to action to members of the Sikh community to take violent action against Lieutenant-General Brar, other members of the Indian armed forces

<sup>3</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb205/obb205.pdf>

<sup>4</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb220/obb220.pdf>

<sup>5</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb222/obb222.pdf>

who had taken part in Operation Bluestar, or those who supported this military operation. We recorded a serious breach of Rule 3.1 (incitement to crime).

## Sanctions and licence revocations

- 2.27 Various remedies are available to us when considering whether to impose a statutory sanction on television or radio licensees for a serious, repeated, deliberate or reckless breach of the Code. Ofcom is able to:
- impose a financial penalty on the licensee;
  - require the licensee to broadcast a statement of Ofcom's findings;
  - require the licensee not to repeat a programme (television only);
  - shorten the licence by up to two years (only some kinds of licences); and/or
  - suspend the licence by up to six months (radio only).
- 2.28 For some types of licence, Ofcom may cause the licence to expire as a penalty for a contravention. In any event, Ofcom has specific powers to revoke most types of licence where the licensee is in contravention of a licence condition, or is failing to comply with a direction, and revocation is in the public interest. More generally, a breach of Rule 3.1 is particularly likely to cause Ofcom to review whether or not the licensee concerned is fit and proper to hold a broadcast licence. If Ofcom cannot be satisfied that the licensee remains fit and proper, Ofcom must do all it can to secure that the licensee does not remain the holder of a licence.
- 2.29 Section 239 of the Act and section 111B of the Broadcasting Act 1990 give Ofcom a power to suspend certain licence types (television licensable content and radio licensable content services) if we are satisfied that material likely to encourage or to incite the commission of crime, or to lead to disorder, has been broadcast and that the breach would justify the revocation of the licence. Ofcom must then go on to consider any representations which the licensee might make, and decide whether or not to revoke the licence.

## Other relevant sections of the Broadcasting Code

- 2.30 Other sections of the Code are relevant to the type of material considered under Section Three. In particular Section Two, which is designed to protect audiences from harmful and offensive content; and Section Four, which deals with religious programming.
- 2.31 We have recorded breaches of the following rules in these sections in cases which we judged did not go so far as to raise issues under Rule 3.1 but were nevertheless problematic:

Rule 2.4: "Programmes must not include material (whether in individual programmes or in programmes taken together) which, taking into account the context, condones or glamorises violent, dangerous or seriously antisocial behaviour and is likely to encourage others to copy such behaviour."

Rule 4.2: "The religious views and beliefs of those belonging to a particular religion or religious denomination must not be subject to abusive treatment."

- 2.32 We have considered these rules and their enforcement as part of the proposals in Section 3 of this document.
- 2.33 The rules of the Broadcasting Code are not intended to be read in isolation but within the context of the Code as a whole. In addition to the policy objectives already set out, we consider there will be benefit in making the links to other relevant sections of the Code more explicit.

## Impact assessment

- 2.34 We do not propose changing the wording of Rule 3.1. This rule reflects the standards objective as set out in statute. The additional notes we propose to give do not change the meaning of Rule 3.1, and should therefore be beneficial to broadcasters and audiences.
- 2.35 Our proposed 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.
- 2.36 We do not consider that the proposed 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.
- 2.37 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 3

# Proposed Code amendments

- 3.1 This Section outlines our proposed amendments to Section Three of the Code. These proposals have been informed by our experience in this area and the recorded breaches of Rule 3.1. We have also included wording to cover types of problematic content we have not encountered to date, to help ensure that the Code is clear about this kind of material.
- 3.2 In addition, we are proposing new rules in Section Three based on our standards objective to provide adequate protection against harmful and offensive material. These rules relate to broader forms of content such as hate speech and abusive or derogatory treatment that may not in itself amount to material likely to encourage or incite the commission of crime or disorder.
- 3.3 Section Three contains five further rules regarding the portrayal of crime and criminal proceedings. We do not propose making any amendments or additions to these rules.

## Foreword

- 3.4 The addition of a foreword to this section of the Code is intended to make clear to the reader the purpose of the rules and to clarify that the Code does not prohibit broadcasters from reporting on or interviewing people or organisations with extreme or challenging views in news and current affairs coverage.

### 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.

## Rule 3.1

- 3.5 We do not propose changing the wording of Rule 3.1. This rule reflects the standards objective as set out in statute.
- 3.6 Introducing the proposed ‘meanings’ and ‘notes’ to Section Three will provide broadcasters with guidance on the application of the rules and how Ofcom interprets words and phrases contained within them. The proposed changes explain to the reader the types of material which may be captured under this rule, and give examples of ways in which material can be complied before broadcast.
- 3.7 The proposed additions to the Code under Rule 3.1 are below in grey shaded text.

