Ofcom Broadcast and On Demand Bulletin

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Introduction

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

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

a) Ofcom's Broadcasting Code ("the Code") for content broadcast on television and radio services.

b) the Code on the Scheduling of Television Advertising ("COSTA") which contains rules on how much advertising and teleshopping may be scheduled in television programmes, how many breaks are allowed and when they may be taken.

c) certain sections of the BCAP Code: the UK Code of Broadcast Advertising, which relate to those areas of the BCAP Code for which Ofcom retains regulatory responsibility for on television and radio services. These include:

- the prohibition on 'political' advertising;
- sponsorship and product placement on television (see Rules 9.13, 9.16 and 9.17 of the Code) and all commercial communications in radio programming (see Rules 10.6 to 10.8 of the Code);
- 'participation TV' advertising. This includes long-form advertising predicated on premium rate telephone services – most notably chat (including 'adult' chat), 'psychic' readings and dedicated quiz TV (Call TV quiz services). Ofcom is also responsible for regulating gambling, dating and 'message board' material where these are broadcast as advertising[3].

d) other licence conditions which broadcasters must comply with, such as requirements to pay fees and submit information which enables Ofcom to carry out its statutory duties. Further information can be found on Ofcom's website for television and radio licences.

e) Ofcom's Statutory Rules and Non-Binding Guidance for Providers of On-Demand Programme Services for editorial content on ODPS. Ofcom considers sanctions in relation to advertising content on ODPS on referral by the Advertising Standards Authority ("ASA"), the co-regulator of ODPS for advertising or may do so as a concurrent regulator.

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

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

[2] The relevant legislation can be found at Part 4A of the Act.

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

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

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

Note to Broadcasters

Consultation on Ofcom's rules on due impartiality, due accuracy, elections and referendums

On 10 November 2016, Ofcom published a consultation[1] setting out:

- a proposal to remove the list of 'larger parties' from Section Six (elections and referendums) of the Code and the rules on party political and referendum broadcasts ("PPRB Rules"); and

- proposed changes to apply Section Five (due impartiality and due accuracy) and Section Six of the Code the rules to the BBC under the new Royal Charter and Framework Agreement.

Ofcom is currently preparing for its new responsibilities of regulating the BBC. This follows the publication on 15 September 2016 by the UK Government of the new draft Royal Charter and Framework Agreement for the BBC.

The consultation is the first of a series of consultation documents that Ofcom is publishing as it prepares for its new BBC duties, including further consultations on the Code and Ofcom's Procedures in this area.

Broadcasters and political parties will need to plan ahead for the various elections taking place in May 2017. We therefore consider it is appropriate to carry out our review of the suitability of the list of 'larger parties' at the same time. This is an issue that will affect all Ofcom licensees as well as the BBC.

In our consultation we set out our proposed approach for regulating BBC editorial content in the areas of due impartiality, due accuracy, elections and referendums. Specifically, this will require amendments to Section Five and Section Six of the Code and the PPRB Rules.

We invite representations from interested stakeholders on the matters set out in the consultation by no later than **5pm on 16 January 2017**. We intend to publish a statement setting out our decision by late February/early March 2017 at the latest.

[1] See https://www.ofcom.org.uk/__data/assets/pdf_file/0024/93840/Larger-parties-and-BBC-impartiality.pdf

Notice of Sanction

Azmat-e-Islam

Peace TV Urdu, 12 and 13 September 2015, 14:00

Introduction

Peace TV Urdu is a television channel broadcasting religious and other programming in Urdu from an Islamic perspective to audiences in the UK and internationally.

The licence for Peace TV Urdu is held by Club TV Limited ("Club TV" or "the Licensee").

This sanction relates to two editions of *Azmat-e-Islam*, which were recordings of public lectures given by the Islamic scholar, Dr Israr Ahmad, who died in April 2010.

Summary of Decision

In its decision published on 22 February 2016 in issue 299 of the Broadcast and On Demand Bulletin[1], Ofcom found for the reasons summarised below that the two programmes contained potentially harmful and/or offensive material, and that the offensive material was not justified by the context.

In the programmes Israr Ahmad delivered an analysis of Jewish people through history and made a number of discriminatory remarks, repeatedly portraying them as a homogenous group and in overwhelmingly negative and stereotypical terms. In Ofcom's view, Israr Ahmad's comments had the potential to be interpreted as spreading anti-Semitism i.e. his comments could be seen as a form of hate speech. The content therefore had the potential to cause harm, and the Licensee had not taken sufficient steps to provide adequate protection to members of the public from the inclusion of the potentially harmful material. In addition, Club TV had failed to provide sufficient context to justify the broadcast of potentially offensive material.

Ofcom found that the two programmes breached Rules 2.1 and 2.3 of the Code:

Rule 2.1: "Generally accepted standards must be applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material".

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

In accordance with Ofcom's penalty guidelines, Ofcom decided that it was appropriate and proportionate in the circumstances to impose a financial penalty of **£65,000** on the Licensee in respect of these serious Code breaches (payable to HM Paymaster General). In addition, Club TV should broadcast a statement of Ofcom's findings in this case, on a date and time to be determined by Ofcom.

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[1] https://www.ofcom.org.uk/__data/assets/pdf_file/0032/93866/Peace-TV-Urdu-Sanctions-Decision.pdf

The full decision is available at:
https://www.ofcom.org.uk/__data/assets/pdf_file/0032/93866/Peace-TV-Urdu-Sanctions-Decision.pdf

Broadcast Standards cases

In Breach

Don't Make Me Laugh

BBC Radio 4, 21 April 2016, 18:30

Introduction

Don't Make Me Laugh is a comedy show, hosted by David Baddiel. A panel of comedians taking part in the programme are asked to talk about why a subject is not funny, without making the audience laugh. If the audience does laugh, the subject passes to the next contestant.

Ofcom received 12 complaints about the episode broadcast on 21 April 2016 which featured a discussion about the Queen and sex. Complainants considered that references to the Queen in the programme were offensive and inappropriate. A number of complaints referred to the fact that the programme was broadcast on the Queen's 90th birthday.

The continuity announcer who introduced this episode described it as *"the latest instalment of the provocative and anarchic panel show 'Don't Make Me Laugh'".*

The panel of comedians on this programme were Russell Kane, Sara Pascoe, Omid Djalili, and Adam Hess. Round two of the show was introduced by David Baddiel:

> *"…*[i]*n an effort to demonstrate just how grown up and sophisticated we've become…I would like you Russell Kane to tell us why there is nothing funny about the fact that…"*

Announcer: *"the Queen must have had sex at least four times* [laughter from the studio audience]*"*.

The panel of comedians responded by making a number of personal comments about Prince Philip and the Queen. For example, Russell Kane said the following:

> *"Four times we have to think of republicanism as we imagine four children emerging from Her Majesty's vulva and for me*– [audience laughter] *…"*

Ofcom considered that the material raised potential issues under Rule 2.3 of the Code which states:

> "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context".

We therefore sought comments from the BBC as to how the content complied with this rule.

Response

The BBC said that the programme had "attracted a significant number of complaints from listeners about the content and the timing" of the broadcast on the day of the Queen's 90th birthday. It considered that the broadcast was "a regrettable failure of editorial judgement and compliance processes".

The broadcaster explained that *Don't Make Me Laugh* was a comedy panel show "recorded in front of a live audience and edited for transmission". The BBC said the time slot of this particular series had been moved from its original scheduled time of 23:00 slot to 18:30, "which is a well-established comedy slot". For this reason and given that the series contained some potentially offensive material, it had been "placed on the Radio Risk List and the Managed Risk Programme List".

The BBC explained that Radio 4 and the production company which made this programme for the BBC had discussed "editorial standards" at "an early stage in the production process". However, it said that the only issue raised concerning this particular episode was to seek "permission to bleep some strong language". The BBC's Editor for Editorial Standards had listened to "a rough-cut of the programme during the production process" and considered that the segment about the Queen "did not raise any issues in terms of editorial standards and did not consider that this particular sequence needed amending". The broadcaster commented that at this point the date for transmission of this programme was not known.

The BBC said the production company had subsequently filled in a BBC compliance form, which asked if the programme included "potentially controversial references to public figures". Although the date of transmission for this programme was then known, the BBC said that the production company did not point out on the form that the programme included references to the Queen. The Editor of the programme then reviewed the compliance form and signed this episode off for transmission "but did not re-listen to the whole series as he had already reviewed the section he had asked to be re-edited". The BBC stated that if the compliance form had "contained information alerting the station to the reference to the Queen" the content "would have been listened to [again] because of the proximity to the [Queen's] 90th birthday celebrations".

Following the broadcast the BBC said it had: cancelled the scheduled repeat broadcast; removed the programme from BBC iPlayer; moved the remainder of the series back to its original 23:00 slot; apologised to Buckingham Palace; and, published the following apology on the Corrections and Clarification page of its website the next day:

> "While BBC Radio 4 comedy is a broad church and often pushes boundaries, we would like to apologise for this broadcast of Don't Make Me Laugh. We never intended for the scheduling of the programme to coincide with the Queen's birthday and are sorry for the offence caused by its timing and content".

The BBC also reminded the Executive Producer "of his responsibilities in terms of the compliance form", and said it planned to introduce a new and updated compliance form to help ensure such a compliance mistake did not happen again.

The broadcaster confirmed that it considered the broadcast of this material to be a serious breach of its editorial guidelines and found that "there had been a failure of editorial judgement and of compliance". It had provided the BBC Trust with a written report. The BBC Trust[1] concluded that the broadcast had included "personal, intrusive and derogatory comments" which had "exceeded the expectations of the

[1] The BBC Trust published its findings on 30 June 2016: http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/appeals/esc_bulletins/2016/dont_make_me_laugh.pdf

audience" and the offence was "compounded by the date of the programme's transmission".

Decision

Under the Communications Act 2003 ("the Act"), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that "generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from harmful and/or offensive material". This duty is reflected in Section Two of the Code.

In reaching its Decision in this case, Ofcom has taken account of the broadcaster's and audience's right to freedom of expression, as set out in Article 10 of the European Convention on Human Rights.

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

In reaching a Decision, Ofcom took into account that there is a long history on British television and radio of broadcast comedy deliberately pushing at boundaries of contemporary taste. In accordance with the right to freedom of expression, the Code does not prohibit broadcast content from referring to any particular topic, subject, and group of people or any specific individual. However, under Rule 2.3, broadcasters must ensure that potentially offensive material is justified by its context. There is therefore significant room for innovation, creativity and challenging material within comedy programming, but it does not have unlimited licence to include offensive material. The nature of some material may be so offensive that relevant contextual factors are insufficient to justify its broadcast.

Ofcom first considered whether the material in this programme had the potential to cause offence.

Throughout this segment of the programme, the panel made a number of comments about the Queen in an effort to explain why the subject of that round of the programme was not funny. We considered that comments about the Queen and the Duke of Edinburgh were made in a mocking way, which would have been perceived by many listeners as humiliating and intrusive. Ofcom took into account that the Queen and the Duke of Edinburgh are public figures with wide exposure in the media. Nonetheless, we considered that the mocking and demeaning tone of these comments made them capable of causing offence. The potential for offence was increased by the fact that these remarks were broadcast on the Queen's 90th birthday.

We went on to consider if the broadcast of this material was justified by the context.

Ofcom took into account that audiences expect some comedy programming to be challenging and to push at boundaries. However, the reaction of the audience to comedy material is subjective and can vary widely. In this case, the jokes about the Queen were made in a way that was mocking and demeaning. The fact that these jokes were made on her 90th birthday, in Ofcom's view, would have considerably increased the level of offence for many listeners. Furthermore, the level of potential offence was also increased to some extent by the fact this programme was pre-

recorded, so that the BBC's editorial decision to broadcast this content on this day was likely to have been perceived by listeners as deliberate and not the result of for example an inadvertent misjudgement made during a live programme.

We noted that this material was broadcast on BBC Radio 4 at 18:30 on a weekday, which is a well-established time for comedy to be scheduled on this service. There was no warning to listeners about potentially offensive content before the programme began, other than the continuity announcer describing the programme as *"provocative and anarchic"*. Radio 4 aims to, and does, attract a largely adult audience. As a result, the audience for this programme may have expected some quite challenging material. In Ofcom's view, however, it is likely that Radio 4 listeners would not have expected comedic content about the Queen of this strength and directness to be included in a Radio 4 comedy programme broadcast in the early evening on her 90th birthday.

We considered also that, for all these reasons, any listeners who had come across this content unawares may well have been surprised and disconcerted to hear it broadcast on Radio 4 at this time, on the Queen's 90th birthday.

Ofcom noted that the BBC said there had been a "failure of editorial judgement and compliance processes" in this instance. The BBC also explained that it had: cancelled the scheduled repeat broadcast; removed the programme from BBC iPlayer; moved the remainder of the series back to its original scheduled 23:00 slot; decided to introduce a new compliance form; apologised to Buckingham Palace; and, published an apology on its website the next day.

However, in light of all the factors above, and in the particular circumstances of this case, the broadcast of this potentially offensive material was not justified by the context, and there was a breach of Rule 2.3 of the Code.

Breach of Rule 2.3

In Breach

It Takes 2

Safeer TV, 7 August 2016, 14:00

Introduction

Safeer TV is a Muslim television channel providing religious and social programming, primarily aimed at viewers in the UK. It broadcasts on digital satellite platforms and online. The licence for the service is held by Faraj Media Limited ("Faraj Media" or "the Licensee").

The programme *It Takes 2* is a relationship advice programme for Muslim married couples. The episode broadcast on 7 August 2016 included a letter from an anonymous woman in Kenya who wrote that her husband repeatedly *"forces himself"* on her. The viewer asked for advice as to what she should do. Ofcom received a complaint that the programme reinforced an abuser's "right to do something in the name of Islam" and did not make it clear that marital rape is a crime in the United Kingdom.

In the programme, the presenter, Bilal Ali Ma ("BAM"), was joined by two panellists, Ruby Sowah ("RS") and Sheikh Ali Massoumian ("SAM").

Having discussed a number of other viewer letters, BAM said:

> *"Because of time, I'll go onto the other letter. It reads 'Dear'—it is, pretty, in fact a very serious letter actually. 'Dear It Takes 2, my husband forces himself on me. I can't stop him from doing this. He does this even if I am ill or tired or on some occasions I just can't really be bothered. I have been told that not being in the mood is not a valid reason. What should I do? He says it's his Islamic right because I am his wife'. And it's from an anonymous sister in Kenya. It's a very problematical—a very troubling letter. A very, very difficult letter to address".*

The following discussion then took place:

RS: *"This is a problem for many sisters—that they often find that because of the pressures of everyday life, that simply that is not the first thing they're thinking about. I think most Muslim sisters know what their Islamic obligations are. I think, yeah, they do know what it is. But, you know other things take precedent and you might just not be interested, you're thinking about work tomorrow. The fact that he's forcing himself on her is a tricky one because I don't know if that's actually what's happening. Is it a terminology? I don't know this sister so I don't want to presume that she may be exaggerating or not exaggerating".*

BAM: *"Yeah, yeah. She may be meaning it literally? Or figure of speech?"*

RS: *"I don't know if it's an abusive situation".*

BAM: *"But I guess although we're speaking to the sister, we're not speaking just to the sister. Cause people might be in similar situations".*

RS: *"Well I would think, you know, I would hope the brother would be mindful and respectful. And, you know, understanding. But if he is not, they need to discuss things. And maybe there's a communication issue, what he's seeing as being a behaviour she's interpreting as something else. I don't know. Is this an abuse case? I don't know. It's difficult for me to make that call with just what she has said there, so I'm keen not to".*

BAM: *"There's not a whole load of information but it does sound problematic".*

RS: *"Like it's a job?"*

BAM: *"Yeah cause straightaway before we get into the halal[1] and haram[2] aspects of it, I'm just thinking about the hadith from the Prophet, when he says 'the best of you are those that are kindest to your wives'. And I just kind of hear of that scenario, one side of the story, that seems bereft of kindness".*

SAM: *"This is not an uncommon question. I've had it more than once in more than one scenario. Marriage is a contract, it's an agreement between two people. In this agreement there is certain things that are compulsory on each party to act upon. The physical intimacy is something that is compulsory by the woman to be offered to the husband. Okay? That is the only thing, the only thing, that this party has to give, unless agreed upon beforehand. So if it's not agreed upon, the wife can charge for washing dishes, the wife can charge for bringing up, looking after the children, the wife can charge for breastfeeding even. Okay? However, this issue is something that she needs to do for free at any time".*

RS: *"But what if she's tired?"*

SAM: *"If it is a marriage then there should be an understanding between both parties. It may be that she's sick. It may be that she has physical issues that stop her from being able to do anything. That comes to an understanding between the two parties. If truly what she's saying then there is a breakdown within the marriage between these two people, and they should look at the contractual agreement they made between themselves. Because when two people get married they complete each other in two halves and the physical aspect of that is a huge part of it. If there is a misunderstanding or if there is miscommunication or if there's a disagreement in the physical side of things, many other points will be problematic as well. So I am sure that if this is the case they have got issues in many other places in the marriage. Therefore, they should come back to the drawing table, okay? 'Now, this marriage cannot continue in this way because of X, Y and Z. So we can now divorce and have a temporary marriage for example for the period that I feel like, three hours? And then I will be in charge of saying that I want another three hours, or another three days, or another three months or another 30 years, or not. Or you know what,*

[1] Permissible according to Islamic law.

[2] Forbidden by Islamic law.

physically we're not compatible. 'What you want physically from me I'm not'—and you see it the other way around as well. There are ladies that write to me and have an issue with their husband's abilities. And again sometimes you know it has to be that there needs to be a new marriage with more compatible persons because the man physically is not able to provide what she wants. So this happens. This happens in many instances".

BAM: *"'Cause you mentioned communication—"*

SAM: *"They need to come back to the drawing board and communicate with one another. If they're not compatible they need to find people that are compatible".*

BAM: *"Okay. 'Cause you mentioned communication and I was thinking, what if they are communicating, and that is a scenario where the lady is saying 'not now' and the gentleman is saying, you know, 'you're obligated'? Is that—?"*

SAM: *"To be honest if there is communication that doesn't happen. The reason that doesn't happen is because there's understanding from both sides. The marriage is about give and take, it's not about dictatorship. Because it's give and take, once the husband gives in, once the wife gives in. They compromise in the middle and they go together. Okay? If there is no compromise or there's a problem, there's a far greater problem, and they need to sit down in the drawing table and think about and revaluate the marriage as a whole and their contract as a marriage".*

RS: *"But sometimes you have an issue where some person has certain needs and the other person doesn't, so the person might think once a month is fine… and the other person might think something else. Then what? And say if they have children?"*

BAM: *"Because you mentioned about contract and situations change, right? Before there was children, and the school run, and the packed lunch, and the reading or the homework, assignments and different things. So the contract kind of changed. So is there room for renegotiation or even maybe questions or a scenario to address?"*

SAM: *"As far as religion is concerned there's not room for renegotiation. However, if they are not compatible then they have to re-evaluate things. But the point is that in every or 99.9 per cent of scenarios there is a compromise because they both want to save the marriage. If for whatever reason they don't want to save the marriage then they just need to sit down at the drawing board because it is rarely the case that one can't give on one side and the other person gives in the other time and they meet in the middle. If there is a vast gap, it happens but it is very rare, then they really need to sit down. Otherwise it falls into adultery, it causes a huge amount of issues in society".*

BAM: *"I wanted to say and I wanted to ask both of you. Is it something worthy of conversation? Maybe you can't negotiate because the rules are the rules".*

SAM: *"It's probably the most worthy conversation to have in a marriage".*

BAM: *"Yeah because people might say where do you fancy living? And what's your favourite colour? And what kind of food do you like?"*

RS: *"What do you mean? Sorry! What do you mean? Five times a week at five o'clock. What—?"*

BAM: *"What do I mean? What I mean is that to have an idea of the person that you're getting married to".*

RS: *"Well, who knows until you're in the situation? Really, honestly? I could say that, you know, I'm a gymnast. I'm not, you know, people often can say things there that they they're not, you don't know".*

SAM: *"Sometimes over a period of time people change, so their physical needs change over a period of time".*

RS: *"Or life happens, yes".*

BAM: *"But is it a worthy conversation or is it just too taboo?"*

RS: *"I don't think—I just don't know how you would do it".*

SAM: *"There is nothing too taboo in marriage when it's between a man and wife".*

RS: *"Do you think before* [marriage]*?"*

SAM: *"Before is very difficult to—unless you've had this experience previous you both know what you're like then it's probably difficult".*

RS: *"I mean if you could say…if you were married before to say 'I'm a type of person' that 'I have a high libido' to someone before you get married, that's fair to say. But I don't think you really sit there and—"*

BAM: *"—No I don't mean like clause two, sub section b. I just meant in a sense of like, because we have a lot of scenarios that are coming into the studio where people are asking these type of questions, or they have these type of challenges, or even young people who are thinking about getting married and they don't know where to get information from, it's too taboo to discuss it, so is there a need for kind of premarital counselling or premarital consultation?"*

SAM: *"Premarital in its place, but within the marriage this needs to be resolved. And I said because sometimes, well many times really, it leads to adultery. And that's the last thing we want in society. Sorry, go on".*

RS: *"I'm going to burst. That's something that I hear so much, and a lot of the time the sisters feel that they're almost to blame if their husband—*

SAM: *"—I was actually saying it the other way around but you've obviously picked up the other way. From what I've seen it's the other way around. It is mainly the sisters that are unfortunately being deviated*

because unfortunately they're not getting the needs they need at home in their marriage. So it's definitely an issue and it's an issue that should be dealt with, and it should be dealt with within the marriage, they should come together and talk about their needs and try and compromise on them".

BAM: *"You felt the sisters were being blamed? You jumped the gun but still speak about that, speak about that all the same".*

RS: *"Well, a lot of the time the sisters, well when I speak to sisters they say you know, if I don't do this then he'll say I'm going to get another wife or he'll have to go somewhere else and then the sin is on me because I haven't given into his needs and stuff and there's a lot of pressure. And that's what I was saying, I haven't come across—"*

SAM: *"But if it's a healthy marriage that shouldn't even be the case, with a healthy marriage".*

BAM: *"Yes 'cause that sounds like a threat".*

SAM: *"Yeah it doesn't sound like a healthy marriage. If it's a healthy marriage then those issues should be resolved between the two at the end of the day. One should want to give into the needs of the other person. One should want to give whatever they can possibly and more to the person that they love the most in this life. If they don't then there's an issue with them in the first place".*

BAM: *"So communication is at the centre, is key. Okay. Alright, well I thank you for your time, Sheikh. Ruby, thank you again".*

RS: *"Thank you, it's a pleasure".*

BAM: *"Excellent as always. And thank you brothers and sisters for staying with us for the duration of 'It Takes 2' and we hope to see you next week".*

After the programme's closing credits, a voiceover said:

"If you've been affected by anything discussed in this episode do speak up to find assistance at your GP, local authorities or helplines online".

Ofcom considered the material raised issues warranting investigation under Rule 2.3 of the Code. This states that:

"In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context…. Such material may include, but is not limited to, offensive language…sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender, race, religion, beliefs and sexual orientation). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence".

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

Response

The Licensee said *It Takes 2* has been broadcasting for two years and "aims at strengthening marital bonds between Muslim couples who have married under Islamic Law". Therefore, the Licensee said that the programme answers the questions asked by viewers "from an Islamic Law perspective". The Licensee accepted that "this does not in any way negate the laws of the UK or other countries in which this series is broadcast". However, it did say *It Takes 2* "is not a legal programme and under no guise asserts itself as such".

The Licensee pointed out that question had come from a viewer from Kenya and said "the producer ensured that neither the presenter nor the panellists referenced the criminal nature of the viewer's question and avoided the terminology marital rape or sexual violence in the UK". The Licensee told Ofcom that "whilst the channel is broadcast in the UK, it has an audience reach which is beyond the UK" and the programme therefore "deliberately avoided the terminology marital rape or sexual violence…to avoid causing harm or offence, or encroaching on cultural sensitivities".

Faraj Media said that the "welfare of all viewers is important to Safeer TV" and "the presenter made it very clear from the outset that this was a concerning and troubling subject matter".

In relation to Ruby Sowah's comment: *"I don't want to presume that she may be exaggerating or not exaggerating"*, the Licensee said that although this "may be heard as not believing the viewer…[this] is not the case". The Licensee said that Ruby Sowah's following remarks (*"I don't know, is this an abuse case? I don't know, it's difficult for me to make that call with just what she has said there so I'm not keen to"*) "demonstrate[d] the seriousness with which Ruby Sower gave to the viewer's question".

The Licensee told Ofcom that "during the discussion, Sheikh Ali Massoumian sought to widen the discussion that all marriage agreements are different". The Licensee said that by saying *"the physical intimacy is something that is compulsory by the woman to be offered to the husband"*, Sheikh Ali Massoumian was "outlining the Islamic marriage agreement". Farah Media described marriage in Islam "as a contract between the husband and the wife and whatever they agree on at the onset of the marriage becomes compulsory on both of them throughout". The Licensee said that: "Islam highly recommends a pre-defined contract where the rights are divided thoroughly according to a certain reasoning and justification"; "this pre-defined contract is widely accepted amongst Muslims and plays a very important role in strengthening the family structure which is challenged nowadays by the new lifestyle"; and "at the same time, Islam gives full rights to each partner to change the pre-defined items and specifics of the contract to suit their own individual needs".

The Licensee acknowledged that the issue being discussed in the programme was "challenging and difficult". It said that it believed "the viewer [who sent in the letter] reached out to this programme with the aim of obtaining advice from an Islamic perspective and to find out what her rights and also responsibilities are within the Islamic marital agreement". Faraj Media said that "if the viewer is in an abusive marriage, providing them with Islamic guidance is what they've requested". Although the Licensee said this "does not detract from the serious criminal nature of marital rape", it said its "panellists are not qualified to make such a legal determination" and although "they clearly understood the serious nature of the question being raised…there are cultural sensitivities to be taken into account". Finally, the Licensee said that when addressing this viewer's question, "the producer endeavoured to

avoid causing harm or offence by not referencing sex violence or marital rape, which would have been distressing for our viewers".

The Licensee said however that in order to assist compliance with Rule 2.3 in the future, the channel will now make "available helpline information for viewers when covering subjects of a sensitive nature".

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including 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". This duty is reflected in Section Two of the Code.

In reaching its Decision in this case, Ofcom had regard to Article 9 of the ECHR, which states that everyone "has the right to freedom of thought, conscience and religion". We also took careful account of the Licensee's and audience's right to freedom of expression set out in Article 10 of the European Convention on Human Rights ("ECHR").

Rule 2.3 of the Code states that in applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context. Context is assessed by reference to a range of factors including: the editorial content of the programme, the service on which the material was broadcast, the time of broadcast, what other programmes are scheduled before and after, the degree of harm or offence likely to be caused, likely audience expectations, warnings given to viewers, and the effect on viewers who may come across the material unware.

Ofcom underlines that in accordance with Articles 9 and 10 of the ECHR licensees are free to broadcast programmes which give relationship advice to the audience from a particular religious viewpoint. On occasions, some viewers and listeners may find such advice controversial or even offensive. Nonetheless broadcasters can still include such advice in their programmes, provided they comply with the Code, and in particular ensure that potentially offensive content is justified by the context.

We first considered whether the material in this programme had the potential to cause offence. We noted that a letter from a viewer was read out as follows:

> *"My husband forces himself on me. I can't stop him from doing this. He does this even if I am ill or tired or on some occasions I just can't really be bothered. I have been told that not being in the mood is not a valid reason. What should I do? He says it's his Islamic right because I am his wife".*

In Ofcom's view, viewers would have understood from this letter that a female viewer was saying clearly that her husband was repeatedly forcing her to have sex with him against her will. Given the extremely serious nature of this matter and issue, we considered that a great deal of care and sensitivity was required in the manner in which it was handled in the programme. Taking into account the programme had a clear focus on religious practice rather than on explaining the law, in our view the audience of a UK-licensed television service would still have expected that it would be made clear to the woman and the audience that she was potentially a victim of a very serious crime in the UK (and a number of other countries) and that her husband's actions were morally unacceptable to the panel.

We noted that Ruby Sowah, one of the panellists, said in her initial response to the viewer's question:

> *"The fact that he's forcing himself on her is a tricky one because I don't know if that's actually what's happening. Is it a terminology? I don't know this sister so I don't want to presume that she may be exaggerating or not exaggerating".*

In its representations on this matter, the Licensee acknowledged that these comments "may be heard as not believing the viewer". Ofcom in fact considered that this was a probable interpretation by viewers rather than a possible one.

Shortly afterwards Ruby Sowah remarked:

> *"Is this an abuse case? I don't know. It's difficult for me to make that call with just what she has said there so I'm keen not to".*

The Licensee considered that these remarks "demonstrated the seriousness with which Ruby Sowah gave to the viewer's question".

The letter from the viewer in Ofcom's opinion was quite clear: *"'My husband forces himself on me. I can't stop him from doing this. He does this even if I am ill or tired or on some occasions I just can't really be bothered. I have been told that not being in the mood is not a valid reason. What should I do? He says it's his Islamic right because I am his wife'".*

In Ofcom's view, both the sets of brief, introductory statements by Ruby Sowah were likely to be interpreted by viewers as failing immediately to recognise the potential seriousness of the situation being described and, to some extent, casting doubt over the woman's version of events. As a result, they were capable of causing offence.

In assessing the potential offensiveness of the content of this programme overall, we also noted the initial comments made by Sheikh Ali Masoumian. He said:

> *"The physical intimacy is something that by the woman to be offered to the husband. Okay? That is the only thing, the only thing, that this party has to give, unless it is agreed beforehand. So if it's not agreed upon, the wife can charge for washing dishes, the wife can charge or bringing up, looking after the children, the wife can charge for breastfeeding even. Okay? However, this issue is something that she needs to do for free at any time".*

In Ofcom's view, these comments could have been reasonably and clearly interpreted as stating that, within a Muslim marriage, it is an absolute requirement for a woman to have sex with her husband at any time on demand, even if she does not consent. Given what viewers had learned about the woman who had contacted the programme (i.e. that her husband repeatedly *"forces himself"* on her), we considered that these remarks could also have been reasonably and clearly interpreted as providing a moral and religious justification for the husband forcing his wife to have sex with him.

We considered that these statements by Ruby Sowah and Sheikh Ali Masoumian broadcast to an audience primarily in the UK, where a husband forcing his wife to have sex with him is a criminal act, clearly had the potential to be offensive.

We therefore went on to consider whether the broadcast of this material was justified by the context.

Ofcom acknowledged that this service is aimed at a Muslim audience primarily in the UK, and provides programmes on a variety of topics from an Islamic perspective. It was therefore likely that most viewers would have been familiar with Islam and its teachings, and the concept of religious advice on everyday practices. As noted above, we took careful account of the rights to freedom of religion and of expression of the broadcaster, the presenter and the panellists and the audience in this case. However, these rights must be balanced against the obligation on the broadcaster to apply generally accepted standards to ensure that material which may cause offence is justified by the context. In Ofcom's view, the audience of this programme was likely to have expected this service to apply generally accepted standards as regards UK law, under which a husband forcing his wife to have sex with him is a very serious criminal offence[3]. We therefore considered the degree of offence likely to have been caused by the statements quoted above was increased considerably by the fact that at no point during this 12 minute discussion did the presenter or panellists make it clear that marital rape is criminal under UK law. We also considered that this content was likely to have caused a considerable degree of offence to any viewers who came across it unawares.

We took into account that, when discussing the Islamic marriage contract, the contributors did make various statements encouraging couples to talk through any disagreements and areas of conflict with a view to resolving them. For example:

"The marriage is about give and take, it's not about dictatorship. Because it's give and take, once the husband gives in, once the wife gives in. They compromise in the middle and they go together".

"So it's definitely an issue and it's an issue that should be dealt with, and it should be dealt with within the marriage, they should come together and talk about their needs and try and compromise on them".

We also noted that the presenter and panellists did make a number of comments that described the husband's behaviour as problematic. For example:

"It's a very problematical…a very troubling letter. A very, very difficult letter to address".

"There's not a whole load of information but…it does sound problematic".

"I hope the brother would be mindful and respectful and, you know, understanding".

"I'm just thinking about the hadith from the Prophet, when he says 'the best of you are those that are kindest to your wives' and I just kind of hear of that scenario, one side of the story, that seems bereft of kindness".

"If it is a marriage then there should be an understanding between both parties. It may be that she's sick. It may be that she has physical issues that stop her from being able to do anything. That comes to an understanding between the two

[3] By way of background Ofcom understands that since 2015 marital rape has also been a criminal offence under the law of Kenya, from where the viewer had written in to the programme for advice. See: http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/ProtectionAgainstDomesticViolenceAct_2015.pdf

parties. If truly what she's saying then there is a breakdown within the marriage between these two people…".

In Ofcom's view, these comments may have softened to a limited extent the level of potential offence. However, we did not consider that they provided sufficient context to fully justify the offensive material because neither they, nor any other comments made in the programme, clearly condemned the husband's actions or made it clear than any form of sexual violence was unacceptable.

We noted that after the programmes closing credits, a voiceover said:

"If you've been affected by anything discussed in this episode do speak up to find assistance at your GP, local authorities or helplines online".

In Ofcom's view this information, like the remainder of the programme, failed to identify the very serious nature of the issue being faced by the viewer. Given the lack of clarity in the programme about the unacceptable and criminal nature of a husband forcing his wife to have sex with him, and of any direct recommendation from the presenter or panellists to the viewer to speak to the relevant authorities, we considered that this generic announcement after the programme did not materially mitigate the offence caused by the earlier comments.

We also took into account that the Licensee said the programme's producer had "endeavoured to avoid causing harm or offence by not referencing sex violence or marital rape, which would have been distressing for [its] viewers". The Licensee also said that the presenter and panellists' responses "did not detract from the serious criminal nature of marital rape" but "the panellists are not qualified to make such a legal determination". It is an editorial matter for the Licensee as to how it decides to comply with Rule 2.3, However, in Ofcom's view, it would have been perfectly possible for the presenter or panellists to make clear that any form of sexual assault (whether inside or outside marriage) is unacceptable without causing harm or offence to the audience or making a legal determination.

The Licensee also said that "in Islam, marriage is a contract between the husband and wife, and whatever they agree on at the onset of the marriage becomes compulsory on both of them throughout". The Licensee described this contract as "widely accepted amongst Muslims and plays a very important role in strengthening the family structure". Ofcom took this into account. However, we did not consider that the audience's view of the Islamic marriage contract was likely to have materially impacted on its expectations of a UK-licensed channel featuring advice to a woman who had said she was being forced to have sex with her husband against her will.

In reaching our Decision, we noted that the Licensee said it would make available a helpline for *It Takes 2* viewers when the programme deals with "subjects of a sensitive nature".

However, for all the reasons above, we considered that in the circumstances of this case the Licensee failed to apply generally accepted standards to ensure that material which may cause offence is justified by the context. Therefore, our Decision was that Rule 2.3 was breached.

Breach of Rule 2.3

In Breach

Hannity

Fox News, 2, 5 and 6 August 2016, 03:00

Introduction

Fox News is a news channel originating in the USA, broadcast on the digital satellite platform and licensed by Ofcom in the UK. The licence for this channel is held by Fox News Network Limited Liability Company ("FNN" or the "Licensee").

Hannity is a live current affairs programme, presented by Sean Hannity, that discusses and analyses political and news stories.

During routine monitoring, Ofcom identified three one hour programmes which were broadcast in the US at 22:00 Eastern Standard Time and simultaneously in the UK at 03:00. The programmes included a number of statements relating to the 2016 US Presidential election, and in particular the election campaigns of the two main party candidates: Hillary Clinton (Democratic Party) and Donald Trump (Republican Party). Our concern in this case was whether these three programmes were duly impartial in their coverage of the US Presidential election campaign.