### **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.

## Rules 3.2 and 3.3

- 3.8 We propose the addition of new Rules 3.2 and 3.3. 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 material<sup>6</sup>. These new proposed rules are designed to deal with content which may contain hate speech and abusive or derogatory treatment that in itself does not amount to material likely to encourage or incite the commission of crime or disorder so could not be tested under Rule 3.1.
- 3.9 The 'meanings' and 'notes' under these new proposed rules are intended to assist broadcasters in their interpretation and application, in particular by outlining some of the key contextual factors which are important for broadcasters to consider.
- 3.10 Under proposed Rule 3.3 there is an explicit link to Rule 4.2 which deals with the abusive treatment of religious views and beliefs in religious programming.
- 3.11 The proposed additions to the Code under Rules 3.2 and 3.3 are below in grey shaded text.

### 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.

#### Note:

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).

<sup>6</sup> The relevant standards objective requires Ofcom to ensure: "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."

**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.

3.12 The complete amendments to Section Three can be viewed at **Annex 5**.

*Question 1: Do you agree with the proposed amendments to the Code?*

## Section 4

# Proposed Code guidance

- 4.1 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.
- 4.2 The guidance provides information on individual rules and how Ofcom considers material against them.
- 4.3 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<sup>7</sup>. These examples may be helpful in demonstrating how we interpret and apply a particular Code rule to broadcast material.
- 4.4 The application of context is significant for proposed Rules 3.1, 3.2 and 3.3. The proposed guidance outlines a range of the contextual factors broadcasters should consider when responsibly complying material for broadcast.
- 4.5 The proposed guidance notes for Section Three can be found at Annex 6. When this review is complete, any revised guidance will be published on Ofcom's website and will replace the existing guidance.

*Question 2: Do you agree with the proposed Code guidance?*

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<sup>7</sup> Note: Ofcom's Broadcast Bulletin was renamed to the Broadcast and On Demand Bulletin in January 2016.

## Annex 1

# Responding to this consultation

## How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 18 March 2016**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at [https://stakeholders.ofcom.org.uk/consultations/broadcasting\\_code\\_review/howtorespond/form](https://stakeholders.ofcom.org.uk/consultations/broadcasting_code_review/howtorespond/form), as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email [SectionThreeReview@ofcom.org.uk](mailto:SectionThreeReview@ofcom.org.uk) attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Ofcom  
'Consultation on Section Three Broadcasting Code Review'  
Floor 5  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA
- Fax: 020 7981 3806
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

## Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Anna Lucas on 020 7981 3130.

## Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), ideally on receipt. If you think your

response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/terms-of-use/>

## Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to publish a statement in April 2016.
- A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: <http://www.ofcom.org.uk/email-updates/>

## Ofcom's consultation processes

- A1.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk) . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:

Graham Howell  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA

Tel: 020 7981 3601

Email [Graham.Howell@ofcom.org.uk](mailto:Graham.Howell@ofcom.org.uk)

## Annex 2

# Ofcom's consultation principles

- A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

## Before the consultation

- A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

## During the consultation

- A2.3 We will be clear about who we are consulting, why, on what questions and for how long.
- A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.
- A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.
- A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.
- A2.7 If we are not able to follow one of these principles, we will explain why.

## After the consultation

- A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

## Annex 3

# Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk).
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at <http://stakeholders.ofcom.org.uk/consultations/consultation-response-coversheet/>.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

### CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

☐

Name/contact details/job title

☐

Whole response

☐

Organisation

☐

Part of the response

☐

If there is no separate annex, which parts?

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

### DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

☐

Name

Signed (if hard copy)

## Annex 4

# Consultation questions

*Question 1: Do you agree with the proposed amendments to the Code?*

*Question 2: Do you agree with the proposed Code guidance?*

## Annex 5

# Proposed Code amendments

## Section Three: Crime, Disorder, Hatred and Abuse

(Relevant legislation includes, in particular, sections 3(4)(j) ~~and~~ 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 6

# Proposed Code guidance: Crime, Disorder, Hatred and Abuse

## Guidance

### General application

- A6.1 Ofcom provides this guidance to assist broadcasters and other stakeholders in interpreting and applying Section Three of the Broadcasting Code (“the Code”).
- A6.2 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 Bulletin<sup>8</sup>. Broadcasters may find these examples helpful when considering how to interpret and apply a particular Code rule.
- A6.3 Every complaint or case will be dealt with on a case by case basis according to the individual facts of the case.
- A6.4 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.”
- A6.5 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.
- A6.6 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 organisations are given the chance to articulate their views on television or radio,

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<sup>8</sup> 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.

broadcasters must always ensure that they comply with the Code by challenging and placing in context those views as appropriate.

## **A6.7 Meanings for this section**

As set out in the Code:

- 6.7.1 “Crime” may relate to any offence under law that is punishable by imprisonment or by a fine.
- 6.7.2 “Disorder” may include but is not limited to the criminal offence of civil disorder.
- 6.7.3 “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.
- 6.7.4 “Terrorism”<sup>9</sup> 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.