2 August 2016 programme

This programme commenced with an interview between Sean Hannity ("SH") and Donald Trump ("DT"), which included, for example, the following statements:

SH: *"You know the same media that's obsessed with Mr. Khan*[1] *and his son, and he spoke at the DNC*[2] *etcetera. I want to go through this issue if I can and slowly with you. You did call this man, his son 'a hero' did you not?"*

DT: *"Yes, I did. Absolutely. Whenever you have the Gold Star family*[3]*. Whenever you have, you know, what you and I have discussed in the past. And these are great people, great families, frankly".*

SH: *"When you talk about refugees, illegal immigration, you're not talking about people like the Khans. For example, James Clapper, our National Director of Intelligence, our CIA Director, or FBI Director, Assistant FBI Director, our Chairman of the House Homeland Security Committee, and even General John Allen, Obama's special envoy to defeat ISIS: They have all warned us that the refugees that Obama's taking in – and Hillary wants a 550% increase – that refugee population will be infiltrated. Are you clear you are not talking about the Khans, you're talking about what these people are saying?"*

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[1] Khizr Khan, a US citizen of Pakistani origin, whose son, US Army Captain Humayun Khan, was killed in 2004 during the Iraq War. Mr. Khan and his wife received widespread media attention for criticising Donald Trump at the 2016 Democratic National Convention.

[2] Democratic National Conference.

[3] Gold Star families are immediate relatives of members of the U.S. Armed Forces who have been killed in combat or in support of certain military activities.

DT: *"No, I'm not talking about the Khans, I'm not talking about a lot of people. I'm talking about people coming over here from Syria that aren't properly vetted, their immigration, nobody knows if they're ISIS, they don't know who they are. They're being put all over the country. Hillary wants a 550% increase over what Obama's bringing in. Obama's bringing them in by the thousands, by the thousands, and she wants to bring them in 550% more. I think it's insane. Now I also think that what we should do is build safe zones over in Syria, have the Gulf states pay for it. They've got plenty of money. They're not doing their job right now…We have to get back to rebuilding our country, rebuild our infrastructure, create jobs, take jobs away from Mexico and all these countries that are taking our jobs".*

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SH: *"…Why do you think Mr. Khan is going after you, when you specifically talk about people coming from countries that practice Sharia, which discriminates against Christians and Jews and women and gays and lesbians, and whose values under Sharia are the antithesis of our constitutional values, and Hillary voted for the war and voted to pull out early? Why do you think you're being targeted?"*

DT: *"Well, I have no idea but I watched him at the Democratic National Convention and he was really going after me, there's no question about it…I can say this. If I was President – because their son died 12 years ago – if I was President, his son wouldn't have died because I wouldn't have been in the war, if I was President back then. There would have been no war for Iraq".*

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SH: *"…George Stephanopoulos has been on record talking about Hillary's temperament and how fierce her anger is – he seems to forget that – and he asked you the question, 'What have you sacrificed?'. Let me ask this question: What have the Clintons sacrificed, if we're going to ask everybody that question? Do you know have they sacrificed or enriched themselves?"*

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SH: *"A friend of mine sent me this, and he googled 'Pat Smith*[4] *and Benghazi' on Google, 384,000 hits. If you google the name 'Khan and Trump' you get 491,000 hits. If that's right, then in five days, this whole issue with the media, he's getting more media coverage in five days than Pat Smith* …[and] *also Charles Woods*[5]*, that* [Hillary Clinton] *lied to them when their sons' bodies were lying next to them – more coverage from the media. Is this now, you just have to accept the media is going to be an extension of the Hillary Press office?"*

[4] Pat Smith is the mother of Sean Smith, a US diplomat who was killed during an attack on the US Embassy in Benghazi, Libya in September 2012. Hillary Clinton, who was US Secretary of State at the time of the attack, has been criticised in relation to the attack by a number of individuals including Pat Smith.

[5] Charles Woods, is the father of Tyrone Woods, who also died in the September 2012 attack on the US Embassy in Benghazi.

DT: *"Well, the media's very unfair. They're very biased. You look at CNN and you look at The New York Times…No matter how good I do on something; they'll never write good. They don't write good".*

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SH: *"Let's go to the issue of veracity of Hillary Clinton. Hillary Clinton was on Fox News, Sunday. She made a claim about James Comey*[6]*. This was on the 'Fox News Sunday Interview'. Let's roll that tape".*

A clip of an interview featuring Hillary Clinton was broadcast:

Interviewer:

"FBI Director James Comey said none of those things that you told the American public were true".

Hillary Clinton:

"Chris, that's not what I heard Director Comey say. Director Comey said that my answers were truthful and what I've said is consistent with what I have told the American people".

Sean Hannity then said:

"So, once she suggests that Pat Smith and Charles Woods were lying about what she said to them about what happened in Benghazi. Then she makes this claim. But I happen to have the interview with James Comey. Let me play it for you".

A clip was broadcast, featuring US Congressman Trey Gowdy ("TG") asking questions to FBI Director James Comey during a Congressional hearing. The questions related to Hillary Clinton's alleged use of a private email server when she had been US Secretary of State between 2009 and 2013:

TG: *"Secretary Clinton said there was nothing marked classified on her emails either sent or received. Was that true?"*

JC: *"That's not true, there were a small number of portion markings on I think three of the documents".*

TG: *"Secretary Clinton said 'I did not email any classified material going to anyone on my email. There is no classified material'. Was that true?"*

JC: *"There was classified material emailed".*

TG: *"Secretary Clinton said that all work-related emails were returned to the State Department. Was that true?"*

JC: *"No, we found work-related emails, thousands, that were not returned".*

TG: *"Secretary Clinton said her lawyers read every one of the emails and were overly inclusive. Did her lawyers read the email content individually?"*

[6] Director of the Federal Bureau of Investigation ("FBI")

JC: *"No".*

Sean Hannity's interview with Donald Trump then continued:

SH: *"Now, The Washington Post*...[said] *'although Comey did say many emails were retroactively classified, he also said there were some emails that were already classified that should not have been sent on an unclassified private server. That's the uncomfortable truth that Clinton has trouble admitting'. She lied to the parents –*

DT: *"Well, she lied".*

SH: *"She lies a lot".*

DT: *"Yeah".*

SH: *"What's your reaction to that?"*

DT: *"Well, she lied about a lot of things. She's now lying about her job and she's lying that she's going to be the agent of change. She's not going to change, she's been there for 30 years…Anywhere you go, we're like a war zone. These are factories you could see 20, 25 years ago that were vibrant, and now those companies are going, have all moved out of our country, in Mexico and other places. And she's lying about that, she's not going to do anything about it".*

SH: *"Well, we now have: the lowest home ownership rate in 51 years now in America; the worst recovery now since the 1940s; the lowest labour participation rate since the '70s. We have 1.2% growth, and this President has accumulated more debt than any other President before him combined. And she says she's going to continue this?"*

DT: *"She's going to be another four years of Obama, and in my opinion worse. And remember the Supreme Court justices. She will appoint justices that will make our country Venezuela. It will be over…I mean. What's going on in this country's incredible. We're spending trillions and trillions of dollars and we don't know what we're doing. We don't know where we're spending it, and it's got to stop, Sean. We have to rebuild our country. We have to get jobs, we've got to bring our jobs back from all of these countries that have taken our jobs. Believe me, they're going to come back. We're going to lower taxes. Hillary's going to raise taxes substantially, I'm lowering taxes. And we're now the highest taxed nation in the world…".*

SH: *"…I want to ask you last week, about the DNC. I watched Hillary's speech. I know you had millions more watching when you compare Thursday to Thursday, but I kind of viewed it as a check-list, sort of clichés and platitudes and slogans, not a lot of specifics, you know. And a lot of things happened there…you have General John Allen interrupted, chanting 'No more war' when he said America would defeat ISIS; the audience interrupted a medal of honour recipient; and also the embracing of Black Lives Matter*[7]*, and that organisation group that chanted 'What do we want? Dead cops. When do we*

[7] Black Lives Matter is a group who campaign for the rights of the African American population in the US (see http://blacklivesmatter.com/about/).

want it? Now'. Hillary's seeking counsel from them. Your reaction to some of those events?"

DT: *"Well, I thought it was terrible. And they didn't show when Bernie Sanders' people all walked out of the arena. They didn't show that, you know, if that happened with the Republicans, it would have been a national scandal. But Bernie Sanders, when they showed Bernie Sanders speaking, it looked the guy was very, very angry and tired and he wants to go home, he just wants to go home. Bernie Sanders really hurt his legacy. If he would have not made a deal, his legacy would have been amazing. I have so many people who call me. You know, they like Bernie, and honestly they are so disappointed. You just take a look at the numbers. They were so disappointed with what he did and they're not going to go for Hillary Clinton. We're going to get a lot more Bernie Sanders people than anybody would believe…".*

SH: *"…I just gave you all the economic evidence: 51-year low home ownership; really bad economic statistics. Some observers, well, your convention, you were being dark, she was going her check-list, and I'm wondering: they can't say 'radical Islam'; they're not talking about the real state of the economy with the worst statistics, the worst debt that we've ever accumulated; they don't really have a plan to deal with open borders, the impact on security and on job creation, or crime or any of these other issues. And when you compare the two conventions, how do you analyse it?"*

DT: *"…I love law and order. They don't talk about law and order. I mean, they didn't have an American flag up on the dais, and it was two days and then we started complaining and all of a sudden, they put American flags up…As you know, millions more watched the final night, my speech, than their night. I just think we had a great convention, and, you know, you hear all these platitudes, and it's ridiculous, for the other one…".*

The next item was an interview with Peter Schweizer, which included the following statement:

SH: *"'Clinton Cash'[8] author, Peter Schweizer, is out with a damning new report that shows that during Hillary Clinton's time as Secretary of State, well, she helped create a technology partnership with Russia that could have put America's national security at risk. Now Schweizer explains some of his findings in a Wall Street Journal article saying, quote: 'Clinton's handling of a major technology transfer initiative at the heart of Washington's effort to reset relations with Russia raises serious questions about her record. Far from enhancing American national interests, Mrs. Clinton's efforts in this area may have substantially undermined US national security'. Now the report also finds over a dozen companies involved in this deal with Russia donated money to the Clinton foundation, or sponsored speeches given by Bill Clinton".*

There was then an interview with retired General Mike Flynn ("MF"), in which he criticised another retired General, John Allen, about the latter's endorsement of Hillary Clinton as presidential candidate. This item included, for example, the following statements:

[8] 'Clinton Cash: The Untold Story of How and Why Foreign Governments and Businesses Helped Make Bill and Hillary Rich' is a book published in 2015.

MF: *"I don't really know what General Allen is talking about. There's not going to be civil military crisis. If Donald Trump has done anything, he's brought, he has brought laser focus on to the problem of this illegal immigration, the refugee flow into Europe and into our own country where we have a president who wants to bring a 100,000 refugees from Syria, Iraq and Afghanistan into our own country. He's also brought the right level of attention on to this radical Islam problem that we have…".*

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SH: *"…Hillary also supported Mohammed Morsi[9], and apparently began the negotiations with Mahmoud Ahmadinejad[10] in Iran which led to $150 billion and they continued to spin their centrifuges…".*

MF: *"…I don't like the Iranian nuclear deal at all. I don't like it. We just gave the number one state sponsor of terrorism a pathway to a nuclear weapon plus a $150 billion, and their national anthem in Iran is 'Death to America'. We have to become more responsible to facing up to this enemy that we are facing, and in order to that we have to clearly define it, something this President has not allowed us to do…".*

The last item featured a panel discussion, which included Juan Williams and Deneen Borelli, about the campaigning group Black Lives Matter. This included, for example, the following statements:

SH: *"Juan Williams, I know you well. You don't want to associate with a group which says 'F the police'. You don't want to associate with a group that says for white people to 'Get in the back'. You don't want to associate with that says 'What do we want? Dead cops. When do we want them? Now'. But, your candidate, Hillary Clinton is meeting with them and seeking advice on matters involving criminal justice…Barack Obama has invited this group multiple times to the Oval Office…".*

Deneen Borelli:

"Sean, this is a radical movement. President Obama and Hillary Clinton have given them legitimacy. This isn't about black lives, it's about black votes. And Hillary desperately needs black voters to turn out in order to win this election, especially in swing states…".

5 August programme

This programme included an interview with Donald Trump's foreign policy adviser, Dr Walid Phares, at the end of which Sean Hannity said:

"It's funny. If you look at the economy, and you look at the world post-Obama. If there's any one human being: the community organiser; the Alinsky[11]

[9] President of Egypt from 2012 to 2013.

[10] President of Iran from 2005 to 2013.

[11] Saul Alinsky was a controversial community organiser to which President Obama has been of having links.

disciple; the Church of GD America[12]; the friend of unrepentant domestic terrorists. There's never been anybody less fit to hold office. And he's criticising Donald Trump? I'll take Trump any day".

The next item started with a clip of Donald Trump saying the following:

"You'll have four more years of Obama if you elect Hillary Clinton. Four more years. Remember this, Hillary Clinton essentially wants to take away your rights under the Second Amendment. She wants to take away your guns. She wants to take away those bullets. She wants to take away your rights. Hillary Clinton, furthermore, can never be trusted with national security. Can't".

Sean Hannity then held a discussion with Michael Cohen ("MC"), who was described as being from *"The Trump Organization"* and Laura Ingraham ("LI"). There were, for example, the following the statements:

LI: *"You have to stay on offence. If anybody needs an intervention, it's the former Secretary of State, given that she can see a tape of what Jim Comey said and just do a bald-faced lie on national television when asked twice by Chris Wallace. So an intervention of truth-telling would be necessary…I would stop talking about the other Republicans and start talking about Hillary's disaster record and the plans that he has for the future…".*

SH: *"…The only two people that he really should mention with 95 days left are Obama's disastrous economic and foreign policy and Hillary's horrible record. And the other thing I think he should do is, you know, focus on the things that he said to me in interview after interview – I've put up on the screen – you know, the differences between these two campaigns: he's going to appoint originalists[13] to the Supreme Court, those that have fidelity to the Constitution, believe in separation of powers, co-equal branches of government; he's going to talk about protecting the homeland and securing the border for both of the economy and our safety; implementing a safe refugee programme; fixing America's broken economy; balancing budgets; creating jobs; energy independence; education and the states; his negotiating better trade deals; the VA[14]; put America first. That's his message".*

MC: *"Jobs, economy and national security. If he stays on those three topics, he's the next President of the United States of America. And where he should be hammering Hillary Clinton and Bark Obama and their disastrous £400 million cash and carry, you know, on this airplane…".*

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LI: *"…Until you win, you put all your focus on the corruption that is the Hillary campaign and the Clinton Foundation…".*

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[12] Ofcom understands this to be a reference to Reverend Jeremiah Wright, Barack Obama's former Pastor. Rev. Wright had been condemned for a sermon in which he had said "God Damn America".

[13] 'Originalism' is a school of legal interpretation of the US Constitution which stresses the intent of the original framers of the Constitution document.

[14] Veteran Affairs.

The next item started with a clip of Donald Trump saying the following:

"The Obama/Clinton economic disaster, it's an economic disaster has brought suffering across the nation: Nearly four in 10 African-American youth are living in poverty; there are two million Latinos which have joined their ranks in poverty; nearly one in four people in their prime working years and now not working.

This was followed by a panel discussion featuring Monica Cowley ("MCo"). There were, for example, the following statements:

SH: *"…People are making less and they're paying more for healthcare, and if you look at the national debt per person, it is no, look at this, for every man, woman and child in America, this man has accumulated more debt than any other President before him combined, $59,723".*

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MCo: *"…Donald Trump can pull this whole thing off if he focuses on two main messages: a strong, pro-growth economic message… and a strong national security platform centred on rebuilding the military and smashing Islamic fundamentalism…But those two main, core themes, he needs to be hitting over and over again. Mrs. Clinton cannot address those things in an effective way because her record and the President's record are absolutely catastrophic on both of those fronts".*

SH: *"…Hillary can't run on the economy. She can't run on national security cause what she did was a mess. The only thing she's got is what the media is trying to help her advance, a narrative about Donald Trump and temperament. …".*

The next item started with a clip of Donald Trump saying the following:

"Hillary Clinton only works for her donors, special interests, and lobbyists. You have lobbyists stamped on their forehead 'I can produce Hillary'. And they're very good. And they raise millions of dollars. Did you see yesterday, it was announced that Hillary Clinton got 48 million or so from hedge funds and Donald Trump got 18,000 from hedge funds, or 19. I want to figure out who they were. I want to give it back".

This was followed by an interview with a former contender for the Republican candidacy for the 2016 US Presidential Election, Ben Carson ("BC"). There were, for example, the following statements:

SH: *"…here's a woman who was called out five separate times for lying in her email scandal. But the big issue for the media is that Donald Trump said that Mr. Khan's son is a hero and his refugee programme would never have impacted his family. What do you make of this double standard, you lived it?"*

BC: *"It's truly amazing and I hope that the American people can see that most of the mainstream media is completely in the tank for Hillary and they are not helpful at all… And they don't even realise that if we put someone like Hillary in, we get more radical Supreme Court justices and federal judges, they too will be affected. They just don't know it yet. They haven't thought that far ahead".*

SH: *"…Doesn't it come down to comparing and contrasting? Here's Trump's justices, here. Here's Hillary's. Compare. Here's Hillary's plan to raise taxes on the middle class, here's Trump's tax cut. He's gonna allow multinational corporations to repatriate the trillions offshore so that we can build jobs. Hillary's going to put coal miners out of work, coal mine companies out of work. Trump is all of the above. We're gonna have millions of new jobs, high paying jobs and become energy independent. We'll build a border wall; we won't build a border wall. We'll get rid of Obamacare; we won't get rid of Obamacare. We'll send education back to the states; we won't send education back to the states. To me it's a quintessential choice election".*

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SH: *"Knowing the media's that biased, knowing that they're out to get him, knowing that the narrative that Hillary wants to advance, even though she's got a vicious temper – how do I know? George Stephanopoulos told us as did Dee Myers – knowing all that, is it Donald Trump's best interests to stick to Hillary, stick to Obama, let his surrogates fight these other fights for him and stay on message and say 'This is what I'm going to do, this is your chance to fix America'?"*

BC: *"…It really boils down to one candidate who is of the people and one candidate who is the epitome of the establishment ruling class. You couldn't have a more clear-cut distinction than this".*

SH: *"You, know, Hillary can't run on Libya, she can't run on her vote on Iraq and then politicising it and creating a vacuum for ISIS in Iraq. And she can't run on what she did in Syria. And she can't run on what she did on Mohammed Morsi in Egypt. She can't run on not saying 'radical terrorism' and she can't run on Obama's economy, where we have a 51-year low in home ownership rates, where we have, you know, literally the worst recovery since the 1940s, the worst labour participation rate since the 70s".*

The final item in the programme featured a discussion about comments made by Clint Eastwood. Sean Hannity, for example, said the following:

SH: *"…* [Clint Eastwood] *also said the following: 'I'd have to go for Trump, you know, because, you know, she's* [i.e. Hillary Clinton] *declared that she's gonna to follow in Obama's footsteps. There's just been too much funny business on both sides of aisle. She's made a lot of dough being a politician. I gave up a lot of dough to be a politician, and I'm sure Reagan gave up a lot of dough to be a politician'".*

6 August programme

This programme was presented by a guest presenter, a former contender for the Republican candidacy for the 2016 US Presidential Election, Governor Mike Huckabee ("MH"). It commenced with an item featuring: Doug Schoen ("DS"); Kellyann Conway ("KS"), who was described as a "*Trump campaign advisor and pollster*"; and the journalist Charles Hunt ("CH"). There were, for example, the following statements:

MH: *"Alright, Kelly, you know last week my inbox was getting filled up every single day with people saying 'what's Trump doing? Why is he not on the attack to Hillary? He's off on these other tangents'. And tonight, after that speech, as*

people were watching, those same people were blowing up my inbox saying 'This is the Donald Trump we want to see' and they are all happy. So was this a turning point for the Trump campaign in moving forward?"

KC: *"Yes, Governor, I believe it was. I actually think you'll look back at today as a really great day for Trump/Pence*[15] *and a terrible day for Hillary Clinton who is now lying about lying. She still can't get the story right and I think when you look at going beyond the endorsements tonight and you listen to what both Mr Trump and Governor Pence had to say on the stump, they are taking the case right to Hillary, if not Obama's eight years in office. Donald Trump's out there tonight questioning her temperament, her fitness for office, her qualifications. Last I checked, integrity is a qualification for President of the United States and I think people who were on the ledge this week are now going to get off the ledge and this is a man who is doing what he needs to do to win now, which is get back in that fighting form and have tunnel vision. There's a bogey woman out there. It's very clear who to attack every single day and I don't think she's going to, it's not going to wear well on her. Hillary benefitted this week Governor from scarcity, from not being part of the conversation. That's when she does best. But she doesn't wear well – the minute she got back up on the stump today she started lying about lying"*.

MH: *"…What we saw tonight was Donald Trump taking the high road when it comes to his own party, but he didn't stop being Donald Trump and Charles, when I listen to this speech, you know, he went right after Hillary, went on the attack. I mean nobody expects him to be anything other than Donald Trump do they?"*

CH: *"No, and of course he was very charming the way he talked about how he was going to have to stay on message tonight and he was repeating portions of his speech and all that was great. But do you know one of the things that has largely been missed by the media this week is when he started taking on water at the beginning of the week it had nothing to do with Paul Ryan*[16]*. The only people who were upset about what he said about Paul Ryan which by the way, was hilarious, the only people who were upset about that was Paul Ryan and a bunch of politicos inside the Beltway*[17]*. Nobody cares about that. What Donald Trump was in trouble for at the beginning of the week was that unnecessary ridiculous spat with the Khan family and what I think we have seen is once again we have seen another media Houdini act by Trump where he throws out the thing with Paul Ryan at the very zenith of the Khan controversy and it completely changes the subject from the Khan controversy to this new non-controversy that nobody cares about and it all winds up with a wonderful speech tonight in which he exhibited party unity - nobody cares about that really - but we're not talking about the Khan thing now, we're talking about Trump's support for John McCain*[18]*, Kelly Ayotte*[19] *and Paul*

[15] Mike Pence is the Republican candidate for the post of Vice-President.

[16] The Republican Speaker of the US House of Representatives.

[17] "The Beltway" is a term used to describe matters relating to the actions of government officials, politicians and lobbyists in Washington DC.

[18] A Republican senator for Arizona.

[19] A Republican senator for New Hampshire.

Ryan and, by the way, he also got in all of his shots on, the queen of corruption and stuff like that. So I think going forward if he does remain laser-focused as he should, today was a victory for him".

KC: *"And on Monday he's going to be unveiling a great economic plan, Governor, I'm sure everyone's aware of that, the Detroit Economic Club, it's really a great plan, it will really help the middle classes who are struggling and I think that's an important segue here too also because I think the 'Inside Baseball' of the past week has also distracted us from talking about what the voters want to talk about which is issues. People in this country are struggling and people are nervous, and they feel unsafe and not prosperous and I think these specific plans, I was with Governor Pence yesterday in North Caroline and Virginia, he's out on the stump talking about substance. Taking the case right to Hillary Clinton for the failures of Obamacare, Governor, which he also reminded us was really just the prologue to Hillarycare…So you've got 16 of the 23 co-ops already failing. You've got millions of uninsured Americans who weren't supposed to be in this place. You've gotta now pivot to the substance because there Hillary simply cannot compete"*.

MH: *"I'm pretty sure that we're not going to hear Donald Trump go to Detroit on Monday and propose another one and a half trillion dollars in taxes over the next ten years. And Charlie I want to go to you because I just want to respond to you. You made a point I think that's very important and that is that this whole thing about Paul Ryan. I think Donald Trump was just tweaking his nose a little bit because he used the exact same language on Paul Ryan that Paul Ryan had used on him about 'I want to get there but I'm just not there yet'. I thought the whole thing was more funny. Now I think some of the other things this week weren't the best of all but he turned the corner".*

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Clip of Donald Trump speaking:

"In one way, she's a monster, okay? Look at what happened, look at her history. In another way, she's a weak person. She's actually not strong enough to be President. She's going to be the tough one, you see. She's going to be the tough one. She's going to play with nuclear weapons, you know, they have all nukes, nice nukes, she's going to be the tough one. Now here's the problem with Hillary – Hillary 'rotten' Clinton. Here's the problem. That's why she doesn't want to use the name anymore! 'Cos everybody was saying that!"

The panel discussion then continued:

MH: *"…Let me start with you Doug. If he stays on Hillary and doesn't go out and beat the fans in the arena, do you think Donald Trump is going to end up getting his mojo back?"*

DS: *"Well he certainly can, I agree with that, but the one thing again we haven't talked about is the Clintons are gonna have two billion dollars to bring to bear. And Kellyann. maybe I'm wrong, so far there really haven't been any appreciable media buys by Donald Trump or his Super PACs*[20]*, I think getting outspent four, five, six to one. And if that happens, given the lead that the Secretary of State has in the swing states, yes he can get his mojo back but*

[20] "Super PACs" are a type of 'Political Action Committee' that can raise funds in US politics.

without unanimous Republican support given the weakness with minorities it's going to be a tough, not impossible, race for Donald Trump".

KC: *"But I have to push back on that a little bit, Doug, because first of all we released an ad tonight and its terrific. I would comment everyone just to go to our website Donaldtrump.com or pick up the ad, and it takes the case to Hillary Clinton and Governor, to your point, it shows the montage of everyone calling her 'reckless' and 'crooked' and putting her personal interests before our national security interest, a fact that will not change between now and November and a fact we really can't emphasise enough*…".

The next item focused on a speech by Hillary Clinton, and included a panel discussion featuring Eboni Williams ("EW"); Lee Carter ("LC"); and Pete Hegset ("PH"). Mike Huckabee introduced this item as follows:

"It's been 246 days since Hillary Clinton had a formal press conference. But today she did answer, well, a few questions while addressing the National Association of Black and Hispanic Journalists Conference. Clinton was asked about her private email server scandal and once again, continued to make excuses…".

There was then a clip of Hillary Clinton stating the following:

"Director Comey said that only three out of 30,000 had anything resembling classified markers. The three emails out of the 30,000 did not have the appropriate markings and it was therefore reasonable to conclude that anyone, including myself, would have not suspected that they were classified. So what we have here is pretty much what I have been saying throughout this whole year and that is I never sent or received anything that was marked classified. What I told the FBI, which he said was truthful, is consistent with what I have said publicly. So I may have short-circuited it, and for that I will try to clarify because I think Chris Wallace and I were probably talking past each other".

Mike Huckabee then said:

"Yeah, I'm sure that's what it was!"

There were also the following statements in this item:

EW: *"It's actually remarkable and I say this as an attorney. What we saw from Secretary Clinton there was about as cherry-picking and as poor as a representation of lawyering…as I've seen. So this is easy, this is simple, Trey Gowdy said to Director Comey 'Did you send or receive any classified emails – was that truthful?' Director Comey said 'No, that was not truthful'. That is the end of the analysis, Governor, so I'm really not sure why Hillary is consistently sticking to a different story than what the FBI Director is saying".*

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LC: *"…people are going to start by not trusting her and then her behaviours one after another is causing a complete dearth of trust in her and her trust numbers are horrible".*

MH: *"She is just south of 70% of the American people who say 'We don't trust you'. Would people ever vote for somebody to be President that they can't trust at that level?"*

PH: *"Lack of trust speaks to the rise of Donald Trump. He may be a rich billionaire but he's a blue-collar billionaire in saying 'Hey, the elites up there that make the rules, the ruling class, they are telling you things that you know are not true whether it's your job performance that your wages are getting better'. He told the VA that things were getting better. Vets know that's not getting better. There's a massive disconnect between the rhetoric in Washington and the reality in the ground. The extent to which Donald Trump continues to expose that, he will drive a wedge into the loyalty problem that Hillary has"*.

EW: *"Nobody trusts Hillary Clinton, like you said, Governor, it's almost 70%. My question is though how is she in some states double digit leading Donald Trump…I'm concerned that despite the lack of trust that people are somehow still willing to vote for Hillary".*

There was then an interview with Sebastian Gorka ("SG"), which focused on President Obama's policy on ISIS. Sebastian Gorka, for example, said the following:

SG: *"DNI*[21] *Clapper said the following: 'In my 30-plus year career as an intelligence professional, I have never seen the world as unstable as it is today. That's after seven and a half years of Obama and Clinton foreign policy, Governor. So let's the answer to the professionals. The most senior intelligence officer has said the world is on fire".*

The last item featured Mike Huckabee introducing a clip of Sean Hannity speaking in a recent, previous edition of *Hannity*, where Sean Hannity said the following:

"…Now Hillary Clinton is going to try and convince voters that Donald Trump does not have the temperament, or that he's too impulsive. So why is this going to be her strategy? It's all she has. She can't run on her record. She can't win on substantive issues. And she certainly can't win on issues based on honesty, integrity and truthfulness. Now, the only people that Donald Trump should ever talk about are two people: Hillary Clinton, Barack Obama because their records are a disaster. I think people want Trump to talk about how he's going to create jobs, revitalise this broken economy and of course, first and foremost, protect the homeland. Now I think Trump should line up speeches all around the country on specific topics so that people can hear exactly what he stands for and the solutions he's offering. And if I was in charge of Trump's campaign, well, I would have him travel all over the country, roll up his sleeves and show you the American people how he will deal with, for example, the immigration crisis, the refugee crisis and much more. And I'd have him put together a team of rivals. And I'd also put together Trump's promises to America to make America great again. In other words, 10 detailed promises that he would fulfil if you elect him president. For example: the promise to elect originalists to the Supreme Court that also respect the constitution, separation of powers, co-equal branches of government; how he will protect the homeland; that he will acknowledge that radical Islam is a real clear and present danger to this country; and we need to secure the border, open borders makes us less secure; and also we have 95 million Americans out of the labour force. Well, people come in here illegally. They're fighting for those jobs that Americans right now need. That also drives down wages. I also want him to talk about the refugee programme, how it has to be safe. We can't gamble with you, the lives of you, the American people. How

[21] Director of National Intelligence.

he's going to fix the American economy and get people back to work, and certainly add some type of discipline, fiscal discipline in Washington. The need for energy independence. He can compare and contrast his plan on energy, which is to expand coal mining, expand nuclear technology, drilling and fracking versus Hillary. She wants to put coal miners out of work, coal mining businesses out of business. And that also brings us to the issue of education. First and foremost, we pay more per student per capita than any other country but yet we have the worst results. Send education back to small towns and cities and let the people decide how best to educate their own kids. Also, Donald Trump should explain what it means to have a better trade deal, and Donald Trump should explain that we have a promise made to America's vets and he's going to fix our broken VA system. In other words, he's going to put America first in all decisions. So my advice: Trump and his campaign, they need to be more than prepared. This election is way too important. We cannot afford a third term of Barack Obama and his failed policies".

Mike Huckabee then said:

"Amen brother!"

There was then a discussion on what Sean Hannity had said which included Matt Schlapp ("MS") (Chairman, American Conservative Union) and Mercedes Schlapp ("MerS"). There were, for example, the following statements:

MS: *"…This election is very clear with the American voter already has decided they don't believe Hillary is either honest or trustworthy, and they don't want to vote for her. And they're looking at Donald Trump, who they know less well in a political context. And they just want to know he's a reasonable alternative. Every poll shows that the number one issue is the economy. Second issue was national security and killing terrorists and stopping these Islamic fundamentalist terrorists, and the fact that Washington's broken. And if Donald Trump keeps reminding Hillary that Hillary's the worst person in the world to take on those challenges, I think he'll win. I love the idea of fleshing it out more, but let's start with that basic premise"*

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MerS: *"Well, let me tell you, the election is almost based more on personality and character and temperament, than it is necessarily on policy initiatives. We've already seen how in terms of an Obama policy or a Hillary Clinton policy, it's much of the same. There's really no change. It is a stale agenda that she's pushing forward. So I do think that we want to see from Donald Trump a bit more of the policy fleshed out…".*

As these programmes dealt with the forthcoming US Presidential Election taking place in November 2016, Rule 6.1 of the Code was applicable. Rule 6.1 states that:

"The rules in Section Five, in particular the rules relating to matters of major political or industrial controversy and major matters relating to current public policy, apply to the coverage of elections and referendums".

Ofcom considered the 2016 US Presidential Election to be a matter of major political or industrial controversy and major matter relating to current public policy.

Ofcom therefore considered this material raised issues warranting investigation under Rule 6.1 and under the following rules:

Rule 5.11: "In addition to the rules above, due impartiality must be preserved on matters of major political and industrial controversy and major matters relating to current public policy by the person providing a service (listed above) in each programme or in clearly linked and timely programmes".

Rule 5.12: "In dealing with matters of major political and industrial controversy and major matters relating to current public policy an appropriately wide range of significant views must be included and given due weight in each programme or in clearly linked and timely programmes. Views and facts must not be misrepresented".

Ofcom therefore asked the Licensee to provide comments on how the programmes complied with the above rules.

Response

The Licensee said that episodes of *Hannity* includes "analysis of and commentary on domestic and international news and political developments and commonly feature guests and panels". It added that "The Programmes covered an array of subjects and topics, some of which either focused on or made an ancillary reference to the US Presidential election. Therefore, Rules 5.11 and 5.12 apply to them".

FNN said it understood "'due impartiality' to mean that programming must not favor a particular perspective when called for by the subject matter or the nature of the programme". It added that because the programmes in this case were "commentary shows, and not news programmes, [and] opinions that favor particular perspectives are expected and welcomed by viewers". The Licensee further added that: "Often Hannity invites guests on to the show because he's looking to elicit their views and opinions and when warranted, offer his own perspectives". FNN therefore argued that: "Given that the Programmes are for commentary, when [they]…mention the US Presidential Election or [related] topics…they were done so to offer analysis and opinions in a manner the complied with Rule 5.11".

FNN said it understood Rule 5.12 "to mean that a variety of views must be presented and appropriate attention must be allocated to them". It also said that these programme "offered the insights of 23 people on many different topics, some of which touched on issues related to the US Presidential Election". The Licensee added that: "Such a variety of individuals, who come from different backgrounds, such as law, government, the military, and journalism, constitutes an 'appropriate wide range of significant views'". Further, it said "although not every host or guest spoke for the same amount of time, the Programmes nonetheless afforded due weight to each view". Noting that each programme consisted of 44 minutes of "live, non-scripted" content, FNN said that "Given this format and the time constraints, the Programmes gave as much weight to each perspective as the format and time permitted".

According to the Licensee, the programmes "discussed and analyzed, among many other topics, various aspects of Hillary Clinton, her record, her honesty, her policy initiatives, and her campaign…[and] discussed and analyzed a similar range of topics with respect to Donald Trump". It added that: "Countering or challenging criticisms is but one way to achieve an appropriate wide range of views, however, it is not the

only way. FNN said that the programme variously presented the views of Hillary Clinton and Donald Trump and "critique[d] them", and in doing so: "Sometimes the views offered in the Programmes criticize aspects of the candidates under discussion and sometimes…support[ed] them".

The Licensee argued that: "Presenting a range of perspectives does not mean that critiques must be challenged. Complying with Rule 5.12 does not mean a range of views must be in opposition to each other. Views …can criticize or support a candidate, without being countered, and still comply with Rule 5.12". FNN also expressed the view that: "As long as programming offers a diversity of alternative views, as it did here in the Programmes, a broadcaster achieves compliance with Rule 5.12, even if those views are not countered or challenged". The Licensee also argued that "The plain language of Rule 5.12 places no requirement on broadcasters like Fox News that a range of views means a specific view must be challenged". It further said that "what the [programme] guests will say and the positions they take cannot be predicted or pre-determined. Each guest offers their own take on the discussion topics, and this array constitutes a wide range of significant views".

Finally, FNN said that "throughout the US Presidential Campaign season, Fox News has made numerous and frequent invitations to Hillary Clinton for her (or any of her campaign staff) to appear on *Hannity* and we continue to make such invitations". It added that: "In her absence, the Programmes presented her views on various topics through summaries provided by the Programme's hosts, by using clips from other sources or prior interviews. and by presenting her publicly available statements as a foundation for discussing her". In conclusion, the Licensee said that "In light of the diversity of viewpoints offered in the Programmes, including perspectives from Hillary Clinton, the Programmes conformed to Rule 5.12".