A6.8 Broadcasters should have regard to the list of proscribed terror groups or organisations in the UK<sup>10</sup>. 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.

## **Rule 3.1: Incitement of crime and disorder**

A6.9 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.

<sup>9</sup> As per section 1 of the Terrorism Act 2000.

<sup>10</sup> <https://www.gov.uk/government/publications/proscribed-terror-groups-or-organisations--2>

### **The seriousness of Rule 3.1**

- A6.10 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.
- A6.11 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**

- A6.12 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.
- A6.13 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.
- A6.14 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.
- A6.15 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**

- A6.16 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 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 as appropriate.

**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 could incite 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**

- A6.17 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.

- A6.18 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.<sup>11</sup>

### Breaches and sanctions

#### **A6.19 Sister Ruby Ramadan Special 2011, Radio Asian Fever**

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

Radio Asian Fever is a community radio station serving the South Asian communities of Leeds. The case involved two programmes in which a presenter (Sister Ruby) gave her interpretation of various Qur'anic scriptures. In the programme broadcast on 17 August 2011, Sister Ruby gave her views, based on her own understanding of scripture, on how people should react to and treat homosexuals. The presenter stated: "*Torture them, punish them, beat them and give them mental torture*" and "*punish them, both physically and mentally...beat them, humiliate them, admonish and curse them and beat them up*".

Ofcom found that such statements breached Rule 3.1 because they were likely to encourage violent behaviour against homosexual people. Breaches were also recorded of Rules 2.3 (potentially offensive material must be justified by the context), 2.4 (the inclusion of material which condones or glamorises violent, dangerous or seriously antisocial behaviour), and 4.1 (responsibility in religious programmes).

#### **A6.20 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).

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<sup>11</sup> Ofcom's sanction adjudications can be found on Ofcom's website: <http://stakeholders.ofcom.org.uk/enforcement/content-sanctions-adjudications/>

**A6.21 *Paigham-e-Mustafa, Noor TV***

Breach Finding: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb220/obb220.pdf>

This is a digital satellite television channel broadcasting programmes about Islam in a number of languages, including English, Urdu and Punjabi. This programme was an Urdu language programme about Islamic teachings. In response to the question “*What is the punishment for the individual who shows disrespect for Prophet Mohammed?*” the presenter praised particular individuals who had murdered in the name of Islam. He also made various statements in which he said it was acceptable, or even the duty of a Muslim, to murder any individual thought to have shown disrespect to the Prophet Mohammed.

Ofcom recorded serious breaches of Rule 3.1 (incitement to crime) and 4.1 (responsibility in religious programmes).

**A6.22 *Programme about the attack on Lieutenant-General Brar, Sangat TV***

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

Sangat TV is a digital satellite channel broadcasting religious and general entertainment content in English and Punjabi, primarily directed towards the Sikh community in the UK. This discussion programme featured eight panellists discussing a violent street attack which took place in London on 30 September 2012 on a former Indian Army officer, Lieutenant-General Brar. Lieutenant-General Brar had been the commander of the Indian armed forces who led Operation Bluestar, the Indian Army’s controversial military operation against the Golden Temple at Amritsar in June 1984. Ofcom found that the panellists made various statements that cumulatively constituted an indirect call to action to members of the Sikh community to take violent action against Lieutenant-General Brar, other members of the Indian armed forces who had taken part in Operation Bluestar, or those who supported this military operation. We recorded a serious breach of Rule 3.1 (incitement to crime).

**Not in breach cases****A6.23 *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).

#### **A6.24 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.

#### **A6.25 Other types of content**

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. For example, far right discourse or propaganda may be considered problematic under Section Three if broadcast on television or radio without sufficient contextualisation.

### **Rules 3.2 and 3.3: Hatred and Abuse**

- A6.26 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 material<sup>12</sup>.
- A6.27 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.
- A6.28 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**

- A6.29 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.

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<sup>12</sup> 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."

- A6.30 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.
- A6.31 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.
- A6.32 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"**

- A6.33 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.
- A6.34 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.
- A6.35 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"**

- A6.36 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.
- A6.37 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.
- A6.38 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.

- A6.39 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.
- A6.40 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).
- A6.41 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.
- A6.42 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

- A6.43 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.
- A6.44 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”.

*Tafheem al Masyal*, Takbeer TV:

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

*Global Khatm-E-Nabuwat Movement*, Takbeer TV:

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

*Seal of the Prophets*, Ummah Channel:

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

*Debate Night*, Ummah Channel:

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

- A6.45 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.”

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>

*Sister Ruby Ramadan Special*, Radio Asian Fever:

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

- A6.46 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**

- A6.47 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**

- A6.48 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.
- A6.49 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.
- A6.50 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.
- A6.51 In the rare 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, such that a payment may be made without breaching Rule 3.5, the broadcaster should declare on air that a payment has been made.

#### **Payments while criminal proceedings are active**

- A6.52 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.