The Licensee also provided representations on Ofcom's Preliminary View, which was to record breaches of Rules Rule 6.1 (and Rules 5.11 and 5.12) of the Code. It said that "Ofcom grounds its [Preliminary View] in two broad points: (1) that the views expressed in the Programmes have a 'high degree of unanimity' with 'overwhelming support given to Donald Trump's candidacy' and (2) criticisms of Donald Trump were not analogous to criticisms of Hillary Clinton".

FNN said "It is disingenuous to label the views of the 23 multiple guests and presenters as unanimously in support of Donald Trump's candidacy". It added that: "Each person may have spoken to varying degrees on aspects of [Mr Trump's] campaign strategy, his position on policy matters, or the public's reactions to his candidacy, but such statements, even if positive or laudatory, do not mean that a speaker supports Trump's campaign".

The Licensee also said that the: "Rules requiring due impartiality and due weight in the context of elections do not mean views critical of one candidate must be analogous to the criticisms of a competing candidate".

FNN also disputed Ofcom's description of Fox News as "a US channel well-known for its broad support for the Republican Party in the USA", stating that "Fox News Channel takes no position with respect to the Republican Party or any other political party".

Decision

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

standards objectives, one of which is that the special impartiality requirements set out in Section 320 of the Act are complied with. This objective is reflected in Section Five of the Code. Section Six of the Code sets out the particular rules that apply at the time of elections.

When applying the requirement to preserve due impartiality, Ofcom recognises the importance of the right to freedom of expression, as contained in Article 10 of the European Court on Human Rights.

Section Five of the Code, which sets out how due impartiality must be preserved, acts to limit, to some extent, freedom of expression. This is because its application necessarily requires broadcasters to ensure that neither side of a debate relating to matters of political or industrial controversy and matters relating to current public policy is unduly favoured. Therefore, while any Ofcom licensee should have the freedom to discuss any controversial subject or include particular points of view in its programming, in doing so broadcasters must always comply with the Code. Further, in reaching decisions concerning due impartiality, Ofcom underlines that the broadcasting of statements supporting or criticising candidates contesting non-UK elections is not, in itself, a breach of the rules on due impartiality. However, as Ofcom's published Guidance to Section Six states[22]: "Rule 6.1 applies to the coverage of elections or referendums both inside and outside the UK". Therefore, depending on the specific circumstances of any particular case, it may be necessary to reflect alternative viewpoints and/or provide context in an appropriate way to ensure that Section Five is complied with. In this context, Ofcom's published Guidance to Section Five states[23]: "The 'special impartiality' rules (Rules 5.4 to 5.13 inclusive) apply to national and international matters, although the impartiality due to a non-national matter may be less. To give an example, broadcasters are expected to apply impartiality rules to a subject such as the American Presidential Elections".

In judging whether due impartiality has been preserved in any particular case, the Code makes clear that the term "due" means adequate or appropriate to the subject matter. "Due impartiality" does not mean an equal division of time has to be given to every view, or that every argument and every facet of the argument has to be represented. Due impartiality may be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures due impartiality is maintained.

The effect of Rule 6.1 is to ensure broadcasters preserve due impartiality in their coverage of elections and referendums. This is to help ensure that elections and referendums are conducted fairly and that no unfair advantage is given to particular candidates through promotion in the broadcast media, irrespective of whether the candidate can be shown to have actually benefited in practice. Rule 6.1 applies to elections both inside and outside the UK, and requires broadcasters' coverage of elections to comply with the rules in Section Five, and in particular the rules relating to matters of major political or industrial controversy and major matters relating to current public policy.

[22] See http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section6.pdf, paragraph 1.4.

[23] See http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section5.pdf, paragraph 1.22.

Rule 5.11 and 5.12 require due impartiality to be preserved by broadcasters in their coverage of major matters of political or industrial controversy and major matters relating to current public policy. In addition, when dealing with such matters, "an appropriately wide range of significant views must be included and given due weight in each programme or in clearly linked and timely programmes".

In this case, Ofcom first considered whether the requirements of Section Five and Section Six of the Code were applicable to this broadcast material: that is, whether the content laid out in the Introduction concerned major matters of political or industrial controversy or a matter relating to current public policy, and whether the rules relating to elections applied in this case.

These programmes were broadcast ahead of the 2016 US Presidential Election, due to take place on 8 November 2016. At the time of broadcast both main parties in the US, the Democratic Party and the Republican Party had formally announced their candidates for that election, Hillary Clinton[24] for the Democratic Party and Donald Trump[25] for the Republican Party. Therefore, we considered that these programmes were broadcast during the election campaign for the US Presidential Election.

Just because editorial content refers to political organisations or political figures does not necessarily mean that the rules in Sections Five and Six are applicable. Ofcom takes into account the manner in which political issues are dealt with, and how they are presented, within programming. In this case all three programmes contained items that focused to varying degrees on the policies and actions of both Hillary Clinton and Donald Trump. In Ofcom's view, the items clearly focused on a matter of major political controversy in the USA, namely the on-going Presidential Election campaign in that country.

Given the above, as the programmes were broadcast during the US Presidential election campaign, Rule 6.1 of the Code was clearly applicable. By virtue of Rule 6.1, the 2016 US Presidential Election was a matter of major political or industrial controversy and major matter relating to current public policy. Rules 5.11 and 5.12 therefore also applied in this case. In this context, we noted that the Licensee acknowledged that: "The Programmes covered an array of subjects and topics, some of which either focused on or made an ancillary reference to the US Presidential election. Therefore, Rules 5.11 and 5.12 apply to them".

Having established that the requirements of Sections Five and Six of the Code applied, we went on to analyse whether due impartiality had been preserved.

We noted the composition of each one-hour edition of *Hannity*:

- A third of the programme broadcast on 2 August 2016 featured the presenter Sean Hannity interviewing the Republican Presidential candidate, Donald Trump discussing the Presidential Election. This programme also included items that referred to: Hillary Clinton's tenure as US Secretary of State; endorsement of Hillary Clinton by retired General John Allen; and the reported links of President

[24] Hillary Clinton's candidacy was confirmed at the Democratic National Convention, which took place in Philadelphia between 25 and 28 July 2016.

[25] Donald Trump's candidacy was confirmed at the Republican National Convention, which took place in Cleveland between 18 and 21 July 2016.

Obama and Hillary Clinton to a controversial campaigning organisation, Black Lives Matter[26];

- the programme broadcast on 5 August 2016 included: an interview with Donald Trump's foreign policy adviser, Dr Walid Phares, and several items that discussed issues relating to Donald Trump's Presidential campaign, one of which was an interview with a former contender for the Republican candidacy for the 2016 US Presidential Election, Ben Carson; and

- the programme broadcast on 6 August 2016 included: a panel discussion that discussed issues relating to Donald Trump's Presidential campaign; a discussion focusing on a speech that Hillary Clinton had given; and a discussion focusing on Donald Trump's putative policy platform.

The above items included a number of highly critical statements (see Introduction), relating to Hillary Clinton's (and the Democratic Party's) policy platform and past political actions, and Hillary Clinton's personality and temperament, for example, as follows:

- in the programme broadcast on 2 August 2016, Hillary Clinton was variously described as: wanting *"a 550% increase"* in refugees entering the US, which Donald Trump described as *"insane"*; having a *"fierce…anger"*; planning to *"raise taxes substantially"*; and acting in a way that *"raises serious questions about her record".* She was accused of *"lying"* on a number of occasions. Hillary Clinton was also implicitly criticised through statements made about the policies and actions of the Democratic Party incumbent, Barack Obama (*"These are factories you could see 20, 25 years ago that were vibrant, and now those companies are going, have all moved out of our country, in Mexico and other places"*; *"we now have: the lowest home ownership rate in 51 years now in America; the worst recovery now since the 1940s; the lowest labour participation rate since the 70s. We have 1.2% growth, and this President has accumulated more debt than any other President before him combined. And* [Hillary Clinton] *says she's going to continue this?"*; and *"We're spending trillions and trillions of dollars and we don't know what we're doing"*);

- in the programme broadcast on 5 August 2016, Hillary Clinton was variously described as: having told a *"bald-faced lie on national television"* and having been *"called out five separate times for lying*"; exhibiting a "*double standard"*; having a *"disaster record"* and *"horrible record"*; having *"corruption"* in her campaign; not being able to *"run on the economy*…[or] *on national security cause what she did was a mess"*; *"only work*[ing] *for her donors, special interests, and lobbyists"*; having plans to *" raise taxes on the middle class…put coal miners out of work, coal mine companies out of work"* and *"to take away…rights under the Second Amendment*[27]*"*; and not to *"be trusted with national security".* Hillary Clinton was also implicitly criticised through statements made about the policies and actions of the Democratic Party incumbent, Barack Obama (*"You'll have four more years of Obama if you elect Hillary Clinton"*; *"Obama's disastrous economic and foreign policy"*; *"The Obama/Clinton economic disaster, it's an economic disaster has brought suffering across the nation"*; "*People are making less and they're paying more for healthcare"*; and *"Hillary Clinton can't run on Obama's economy, where*

[27] The second amendment to the US Constitution states: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed".

we have a 51-year low in home ownership rates, where we have, you know, literally the worst recovery since the 1940s, the worst labour participation rate since the 70s"); and

- in the programme broadcast on 6 August 2016, Hillary Clinton was variously described as: a *"bogey woman"*; *"lying about lying"*; *"the queen of corruption"*; *"a monster"*; *"a weak person"*; *"not strong enough to be President"*; *"Hillary 'rotten' Clinton"*; *"reckless and crooked"*; *"putting her personal interests before our national security interest"*; not being able to *"win on issues based on honesty, integrity and truthfulness"*; not being *"honest or trustworthy"*; and putting forward a *"stale agenda".* Hillary Clinton was also implicitly criticised through statements made about the policies and actions of the Democratic Party incumbent, Barack Obama (*"People in this country are struggling and people are nervous, and they feel unsafe and not prosperous"; "the failures of Obamacare"*; and *"In my 30-plus year career as an intelligence professional, I have never seen the world as unstable as it is today. That's after seven and a half years of Obama and Clinton foreign policy"*).

In addition, the programmes included various statements that could be described as supporting the policies of Donald Trump, for example, as follows:

- in the programme broadcast on 2 August 2016, during an interview with Donald Trump, the latter was able to make a number of unchallenged statements about his policies (*"what we should do is build safe zones over in Syria, have the Gulf states pay for it"*; *"We have to get back to rebuilding our country, rebuild our infrastructure, create jobs, take jobs away from Mexico and all these countries that are taking our jobs"*; *"We have to get jobs, we've got to bring our jobs back from all of these countries that have taken our jobs"*; and *"I love law and order.* [The Democratic Party] *don't talk about law and order"*);

- in the programme broadcast on 5 August 2016, Sean Hannity summed up Donald Trump's policies as follows: *"He's going to appoint originalists to the Supreme Court, those that have fidelity to the Constitution, believe in separation of powers, co-equal branches of government; he's going to talk about protecting the homeland and securing the border for both of the economy and our safety; implementing a safe refugee programme; fixing America's broken economy; balancing budgets; creating jobs; energy independence; education and the states; his negotiating better trade deals; the VA; put America first. That's his message"*. In addition, the programme included a number of statements that spoke in positive terms about Donald Trump's policies (*"We're gonna have millions of new jobs, high paying jobs and become energy independent. We'll build a border wall; we won't build a border wall. We'll get rid of Obamacare"*; *"It really boils down to one candidate* [i.e. Donald Trump] *who is of the people and one candidate* [i.e. Hillary Clinton] *who is the epitome of the establishment ruling class"*; and *"here's Trump's tax cut. He's gonna allow multinational corporations to repatriate the trillions offshore so that we can build jobs"*); and

- in the programme broadcast on 6 August 2016, various contributors that spoke in positive terms about Donald Trump's policies (*"this is a man who is doing what he needs to do to win now which is get back in that fighting form and have tunnel vision"*; *"Donald Trump's out there tonight questioning* [Hillary Clinton's] *temperament, her fitness for office, her qualifications. Last I checked, integrity is a qualification for President of the United States"*; and *"the only people that Donald*

Trump should ever talk about are two people: Hillary Clinton, Barack Obama because their records are a disaster".

We therefore assessed whether the Licensee provided sufficient alternative viewpoints to preserve due impartiality. In particular, we considered whether the viewpoint of Hillary Clinton and/or the Democratic Party has been adequately reflected in the programmes. In this context, we noted FNN's representation that "throughout the US Presidential Campaign season, Fox News has made numerous and frequent invitations to Hillary Clinton for her (or any of her campaign staff) to appear on *Hannity* and we continue to make such invitations" but that such invitations had been declined. We acknowledge the practical challenges that broadcasters can face when seeking alternative viewpoints. However, as Ofcom's published Guidance[28] to Section Five makes clear, if alternative views are not readily available, broadcasters can consider using various editorial techniques, such as: interviewers critically challenging alternative viewpoints being expressed, for example, by programme guests or audience members, so as to ensure that programme participants are not permitted to promote their opinions in a way that potentially compromises the requirement for due impartiality; having available interviewees to express alternative views and/or alternative viewpoints being summarised, with due objectivity and in context, within a programme.

We also considered the Licensee's argument that "In [Hillary Clinton's] absence, the Programmes presented her views on various topics through summaries provided by the Programme's hosts, by using clips from other sources or prior interviews. and by presenting her publicly available statements as a foundation for discussing her". We disagreed. In our view the few video clips of Hillary Clinton featured in the programmes were used only in a manner to criticise her and her candidacy. For example, the programme broadcast on 2 August 2016 featured a clip of Hillary Clinton in which Sean Hannity was focusing on her *"veracity".* This clip was immediately followed by a further clip from a Congressional hearing where the FBI Director, James Comey, was being questioned over the controversy of Hillary Clinton's use of a private email server while being Secretary of State (These exchanges are laid out on page 3 of this Decision). This led Sean Hannity to labelling Hillary Clinton as having *"lied".*

"Now, The Washington Post...[said] *'although Comey did say many emails were retroactively classified, he also said there were some emails that were already classified that should not have been sent on an unclassified private server. That's the uncomfortable truth that Clinton has trouble admitting'. She lied to the parents–*

In the programme broadcast on 6 August 2016, there was another clip of Hillary Clinton referring to the controversy around the use of a private email server while she had been Secretary of State. In the clip she was shown defending her past behaviour. However, at the end of the clip the guest presenter Mike Huckabee was shown sarcastically dismissing Hillary Clinton's defence of her actions by saying: *"Yeah, I'm sure that's what it was!".* (This exchange is laid out on page 12 of this Decision).

We considered that the different clips of Hillary Clinton featured in the programmes were not treated with "due weight" in the context of Rule 5.12. This was because the views expressed by Hillary Clinton were being dismissed and denigrated in a manner

[28] See http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section5.pdf, paragraph 1.37.

so as to support the viewpoints of, for example, the presenter Sean Hannity and guest presenter, Mike Huckabee, which were clearly highly critical of Hillary Clinton. By contrast, the various video clips of Donald Trump that were shown in the programmes were typically used as a basis for discussions in which various programme contributors typically voiced their support for what Donald Trump had said, and in particular his criticisms of Hillary Clinton.

In addition, we noted the Licensee did not provide any other evidence of the broadcast of alternative views that could reasonably be described as representing the viewpoint of Hillary Clinton and/or the Democratic Party within a series of programmes taken as a whole (i.e. more than one programme in the same service, editorially linked, dealing with the same or related issues within an appropriate period and aimed at a like audience).

We also considered whether viewpoints that were critical of Hillary Clinton and/or the Democratic Party were challenged or otherwise countered within the programmes. In this context, we took into account FNN's arguments that: "Complying with Rule 5.12 does not mean a range of views must be in opposition to each other"; "Views…can criticize or support a candidate, without being countered"; "Countering or challenging criticisms is but one way to achieve an appropriate wide range of views, however. it is not the only way"; and "The plain language of Rule 5.12 places no requirement on broadcasters like Fox News that a range of views means a specific view must be challenged". We agreed that the Code does not automatically require that particular viewpoints need to be challenged or countered to ensure the preservation of due impartiality. However, in our view, given the very large amount of content that was critical of Hillary Clinton and her candidacy and the lack of any content that could reasonably be described as articulating or defending her viewpoint, we considered that the material which was critical of Hillary Clinton's viewpoint, could have been challenged or countered.

In this regard, we noted the Licensee's statement that it had "discussed and analyzed a similar range of topics with respect to Donald Trump" as it had done for Hillary Clinton. It also argued that "the programmes variously presented the views of Hillary Clinton and Donald Trump and "critique[d] them", and in doing so: "Sometimes the views offered in the Programmes criticize aspects of the candidates under discussion and sometimes…support[ed] them". We did not agree. In our view, while there were a larger number of statements as discussed above, that were heavily critical of Hillary Clinton, any criticism of Donald Trump was mild by comparison. Further, we noted in these programmes no criticisms of Donald Trump's policies, actions or integrity analogous to criticisms in the same areas made about Hillary Clinton. Instead, for example, several participants in the programmes made what could be described a mildly admonishing remarks about Donald Trump's campaign tactics to that point in the campaign and his candidacy, but in the context of these participants being broadly supportive of Donald Trump. For example, in the 5 August 2016 programme, there was the following exchange between Sean Hannity ("SH") and Michael Cohen ("MC"):

SH: *"…The only two people that he really should mention with 95 days left are Obama's disastrous economic and foreign policy and Hillary's horrible record. And the other thing I think he should do is, you know, focus on the things that he said to me in interview after interview – I've put up on the screen – you know, the differences between these two campaigns: He's going to appoint originalists to the Supreme Court, those that have fidelity to the Constitution, believe in separation of powers, co-equal branches of government; he's going to talk about protecting the homeland and securing the border for both of the*

economy and our safety; implementing a safe refugee programme; fixing America's broken economy; balancing budgets; creating jobs; energy independence; education and the states; his negotiating better trade deals; the VA; put America first. That's his message".

MC: *"Jobs, economy and national security. If he stays on those three topics, he the next President of the United States of America. And where he should be hammering Hillary Clinton and Bark Obama and their disastrous £400 million cash and carry, you know, on this airplane…".*

We noted in the 6 August 2016 programme, a number of similar examples, including the following exchange between the guest presenter Mike Huckabee ("MH") and Kellyann Conway ("KC"):

MH: *"Alright, Kelly, you know last week my inbox was getting filled up every single day with people saying 'what's Trump doing? Why is he not on the attack to Hillary? He's off on these other tangents'. And tonight, after that speech, as people were watching, those same people were blowing up my inbox saying 'This is the Donald Trump we want to see' and they are all happy. So was this a turning point for the Trump campaign in moving forward?"*

KC: *"Yes, Governor, I believe it was. I actually think you'll look back at today as a really great day for Trump/Pence and a terrible day for Hillary Clinton who is now lying about lying.*

Mike Huckabee later said:

"I'm pretty sure that we're not going to hear Donald Trump go to Detroit on Monday and propose another one and a half trillion dollars in taxes over the next ten years. And Charlie I want to go to you because I just want to respond to you. You made a point I think that's very important and that is that this whole thing about Paul Ryan. I think Donald Trump was just tweaking his nose a little bit because he used the exact same language on Paul Ryan that Paul Ryan had used on him about 'I want to get there but I'm just not there yet', I thought the whole thing was more funny. Now I think some of the other thing's this week weren't the best of all but he turned the corner".

There was also the following exchange, in the same programme between Mike Huckabee and Doug Schoen ("DS"):

MH: *"…Let me start with you Doug. If he stays on Hillary and doesn't go out and beat the fans in the arena, do you think Donald Trump is going to end up getting his mojo back?"*

DS: *"Well he certainly can, I agree with that,*

t the end of the same programme, Mike Huckabee, introduced a clip of Sean Hannity speaking in a recent, previous edition of *Hannity,* where Sean Hannity talked about Donald Trump's policies (Sean Hannity's words are laid out on page 13 and 14 of this Decision). At the end of this clip, Mike Huckabee voiced his support for what Sean Hannity had just said by saying:

"Amen brother!"

In reaching our Decision, we also considered the role of the presenter Sean Hannity. In our view, we considered that Sean Hannity made clear his strong support for Donald Trump coupled with an equally strong level of criticism directed at Hillary Clinton and her campaign. For example, in the 5 August 2016 programme, Sean Hannity said:

> *"It's funny. If you look at the economy, and you look at the world post-Obama. If there's any one human being: the community organiser; the Alinsky disciple; the Church of GD America; the friend of unrepentant domestic terrorists. There's never been anybody less unit to hold office. And he's criticising Donald Trump? I'll take Trump any day".*

Sean Hannity also made clear his support for Donald Trump during his interview with Donald Trump in the 2 August 2016 programme. In this context, we considered whether the views and policies of Donald Trump had been "critique[d]" as claimed by FNN. In our view, they were not in any meaningful sense. During this interview, the presenter Sean Hannity did not challenge Donald Trump, in any material way, in relation to the various statements that Donald Trump was making, including those that were critical of Hillary Clinton. We considered a number of the questions posed by Sean Hannity ("SH") to Donald Trump, rather than challenging Donald Trump ("DT"), served as a means by which the interviewer and the interviewee were shown to agree with each other. For example, we noted the following exchanges:

SH: *"You know the same media that's obsessed with Mr. Khan and his son, and he spoke at the DNC etcetera. I want to go through this issue if I can and slowly with you. You did call this man, his son 'a hero' did you not?"*

DT: *"Yes, I did. Absolutely. Whenever you have the Gold Star family. Whenever you have, you know, what you and I have discussed in the past. And these are great people, great families, frankly".*

SH: *"When you talk about refugees, illegal immigration, you're not talking about people like the Khans. For example, James Clapper, our National Director of Intelligence, our CIA Director, or FBI Director, Assistant FBI Director, our Chairman of the House Homeland Security Committee, and even General John Allen, Obama's special envoy to defeat ISIS: They have all warned us that the refugees that Obama's taking in – and Hillary wants a 550% increase – that refugee population will be infiltrated. Are you clear you are not talking about the Khans, you're talking about what these people are saying?"*

DT: *"No, I'm not talking about the Khans, I'm not talking about a lot of people. I'm talking about people coming over here from Syria that aren't properly vetted, their immigration, nobody knows if they're ISIS, they don't know who they are. They're being put all over the country".*

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SH: *"…Why do you think Mr. Khan is going after you, when you specifically talk about people coming from countries that practice Sharia, which discriminates against Christians and Jews and women and gays and lesbians, and whose values under Sharia are the antithesis of our constitutional values, and Hillary voted for the war and voted to pull out early? Why do you think you're being targeted?"*

DT: *"Well, I have no idea but I watched him at the Democratic National Convention and he was really going after me, there's no question about it… I can say this. If I was President – because their son died 12 years ago – if I was President, his son wouldn't have died because I wouldn't have been in the war, if I was President back then. There would have been no war for Iraq".*

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DT: *"Well,* [Hillary Clinton] *lied".*

SH: *"She lies a lot".*

DT: *"Yeah".*

SH: *"What's your reaction to that?"*

DT: *"Well, she lied about a lot of things. She's now lying about her job and she's lying that she's going to be the agent of change. She's not going to change, she's been there for 30 years…*

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SH: *"…I want to ask you last week, about the DNC. I watched Hillary's speech. I know you had millions more watching when you compare Thursday to Thursday, but I kind of viewed it as a check-list, sort of clichés and platitudes and slogans, not a lot of specifics, you know. And a lot of things happened there…you have General John Allen interrupted, chanting 'No more war' when he said America would defeat ISIS; the audience interrupted a medal of honour recipient; and also the embracing of Black Live Matter, and that organisation group that chanted 'What do we want? Dead cops. When do we want it? Now'. Hillary's seeking counsel from them. Your reaction to some of those events?"*

DT: *"Well, I thought it was terrible.*

Given all the above, we considered that the programmes presented an overwhelmingly one-sided view (in support of Donald Trump) on a matter of major political controversy and major matter relating to current public policy, i.e. the policies and actions of the two principal candidates contesting the 2016 US Presidential Election.

In reaching this view, we took into account contextual factors such as: the nature of the programme; the programme's presentation of its argument; the transparency of its agenda; the audience it is aimed at, and the audience's expectations. The programme was broadcast on Fox News, which FNN stated "takes no position with respect to the Republican Party or any other political party". However, we noted that Sean Hannity was described on Fox News' website[29] as "one of the most prominent and influential conservative voices in the country". Further, we acknowledged the Licensee's representations that in the case of the *Hannity* series "particular perspectives are expected and welcomed by viewers".

Taking all of this into account, we considered that viewers would have expected programmes on the channel and in the *Hannity* series to address controversial

[29] See http://www.foxnews.com/person/h/sean-hannity.html

issues, and to do so from a perspective that might be described as generally more supportive of the US Republican Party and generally more critical of the US Democratic Party. However, we considered that these contextual factors were outweighed by the strength of the heavily critical statements made about Hillary Clinton coupled with the broad levels of support being expressed for Donald Trump, within programmes which dealt with a matter of major political controversy.

In reaching our Decision, we took account of the other representations made by the Licensee. FNN argued that: it understood: "'due impartiality' to mean that programming must not favor a particular perspective when called for by the subject matter or the nature of the programme"; that the programmes in this case were "commentary shows, and not news programmes, [and] opinions that favor particular perspectives are expected and welcomed by viewers"; and: "Often Hannity invites guests on to the show because he's looking to elicit their views and opinions and when warranted, offer his own perspectives". The Licensee therefore argued that: "Given that the Programmes are for commentary, when [they]…mention the US Presidential Election or [related] topics…they were done so to offer analysis and opinions in a manner the complied with Rule 5.11". In response to these points, Ofcom underlines that the Code does not prevent programmes from criticising political candidates in elections from a particular viewpoint. However, just because these programmes were providing "commentary" on matters relating to the US Presidential Election, or the audience to the programmes "expected and welcomed" particular viewpoints, did not obviate the need for the Licensee to reflect alternative viewpoints as appropriate in this case (especially when the matter of major political controversy in this case was a very important election in which there were two principal candidates).

FNN also said it understood Rule 5.12 "to mean that a variety of views must be presented and appropriate attention must be allocated to them". It added that: "As long as programming offers a diversity of alternative views, as it did here in the Programmes, a broadcaster achieves compliance with Rule 5.12, even if those views are not countered or challenged". In this context, the Licensee said that in this case: the three editions of *Hannity* "offered the insights of 23 people on many different topics, some of which touched on issues related to the US Presidential Election"; "Such a variety of individuals, who come from different backgrounds, such as law. government, the military, and journalism, constitutes an 'appropriate wide range of significant views'"; and "although not every host or guest spoke for the same amount of time, the Programmes nonetheless afforded due weight to each view" in the context of each programme consisting of 44 minutes of "live, non-scripted" content. FNN also said that "what the [programme] guests will say and the positions they take cannot be predicted or pre-determined. Each guest offers their own take on the discussion topics, and this array constitutes a wide range of significant views".

We agreed that there were a large number of contributors included in the three programmes in this case. We also noted that the Licensee argued that it would be "disingenuous to label the views of the 23 multiple guests and presenters as unanimously in support of Donald Trump's candidacy". It added that "Each person may have spoken to varying degrees on aspects of [Mr Trump's] campaign strategy, his position on policy matters, or the public's reactions to his candidacy, but such statements, even if positive or laudatory, do not mean that a speaker supports Trump's campaign". We agreed that there was not unanimous support expressed for Donald Trump and his campaign within the programmes. However, in our view, there was a high degree of unanimity in the viewpoints expressed within the programmes, and overwhelmingly support was given to the candidacy of Donald Trump. While not all the contributors could be described as formally declared supporters of Mr Trump

and his campaign, it is the case that, in general, contributors made, as FNN described, "positive or laudatory" statements about Mr Trump and his campaign.

In its representations, the Licensee also argued that the "Rules requiring due impartiality and due weight in the context of elections do not mean views critical of one candidate must be analogous to the criticisms of a competing candidate". We agreed. However, in these programmes, we considered that there were a large number of positive viewpoints expressed about Mr Trump and his campaign, coupled with the fact that Hillary Clinton and her candidacy were strongly criticised. As already mentioned above, this meant that there was an overwhelmingly one-sided view on a matter of major political controversy and major matter relating to current public policy, i.e. the policies and actions of the two principal candidates contesting the 2016 US Presidential Election.

Given the amount and nature of the critical statements made about Hillary Clinton and her campaign, we considered that a significant viewpoint which was not adequately and fairly within the programmes was that of Hillary Clinton or her campaign, or the Democratic Party more generally. How these alternative viewpoints could and should have been reflected within the programmes was an editorial matter for the Licensee, but we considered it was incumbent on FNN to do so in order to preserve due impartiality. As already mentioned if alternative views are not readily available, broadcasters can consider employing various editorial techniques, such as having available interviewees to express alternative views and/or alternative viewpoints being summarised, with due objectivity and in context, within a programme

For the reasons set out above, our Decision was that this material had clearly breached Rule 6.1 (and Rules 5.11 and 5.12).

Breaches of Rule 6.1 (and Rules 5.11 and 5.12)

In Breach/ Not in Breach

The Shaheedi Smagam

Sikh Channel, 15 November 2015, 11:30

Introduction

The Sikh Channel is a faith and cultural television channel for the UK Sikh community broadcasting in Punjabi and English. The licence for this service is held by The Sikh Channel Community Broadcasting Company Limited ("the Licensee").

The Shaheedi Smagam (meaning The Martyrdom Broadcast) was a pre-recorded programme broadcast as part of a Shaheedi Jorh Mela[1], filmed in a gurdwara (Sikh place of worship) in Huddersfield on the 16, 17 and 18 October 2015.The broadcast was about two hours in duration.

A complainant alerted Ofcom to the programme. The complainant considered that a speaker made potentially harmful statements about how "Sikhs in the UK should not wait for a separate homeland of Khalistan in the Punjab" and that they should create one in the UK. The complainant was also concerned that the speaker appeared to call for Sikhs to "set up their own economies" and "paramilitaries in the UK".

The programme had sections in Punjabi, Gurmakhi, Gurbani[2] and English. Ofcom translated the material in Punjabi into English. Ofcom commissioned an independent translation of the Gurbani and Gurmakhi sections into English. In the quotes below, to aid understanding, we include in square brackets close English equivalents of some terms where relevant. Ofcom provided a copy of the translations to the Licensee to give it an opportunity to comment on their accuracy. In response the Licensee said:

"With regards to the translation provided, a specialist interpreter with knowledge of Punjabi colloquialisms and braggadocio for elements of the Dhadi [commemorative folk songs in Punjabi included in the programme] would be required. Therefore, whilst we do not fully accept the translation and accompanying footnotes in their entirety, the version provided has been acquiesced in light that contention would be deemed futile when the airing of such a programme would not have occurred under normal circumstances".

Programme summary

The programme mainly consisted of three speeches, given to a congregation in a Gurdwara about: (i) historical and present day struggles faced by Sikhs in the UK and state of Punjab in India; (ii) an historical account of Sikh martyrs from the 17th century to present day and; (iii) the role played by Sikh martyrs in the preservation of Sikhism today.

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[1] Ofcom understands that this event in the UK has its roots in the Shaheedi Jorh Mela annual three-day event held each December at the Gurdwara Fatehgarh in Punjab, India, commemorating the martyrdom in 1705 of the two youngest sons of the tenth Guru, Gobind Singh.

[2] Gurbani is a form of Punjabi used in religious texts.

The programme began with a man reciting a poem in Punjabi in front of a banner displaying the Sikh Channel logo, and a large image of a Sikh militant, Talwinder Singh Babbar[3]. This included the following lines:

"…We have no guarantee of what happens in the coming days.
Make sure that you have weapons in every home [repeated]…
In the future look after yourselves.
I appeal to you dear Khalsa[4].
Khalsa, stay intact and organised [repeated twice].
Make sure that you have weapons in every home".

Speech one

The first speaker wore a jumper with the image of Jarnail Singh Bhindranwale[5] and delivered a speech in Punjabi and English. He spoke about the importance of promoting the *"Sikh Manifesto"*[6] in light of recent events in the state of Punjab in India such as the theft and desecration of the Guru Granth Sahib (Sikh holy book), and what he described as, *"the indiscriminate killings of Sikh peaceful protesters"* and *"police brutality"*.

Speech two

The second speaker, identified on the programme as Sarbjit Singh, spoke predominantly in English about the tense situation and *"heavy police presence"* in the state of Punjab:

"I was asked by the organisers [of this event] *…to speak about Sukha and Jinda[7] and the concept of Shaheedi* [martyrdom] *and how it sort of relates to us today. But recent events, and especially what's been going on the past week[8], I think it's only fitting that we…give that some perspective and then work backwards and just think about what Sukha and Jinda mean to us today".*

[3] Founder of Babbar Khalsa International, which is described in the Home Office List of Proscribed Terrorist Organisations dated 18 March 2016 as, "a Sikh movement that aims to establish an independent Khalistan [or Sikh homeland] within the Punjab region of India". https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/509003/20160318proscription.pdf

[4] Khalsa means the Sikh nation and initiated (baptised) Sikhs.

[5] Leader of the Sikh group who occupied the Golden Temple in Amritsar in June 1984, against whom the Indian Army launched a controversial military operation, known as Operation Blue Star, resulting in a number of deaths.

[6]A manifesto launched in January 2015 calling for a number of measures to support the Sikh community. See: http://www.sikhfeduk.com/press/LAUNCH-OF-THE-SIKH-MANIFESTO-2015-2020-50-TARGET-SEATS

[7] Harjinder Singh Jinda and Sukhdev Singh Sukha were members of the Khalistan Commando Force who were executed in 1992 for the assassination of an Indian General responsible for Operation Blue Star (Arun Shridhar Vaidya).

[8] Ofcom understood that this comment referred to a then recent example of the desecration of the Guru Granth Sahib in a village in the state of Punjab in India and the protests and strikes which resulted. See: http://www.bbc.co.uk/news/world-asia-india-34578463

Mr Singh spoke about: the current and past struggles of Sikhs; the resistance demonstrated by Sikhs *"in the face of adversity"*; how the strength of Sikhism is derived from the Sikh community's close relationship with the Guru Granth Sahib (the Sikh Holy Book); and how this relationship was being undermined by the desecration of the Guru Granth Sahib in some districts in the Punjab. He described these acts as:

"…a deadly war…[I]*f we don't wake up soon we will become the Hindus that these lot, the Indian establishment, want us to become".*

Mr Singh made reference to the sacrifice of various 17th and 18th century Sikh martyrs who had been executed in the name of their Sikh faith. He later referred to various 20th century Sikh martyrs, saying:

"…Even if we look at the defiance that somebody like Bhai Balwant Singh Rajoana[9] *is keeping alive today. He could easily avoid the death sentence and regret what he's done. He's saying "I don't even want legal counsel and I refuse* [to] *appeal to your system because it's killed my people". This is the defiance in our blood that's slowly seeping away. This is the resistance that the Indian establishment are slowly chipping away at. But with all the issues that we face because we are often asked what can we do about it? What can we do* [about] *this dishonour? And you've seen some great images on the projector: Sukha; Jinda; Baba Manochahal*[10]*; and Jugraj Singh Toofan*[11]*, many soldiers, who tried to keep the concept of Guru Nanak Devji*[12] *alive".*

Mr Singh continued:

"This generation that exists today shouldn't be alive but it is. There is defiance in them as well. As we stand are we ready for an armed military conflict with the Indian establishment? Do we have General Labh Singh[13] *to lead us today? Do we have the essence of Sant* [saint] *Bhindranwale? Do we have Baba Manochahal, a Jathedar* [leader], *who survived in the swamp lands in the forests of Punjab and bought justice to the people? It is easy for us to say now is the time* [for] *weapons and there will be time for that. But the time essentially now is to cultivate that generation. Is to give them planning, is to give them strategy and not send them to a sure death. Because if the Indian establishment decided today that we are gonna go all-out war like we did in the 80s…they will steam roll us in a couple of weeks. So it's about cultivating that generation and let's make no bones about it there will be an armed conflict. There will be an armed uprising when the Khalsa has to stand again. But now is the time for us to create Khalistan locally".*

Mr Singh spoke of the need for gurdwaras to invest in the next generation:

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[9] Convicted of conspiracy to kill the Punjab Chief Minister, Beant Singh in 1995.

[10] A Sikh militant who founded the Bhindranwale Tiger Force of Khalistan and the Khalistan Commando Force.

[11] Deputy Chief of the Khalistan Liberation Force who has been linked with the assassination of Police Chief Gobind Ram in Jalandhar, India in 1990.

[12] Guru Nanak Devji was the founder of Sikhism.

[13]Leader of the Khalistan Commando Force and an associate of Jarnail Singh Bhindranwale.

"…What would Sukha and Jinda say about the world we are living in today. So these are the systems that we need to put into place…So we need to localise Khalistan. We need to build it in our areas and hopefully in time we build up, we build up an economy, we build para-military forces. And when we build up an economy and para-military forces, and I'm not just talking about the people of Punjab because we are linked with them. Sikhi[sm] *isn't about a geographical location. We are all one family. Then maybe we can give freedom another bash. Maybe we can try and survive. Maybe we can try and create a system where we are not persecuted for our belief and our system"*.

Mr Singh spoke of Sikh unrest in Punjab resulting from the desecration of the Guru Granth Sahib and how certain Sikhs and other leaders were calling for the Sikh community to respect law and order:

"[T]*hey* [the Indian Government] *will make an example of you as a warning to everybody else that this is what will happen if you don't conform and comply…And that is when you will have Jaspal Singh*[14] *martyred, Balker Singh*[15] *martyred, Darshan Singh*[16]*martyred,* [Jasjeet] *Singh*[17] *martyred in Jammu. In this past week, Bhai Kishan Singh, Bhai Gurjeet Singh*[18] *and this morning Bhai Puran Singh*[19]*".*

He concluded his speech by saying:

"So we pray for peace, we pray for law and order, we pray for peace but not at the expense of losing ourselves. Sikhism does not sign one-sided peace agreements…[T]*hese are your choices. It's either 'jay maa dee'* [long live mother India] *or 'raj kuray ga Khalsa'* [the Sikh Khalsa will rule]. *It's the Tiranga* [Indian flag] *or it's the Khanda* [Sikh emblem]. *It's slavery or its freedom. It's Hindustan or its Khalistan. And in order to effect that change we need another Sukha and we need another Jinda. We need another Sardar Khalra*[20]*…and I'm afraid digital petitions, placards, protests and appealing to the two countries* [India and UK] *that we've done the most for – and they've stabbed us in the back time and time again. Appealing to those two countries, signing petitions, doing Facebook posts and making hashtags won't give birth to another Sukha and Jinda. That's the job of the Khalsa".*

[14] A student who was killed by police during a protest in 2012.

[15] Killed by security guards during a protest against the presence of Ram Rahim (a controversial figure within the Sikh community) in 2008.

[16] A Sikh activist who was killed by police during a protest in 2009.

[17] We understand this to refer to the death of Jasjeet Singh, who was killed by police in 2015 during protests over the removal of Jarnail Bhindranwale posters in Jammu, Punjab.

[18] Bhai Kishan Singh and Bhai Gurjeet Singh were killed by police in 2015, during protests in Kotkapura, Punjab, over the desecration of the Guru Granth Sahib.

[19] Bhai Puran Singh died from a heart attack during a protest against the desecration of the Guru Granth Sahib.

[20] A Sikh human rights activist who was abducted and murdered by police officers in Amritsar, India in 1995.

Speech three

The final two participants, identified in the programme as Bhai Satvinder Singh and Bhai Palwinder Singh (brothers known when appearing together as "Jagowale Jatha") began by singing (in Punjabi and Gurbani) about the struggles of Sikhs in history, including references to Operation Blue Star:

"…From Delhi, Indira [Gandhi, former Indian Prime Minister] *started her journey to eliminate Sikhism*
To finish off Sunt [i.e. Saint] *Jarnail Singh* [Bhindranwale] *and committed Sikhs*
Hundreds of thousands troops ambushed to demolish the Golden Temple
The committed Sikhs tied bombs to their bodies and blew up tanks
In service of Sikhism, give up your lives
In service of Sikhism.

They resolved in their hearts that they would take revenge
When you hurt the Sikhs, you should think carefully
The nation proudly raised its head after killing Indira [Gandhi]
In service of Sikhism, they hang from the gallows
In service of Sikhism, give up your lives
In service of Sikhism.

Two brave Sikhs, Harjinder [Singh Jinda] *and* [Sukhdev Singh] *Sukha, fulfilled their commitment to Sikhism*
Two lions stalked and killed the murderers of Sikhs one by one
Religious and brave men elevated the glory of Sikhism
They killed the sinner [General Arun Kumar] *Vaidya and were hung from the gallows*[21]
In service of Sikhism, give up your lives
In service of Sikhism.

Dilawar Singh[22] *thought about his beloved Sikhism,*
He resolved in his heart to serve Sikhism
He thought how he could raise the head of nation in pride
He tied a bomb to his body and sacrificed himself
In service of Sikhism, give up your lives
In service of Sikhism".

Bhai Palwinder Singh then spoke (in a mixture of Punjabi and Gurbani) of how "[t]*he Sikh nation is going through difficult times at present*" and praised Sukha and Jinda (see footnote 7) and Satwant Singh Randhawa and Beant Singh who assassinated the then Prime Minister, Indira Gandhi, in 1984. He also said that:

"Now those same people are under the misapprehension that by killing someone like Harjinder Singh Jinda, brother Kulwinder Singh[23]*, Sukhraj Singh*[24] *they think that*

[21] Assassination reference to the assassination of General Vaidya in 1986.

[22] Dilawar Singh Babbar assassinated Beant Singh, the chief minister of Punjab, in a suicide bombing in 1995.

[23] We understand this to be a reference to the alleged kidnap and extrajudicial killing of Kulwinder Singh in Punjab, in 1989.

there are no other Sikhs like them, but they are mistaken, but I tell you they are mistaken. Those [are] *lovers of Guru…So as in the past when we have been persecuted, today we must use new techniques. The Sikh nation has always taken vengeance for any atrocity or desecration in the past and it will take vengeance in the future whether it is against* [Punjab's Chief Minister] *Badal or the sell outs Jethadars* [leaders]*… They have wounded and harmed the Sikh Nation, and these martyrs can never be brought back and I ask you Khalsa Ji who will bring them back? Well the answer is that it will be those supporters of Sukhdev Singh Sukha and Harjinder Singh Jinda, whose mothers probably don't yet know that they are in their midst"*.

He went on to say:

"God sends his own special beloved people whose sole task is to mete out justice on those cruel people and thus bring about tranquillity. The organisers of the Delhi massacre Arjun Das[25]*…They committed atrocities upon us but did not realise that 5 September 1985*[26] *would come. So retribution came upon those individuals in the past and the same retribution will be visited upon those today…Our duty is to remain loyal to the Guru, and to those Sikhs* [back home] *and stand shoulder to shoulder with them, and to help and assist them in every way…So I say to you all, that the day will come when lovers of the Guru will reach the perpetrators of cruelties upon Sikhs and their day of reckoning will come and they will perform their duty. To fulfil their duty and to seek vengeance, Sukhdev Singh Sukha and Harjinder Singh Jinda reached the office of the perpetrator of the Delhi Massacre – Arjun Das. Upon reaching the office they silenced his bodyguards, and the person, the MP who ordered burning tyres to be placed around the necks of innocent Sikhs, paid the price"*.

Jagowale Jatha then sang a duet about the assassination of Arjun Das, including the lines:

"On 4 September 1985, the brave and just men, the lions,
Surrounded the one who had been inflicting atrocities on the Sikh nation [Arjun Das]
…
By ending the existence of Arjun Das, the devotees took revenge...

He lay in dust, he touched their legs, joined his hands and cried [repeated]
Spare my life O Sikhs, for the sake of so many things
A man of black deeds was close to pay for his deeds
By ending the existence of Arjun Das, the devotees took revenge.

The devotees took out their weapons to finish off Arjun Das
They shot bullets at him in the chest to fulfil their religious duty
They dispatched the sinner to the next world, and his soul left his body
By ending the existence of Arjun Das, the devotees took revenge.

The religious ones earned their good deed and quickly escaped from the scene

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[24] We understand this to be a reference to the murder of youth congress leader Sukhraj Singh in 2013.

[25] A member of Indian parliament who allegedly encouraged violence against Sikhs following Indira Ghandi's assassination.

[26] We understand this is in reference to the assassination of Arjun Das on 4 September 1985.

They expanded their chests; they had had the rascal sinner Arjun Das
The brave ones served their religion and were hailed by the elders
By ending the existence of Arjun Das, the devotees took revenge".

Bhai Palwinder Singh went on to talk about how people should react to the desecrations of the Sikh holy book in Punjab:

"The message that we need to send to those who carry out these desecrations [of the Guru Granth Sahib] *is "Son, if you desecrate the Guru Granth we will teach you the same lesson we taught Rangar*[27]*"…*[W]*hen a house to house search began in Delhi, Harjinder Singh Jinda and Sukhdev Singh Sukha fled Delhi…and they are given their new orders…The instructions were to go for the number two target after Indira Gandhi, General Vaidya, who had now retired and was living in Pune…They knew the description of his Maruti make car, and when they reached the location they saw an armed bodyguard was standing outside the car, and that is when they realised that they had their prey in their sights...and at that point the image that flashed before their eyes was the desecration of the Harmandir Sahib, and the bullets and cannon fire that had damaged the building. 500 shells had hit the Harmandir Sahib and countless pages of the Granth had been destroyed, and on the orders of this man thousands of Sikhs had been killed"*.

Jagowale Jatha sang a duet about Sukha and Jinda in the moments before the assassination of General Vaidya. Describing this murder as "*the time…to hand down justice*" for the desecration of the Harmandir Sahib, Bhai Palwinder Singh introduced the song by saying:

"When Jinda and Sukha saw General Vaidya, the whole scene came to their mind. We too, when we see the photos of these sinners, we know it all; we know that these are sinners and they inflicted so much upon us. Our blood boils. To kill an innocent man is not easy and it is a huge sin to kill an innocent man. But killing a sinner is [a] *great act of goodness".*

They then sang the duet, including the following lines:

"…He [General Vaidya] *drove his car slowly until he was out of the town*
The committed Sikhs kept following him on their motorcycle
They were to keep their promise; "We will not spare you today".
The brave men, Jinda and Sukha, were to take Vaidya's life…

Sukhdev Singh took out his weapon and aimed it at his ear
He said, "Watch Jinda, how I am going to smash Vaidya's head".
Tr tr tr tr, he fired throughout at Vaidya
The brave men, Jinda and Sukha, were to take Vaidya's life.

The bullets hit him in the head and showers of blood sprouted
The body guard heard the blast and hastily ducked down
After killing Vaidya, the committed Sikhs rushed like a storm
The brave men, Jinda and Sukha, had taken Vaidya's life...

Vaidya, you lost hope when you reaped what you had sown
Thus the Awakening Group tells your story

[27] Massa Rangar was a Mughal official who was killed in 1740 by Sukha Singh and Mehtab Singh for allegedly desecrating the Golden Temple in Amritsar.

Your death is truth and your life was a lie – admit that this is true
The brave men, Jinda and Sukha, had taken Vaidya's life".

After the song Bhai Palwinder Singh addressed the audience in a final speech:

"[A]*nyone who desecrates the faith will not escape…General Vaidya had no idea that his time would come on 10 August 1986 when he would have to answer for his crimes. They tried their best to cover up these crimes, but our two beloveds* [Jinda and Sukha] *took retribution* [upon General Vaidya]*. Later when the bullet hit General Vaidya's wife after having passed through the skull of General Vaidya, Harjinder and Sukhdev Singh stated that after they had fired bullets into his face, and they saw blood pouring from his mouth, nostrils and ears that is when they thought, now we have taken vengeance…*".

He then described: Sukha and Jinda's arrest; their criminal trial in court, at which they freely admitted the murders of Arjun Das, Lalit Maken and General Vaidya; and the time they spent in prison prior to their execution.

He concluded by stating:

"So until we stop the people responsible for these indignities and knock them for six, and knock the breath out of them these atrocities will continue, and this is what Harjinder and Sukha said to the Judge. Don't you understand our very struggle is that for Khalistan, and until we achieve this aim our women will continue to be violated and Sikhs will continue to be martyred for this struggle, and even if you hang us a hundred times we will still raise the slogan of Khalistan every time..."What bravery!" he [the Judge] *exclaimed. When people are handed down a life sentence, their legs wobble and they have to be helped from the dock, and yet these two persons thanked me and then handed out sweets within the jail as a celebration at their being handed down a death sentence. On 9 October 1992 at 4a.m. even as they were led to the gallows they continued to shout out "Khalistan Zindabad"* [long live Khalistan], *and "Bole So Nihal"* [he who pronounces these words shall be fulfilled]*. So I say to you all who are gathered here and in the wider community, and the channel broadcasting this let us all celebrate the lives of those people who avenged the desecration of the Akal Takht, the violation of thousands of Sikh women, and the murder of so many Sikh youths. Let us all remember these great martyrs, come let's listen"*.

Jagowale Jatha concluded the programme by singing of Sukha and Jinda's execution:

"It was the month of October, and it was 4:30 in the morning
The courageous and committed Sikhs took baths, got ready and shouted
For the sake of freedom, we are going to die
Even when going to gallows, the committed Sikhs raise slogans of Khalistan.

The committed Sikhs say to their executioners,
"We will distribute sweets before we walk to the gallows to hang".
Those who fight against the Sikh Throne, Sikhs do not let them live…
Even when going to gallows, the committed Sikhs raise slogans of Khalistan
[repeated]…

We have fulfilled our duty and service that was assigned to us
What is to be done in future, we have entrusted you with it
Go along with the young men who are performing national duties

Even when going to gallows, the committed Sikhs raise slogans of Khalistan [repeated].

Support the committed Sikhs; companionship does not last forever
Let us walk together as one unit; this is our message to the Sikh community
They confront and clash with the rulers of Delhi and do not leave them in peace
Even when going to gallows, the committed Sikhs raise slogans of Khalistan [repeated].

O Sikhs, stay away from the traitors; we have to form Khalistan
Those who lose time from their hand, they will keep regretting
Those who raise hollow slogans, do not accept them as your leaders
Those who raise empty slogans
Even when going to gallows, the committed Sikhs raise slogans of Khalistan [repeated].

If we get another life, we will serve the nation to our best
We will give our heads smiling for our nation without fear
The heroes were not defeated even when they stepped at the gallows
Even when going to gallows, the committed Sikhs raise slogans of Khalistan [repeated].

The two lions avenged; they gave their lives and saved the honour
They kissed the ropes of the gallows and opened the sleeping eyes of the nation
They are revered at every place in the community
They are revered at every place
Even when going to gallows, the committed Sikhs raise slogans of Khalistan [repeated]*".*

Relevant Code Rules

Ofcom considered the programme raised issues warranting investigation under the following rules of the Code:

Rule 2.1: "Generally accepted standards must be applied to contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such of harmful and/or offensive material".

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

Rule 3.1: "Material likely to encourage or incite the commission of crime or lead to disorder must not be included in television or radio services".

We therefore sought comments from the Licensee as to how the material complied with these rules.

Ofcom published its Statement setting out revisions to Section Three of the Code on 4 May 2016[28]. These changes amended the guidance accompanying Rule 3.1, and introduced Rules 3.2 and 3.3 covering hate speech and abuse. The intention for

[28] See: http://stakeholders.ofcom.org.uk/binaries/consultations/broadcasting_code_section_3/statement/statement.pdf

Section Three to cover a broader range of content under the harm and offence standards objectives was reflected in the change in title of Section Three from "Crime" to "Crime, Disorder, Hatred and Abuse".

The changes came into effect on 9 May 2016, after the Sikh Channel broadcast the material investigated in the present case. It is important to note that Ofcom's investigation is based on the version of the Code that was in force at the time of broadcast.

Response

The Licensee said that the programme would not have been aired under normal circumstances and said that, due to staff shortages, the programme was broadcast without the channel completing its normal checking procedure. It added that the nature of the programme only came to light following correspondence from Ofcom.

The Licensee said that *The Shaheedi Smagam* was held in honour of historical Sikh martyrs and that the commemoration of Bhai Harjinder Singh Jinda and Bhai Sukhdev Singh Sukha was part of the annual Sikh calendar celebrated in gurdwaras.

The Licensee stated that since 1 June 2015, following the theft of the Guru Granth Sahib from a gurdwara in a village in the Punjab, the Sikh Channel had been providing daily news coverage, over a period of six months, about a "widely reported campaign of sacrilege of Sikh scriptures across the State of Punjab". It said this campaign had included or led to provocative posters being posted on gurdwara walls referring to the stolen Sikh scriptures, pages of the Guru Granth Sahib being "torn and thrown" in the village of Bargari near Kotkapura, daily protests, and the shooting of two Sikh protestors by police in Bhebal Kalan.

The Licensee said that, given the serious nature of the events unfolding in Punjab, the international Sikh community was "extremely shocked" and concerned "that historical episodes of widespread disorder in Punjab were being repeated…[and] was a harbinger of further violence ahead". Therefore, "three hundred hours of programming was dedicated to the sensitive issues". The Licensee added that "testament to the effectiveness of [the Licensee's compliance] procedures during this tense and volatile period was "its unblemished [compliance] record" on reporting on matters of "very sensitive and cultural issues" in a manner "that could not be in any way described as inflammatory or offensive".

The Licensee considered that the opinions expressed in the programme "verged on an expression of impotency felt by the Sikh community in their inability to help prevent a deteriorating situation in Punjab rather than a blanket call for violence, disorder or criminality". In relation to the commemorative songs in the programme, the Licensee said the singers were performing "a form of traditional folk story" about warriors which "is a weekly feature of Sikh ceremonies in gurdwaras…known for its energetic style" using "colloquial terminology and elements of braggadocio as part of its repertoire…and is accepted and understood as such by the audience". The Licensee stated that the ethos of the channel "is to unite the global Sikh community with a message of peace, tolerance and love for one and all" and that it did not "endorse or condone" the views expressed made against "the back drop of a heightened situation in Punjab".

The Licensee explained that *The Shaheedi Smagam* was "one of several annual events held in honour of historical Sikh martyrs". It said that "given the inherent nature of such events" its compliance policy is not to broadcast such content live, but

that this type of programme ("hymn singing recitals, lectures or religious discourse in Gurdwaras") would not be "subject to additional counter checks" like the Sikh Channel's news programmes. The Licensee added that a programme of this nature (after editing) would normally be assessed "by the post production manager followed by a cursory check by the gallery manager". However, on this occasion, the programme was "erroneously allocated" to a "probationary junior editor" and "both checks were missed".

The Licensee said that it had "overhauled" its compliance policy in 2012, "beginning with the cancellation of live broadcasts of such programmes" because "of previous incidences…where similar views were expressed". It had broadcast "similar events over the course of the past two years" none of which "attracted complaints or warranted further investigation due to the stringent compliance checks taken prior to broadcast". In response to the current Ofcom investigation, the Licensee said it had begun an "internal investigation" resulting in "disciplinary procedures…including the inevitable dismissal of the editor concerned".

The Licensee explained that it had "adopted a rigorous compliance policy" to mitigate the "possibility of a further incident of similar nature occurring" by introducing: "a dual checking and authorisation system" to be completed for "all programme content prior to transmission"; new checks on programmes of all genres or subject matter; invested in software "to ensure a file cannot enter the broadcast play list prior to the correct authorisation" being obtained; recruited "supplementary editors" to "counter staff absences"; and "instigated a through induction process for all staff" and "regular and intensive compliance training and tests".

In addition, the Sikh Channel editorial standards committee said it had broadcast the following apology on 23 January 2016 and 24 January 2016 at 09:00, 14:00,18:00 and 21:00 as a scrolling text in English with a voiceover in Punjabi:

"A Sikh Channel Editorial Standards Committee investigation into the programme established that certain elements of the content [broadcast on 15 November 2015] *were in clear contravention of Sikh Channel policy and raised serious concerns with respect to the OFCOM Broadcasting Code. The investigation further identified that the production of the content and its subsequent broadcast…occurred due to staff shortages. Regrettably, the content was broadcast without completing the strict checking and compliance procedures normally in place at Sikh Channel.*

Sikh Channel would like to clarify that the opinions expressed during this broadcast are not endorsed by the channel and we offer our full and unconditional apologies to anyone offended by the nature of the views expressed...".

The Licensee concluded that it was "deeply disappointed that [its] systems failed as a result of human error" and "fully understands the seriousness of this complaint". It emphasised that the "broadcast was not done deliberately, recklessly or intentionally".

Licensee's comments on the Preliminary View

The Licensee made a series of comments on Ofcom's Preliminary View. The Preliminary View was to find breaches of Rules 2.1 and 2.3, but not of Rule 3.1, and to put the Licensee on notice that these breaches were serious and would be considered for the imposition of a statutory sanction.

Points already made

The Licensee repeated a number of points made in its initial comments, and developed some of the same points. These points accepted that administrative failings had led to the broadcast of a programme which would not otherwise have been broadcast, and set out steps the Licensee was taking to avoid future contraventions. We have reflected key points by amendment to the section of the Response above.

Factual corrections

The Licensee corrected a small number of biographical points about named individuals where we had included footnotes to explain their significance. We have reflected these points in the footnotes where relevant. The Licensee described the descriptions of Kulwinder Singh and Sukhraj Singh at footnotes 23 and 24 as "unsubstantiated assumptions" but did not offer an alternative suggestion as to whom Jagowale Jatha was referring. We have therefore continued to refer to our understanding of the situation based on research.

The Licensee expressed concerns that the factual points raised "may have wrongly influenced how the Reviewer perceived the content of the Broadcast".

Consideration of imposition of a sanction

The Licensee made a number of submissions, arguing that Ofcom should not impose a statutory sanction, but if a sanction were to be imposed asking that "it should be at the lower end of the scale". In summary, the Licensee said: it had fully cooperated with Ofcom and accepted that the material should not have been broadcast; the broadcast was a result of a mistake by a junior employee (rather than a management level failing); it had taken steps including disciplining the employee and improving its compliance measures (procedures, staff, training and software); the programme was "isolated" and not shown again; it had made no direct financial gain from the broadcast; and it had broadcast an apology and retraction.

Contextual and cultural factors

The Licensee asked Ofcom to take into account various contextual and cultural factors when assessing the potential harm and impact of the broadcast material, and deciding whether to recommend that any breaches be considered for the imposition of a sanction.

The Licensee said Ofcom should have regard to "the cultural nuances of the Sikh faith", "religious context" of the broadcast, and related factors. Key arguments made in this regard were as follows.

The Licensee argued that the content was "historic" (dating back to the 1980s) and largely consisted of "the glorification of the individuals involved rather than the particular conduct carried out by them". As such the broadcast, "was to reflect the struggles of Sikhs", "the resistance suffered by them", and "how they should gain strength from unity with one another and forging close relations". The Licensee therefore considered it to be a "message for the UK Sikh community to unify with the Indian Sikh community rather than being an actual call for arms".

The Licensee also queried the basis for Ofcom's understanding (set out in the Preliminary View) that while there is more community consensus over the status of

Sikh martyrs dating back to the 17th century, "there is considerably less consensus in the Sikh community about more recent events". The Licensee contended that annual events by the Sri Akal Takht Sahib to honour the assassins of Arjun Das, General Vaidya and Lalit Maken in the 1980s as martyrs illustrated "consensus among the community".

In relation to the importance of the concept of martyrdom in the Sikh faith, the Licensee also said that "[m]ultiple Shaheedi Smagans are recognised in the Sikh calendar and celebrated in gudwaras to honour historical Sikh Martyrs…involving the commemoration of figures of great significance in the Sikh faith". It emphasised that this is a "fundamental concept of and represents an important institution of faith". It contended that the broadcast "was a long established tradition that Sikhs should be willing to defend their faith and this objective created a long line of highly coveted warriors…a key feature of the Sikh faith". The Licensee provided a letter from an academic regarding the concept of martyrdom in the Sikh faith in support of its points.

The Licensee also argued that the programme "would specifically have only attracted the attention of members of the community interested in Martyrdom", who would have appreciated the context and been unlikely to be incited or provoked by it. It pointed out that the programme title described it as the "Martyrdom Broadcast" and the literature displayed at the event "described it as, 'In loving memory of Martyrs of Khalistan'". The Licensee considered that viewers "would have already been affiliated to the concept of martyrdom" and "would have been thoroughly appreciative of the context in which it [the content] was set and its theatrical delivery rather than perceive it as a call to action". The Licensee added there was "neither a direct nor indirect impact as a result of this broadcast in terms of inciting violence or the commission of any offence".

In relation to the form of the programme and how it would be understood, the Licensee explained that "many of the traditional folk songs and music convey a range of emotions in an often varied and expressive manner showing a full sincerity of emotion". It said that the folk songs about battles and struggles of Sikhs "bear historical significance" and are "not designed to incite repetition but to honour those involved…in a sign of remembrance". It also added that the name Singh (meaning lion) was "adopted as a title by warrior casts in India". The Licensee explained that references to this lion reflected "the proud and warrior features of the religion". It added that the speeches in the broadcast related "to the celebrations of these key aspects of Sikhism and would have been understood by viewers". It pointed out it had not received any complaints from viewers.

The Licensee said Ofcom's opinion (set out in the Preliminary View) that "it was likely that a cumulative effect of the speakers' comments was potentially to…increase tension, within the Sikh community, and between the Sikh community and others" was unsubstantiated. It also said that comments in the Preliminary View about "the radicalisation of the Sikh Community" and creation of a "larger and more entrenched category of individuals" were not supported by evidence of radicalisation. It objected to Ofcom's references to the attacks on Lieutenant-General Brar and Darshan Das in relation to radicalisation, arguing that "the inclusion of these cherry picked cases appears unnecessary, unfair, and paints an inaccurate picture".

Steps to prevent harm

In relation to the broadcast apology (as detailed under Response above) the Licensee stated that it had taken "timely and effective" steps and had provided a "suitable explanation to viewers as to why the incident occurred" to "ensure viewers were in not doubt that the views expressed [in the programme] were not condoned or endorsed by the Licensee...Whilst it is accepted that the apology was not aired until two months after the Broadcast, this serves to substantiate that the Licensee was not aware of the Broadcast having been aired" until being informed by Ofcom.

It added that the Sikh Channel "prides itself on its regular and repeat viewers" and it was therefore "highly probable that viewers of the Broadcast would have been…aware of the apology and retraction which would have dispelled any...thoughts that the Licensee endorsed the views expressed".

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives including that generally accepted standards are applied so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material, and 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. These duties are reflected in Sections Two and Three of the Code.

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

Rule 2.1

Ofcom first considered the statements in the programme against Rule 2.1 of the Code. This requires that:

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

Under this rule, broadcasters must ensure that they take sufficient steps to provide adequate protection to members of the public from harmful and/or offensive material. How adequate protection might be achieved is an editorial matter for the individual broadcaster. In reaching a decision under Rule 2.1, Ofcom assesses the nature of the material, and its potential effect and actual effect in terms of harm and/or offence. A crucial question is whether broadcasters have provided sufficient context in the editorial content so that harm and/or offence is unlikely to be caused as a result. Accordingly, if it is to find a programme in breach of Rule 2.1, Ofcom must be satisfied that there is sufficient causal link between the editorial content in question and actual or potential harm and offence. Ofcom must also take proper account of the broadcaster's right to freedom of expression and of religion.

We recognise that, as a channel targeted at the Sikh community, the Sikh Channel wants to produce content concerning issues of interest to Sikhs – for example coverage of events at gurdwaras, and the lives and acts of individuals considered to be martyrs. We also recognise that traditional Sikh poetry and songs have a tradition of dealing with the full range of human experiences and emotions. Further, content referring favourably to individuals who have committed criminal acts (as opposed to praising the acts themselves), does not necessarily involve a breach of Section Two of the Code.

We first considered whether material in the programme as broadcast was potentially harmful (there being no evidence of any actual harm being caused).

The broadcast included a number of statements that we consider condoned and even celebrated criminal acts of violence, for example assassinations and conspiracies to murder government officials (such as Punjab Chief Minister Beant Singh and former Prime Minister Indira Gandhi) in Punjab, India during the 1980s and 1990s. The speakers spoke in detail about Sukha and Jinda and individuals such as Balwant Singh Rajoana (as detailed in the Introduction), and referred to their violent criminal acts in wholly positive terms. These acts were described as keeping *"defiance"* and *"the concept of Guru Nanak Devji"* alive by *"hand*[ing] *down justice"*, and a speaker said *"killing a sinner is* [a] *great act of goodness"*.

We noted that the programme began with a recital of a poem calling on Sikhs repeatedly to *"*[m]*ake sure that you have weapons in every home".* A number of relatively recent murders were spoken of as motivated by *"retribution"* and *"vengeance"* by *"the Sikh Nation"* in revenge for events interpreted as hostile and inimical to the Sikh community in the 1980s (such as Operation Blue Star and 1984 anti-Sikh riots). Those events in turn were linked by the speakers to the recent theft and desecration of the Guru Granth Sahib in 2015 in the state of Punjab. The speakers also suggested that, in response to this perceived and continuing persecution of Sikhs in India, Sikhs in the UK should consider now making preparations and adopting *"new techniques"* in readiness for some form of *"armed conflict"* in the future against the *"Indian establishment"* by creating *"Khalistan locally"*, including by building up *"para-military forces"*.

For example:

"So it's about cultivating that generation and let's make no bones about it there will be an armed conflict. There will be an armed uprising when the Khalsa has to stand again. But now is the time for us to create Khalistan locally".

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"So we need to localise Khalistan… and when we build up an economy and para-military forces, and I'm not just talking about the people of Punjab because we are linked with them…We are all one family. Then maybe we can give freedom another bash. Maybe we can try and survive".

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"God sends his own special beloved people whose sole task is to mete out justice on those cruel people and thus bring about tranquillity…So retribution came upon those individuals in the past and the same retribution will be visited upon those today. Our duty is to remain loyal to the Guru, and to those Sikhs [back home] *and stand shoulder to shoulder with them, and to help and assist them in every way…So I say*

to you all, that the day will come when lovers of the Guru will reach the perpetrators of cruelties upon Sikhs and their day of reckoning will come and they will perform their duty".

We considered there were two reasons why this material was potentially harmful.

Firstly, in Ofcom's view these statements taken together carried a significant risk of making some viewers more susceptible in future to reacting positively to any calls for acts of violence (including murder), which would constitute criminal acts. Although the cumulative effect of these statements in our view fell short of amounting to a direct or indirect call to commit such acts (see Rule 3.1 below), various statements in the programme clearly condoned and glorified various criminal acts. Ofcom considered that this material carried a risk of harm in the form of potentially increasing the number of people holding extremist views about the acceptability of violence, and confirming the views of those already holding such opinions. The harm resulting from such radicalisation in the Sikh community is that, particularly in the event of heightened tensions in future, there exists a larger and more entrenched category of individuals who may on their own initiative, or encouraged by others, commit acts of violence, as have occurred in the recent past, both in the UK (such as the violent attack on Lieutenant-General Brar in 2012 and the murder of Darshan Das in 1987[29]) and elsewhere.

The Licensee argued that comments by Ofcom in its Preliminary View about radicalisation of the Sikh Community were not supported by evidence. It also objected to the specific references to Lieutenant-General Brar and Darshan Das. Ofcom considered that these references were relevant because they demonstrated that there have been examples of violent acts carried out by Sikhs with radical and/or extreme views. Ofcom was assessing the risk of harm in the form of potentially increasing the number of people holding extremist views about the acceptability of violence. The fact that these acts were carried out in the UK in the relatively recent past does support the conclusion that there is a genuine risk that extremism may result in harm. There was no suggestion that such extreme views are currently widespread in the Sikh community, merely that there are risks involved if they become more prevalent (as there are in other communities).

Secondly, in Ofcom's view it was likely that a cumulative effect of the speakers' comments was potentially to increase tension, within the Sikh community, and between the Sikh community and others. In particular, we considered:

(i) while some individuals are widely accepted as martyrs by Sikhs dating back to the 17th century, Ofcom understands that there is considerably less consensus in the Sikh community about more recent events. Also in Ofcom's view the description of relatively recent criminal acts (e.g. the murders of Arjun Das, General Vaidya and Lalit Maken in the 1980s) as being the acts of "martyrs" would be regarded as controversial and divisive by a number of Sikhs in the UK;

(ii) there was potential to increase tension between the Sikh community and other communities in the UK through, for example, encouraging British Sikhs to *"create Khalistan locally"* and build up *"para-military forces"*, and by proposing that Sikhs in the UK should consider now making preparations for some form of *"armed conflict"* in the future against the *"Indian establishment";* and

[29] Darshan Das, a controversial religious figure within the Sikh community, and two members of his congregation were killed by Manjit Singh and Rajinder Singh while preaching in Southall in 1987.

(iii) the broadcast directly linked the acts of martyrs (both historical and more recent) with current day grievances (the desecrations of the Guru Granth Sahib). For example, in reference to recent events, a speaker said, "*The message that we need to send to those who carry out these desecrations* [of the Guru Granth Sahib] *is "Son, if you desecrate the Guru Granth we will teach you the same lesson we taught Rangar""*. This had the potential to increase tension between the Sikh community and others.

We also considered that the statements set out above had the potential to cause offence.

This was because the programme contained statements which glorified acts of murder committed within living memory, and proposed preparations for armed conflict. For example, Sarbjit Singh praised the criminal acts of Baba Manochahal, Sukha and Jinda, and Dilawar Singh as motivated by *"sheer resilience and defiance",* while songs delivered by Jagowale Jatha referred to: the assassination of a senior member of the Indian Army as being the acts of *"religious and brave men"*; *"the lions"*; *"devotees"*; and *"the courageous and committed Sikhs"* that *"elevated the glory of Sikhism"*, and *"handed down justice".* The murders of Arjun Das and General Vaidya were described in similar, approving terms (*"they shot bullets at him* [Arjun Das] *to fulfil their religious duty", "they expanded their chests; they had had the rascal sinner Arjun Das", "He said, "watch Jinda, how I am going to smash Vaidya's head""* and *"the bullet hit him in the head and showers of blood sprouted"*).

In assessing these statements as having the potential to cause harm and/or offence, we took account of the representations of the Licensee as summarised above, that Ofcom was incorrect about the lack of consensus on more recent events, and had not fully considered the cultural significance of martyrdom in the Sikh tradition, which the Licensee considered would have been understood by viewers. The Licensee described as "unsubstantiated" Ofcom's view that the likely cumulative effect of the speakers' comments was potentially to increase tension, within the Sikh community, and between the Sikh community and others.

We recognise that the concept of martyrdom is a theme common to many religions, including Sikhism, and that much of the audience for this particular programme would be likely to have some understanding of that and expect some references to Sikh martyrs. We also recognise that some Sikhs may pay special respect to, and honour as martyrs, people who have carried out criminal acts, including murder, in the name of Sikhism in recent decades, as opposed to the more distant past.

However, we did not consider that the commemorations of Sikh martyrs referred to by the Licensee illustrated a consensus that people such as Baba Manochahal, Sukha and Jinda, and Dilawar Singh should be treated as martyrs and honoured in the strong terms that they were in the programme. We also did not consider that Sikhs with an interest in martyrs (who we agreed could be expected to be particularly interested in the particular programme) would necessarily recognise and not be offended by the references, even within the "braggadocio" tradition of such events. Indeed, this was indicated by the Licensee's acceptance that the material would not have been broadcast had appropriate checks been carried out. Ofcom therefore remained of the view that it was likely that a cumulative effect of the speakers' comments was potentially to increase tension, within the Sikh community, and between the Sikh community and others.

We went on to consider whether the Licensee had taken sufficient steps to provide adequate protection to members of the public from the inclusion of this potentially harmful and offensive material. During this two-hour programme the speakers spoke uninterrupted and their views were not challenged, or held up to scrutiny. There was also no warning or information given before or during the programme to set the views included in the programme in context. We noted that the programme included the promotion of the Sikh Manifesto in the UK (which does not include any calls for violent action), but did not consider a reference to more moderate material in itself was sufficient to protect the public from potential harm. We also noted that at one point Sarbjit Singh said: *"So we pray for peace, we pray for law and order, we pray for peace…".* He however immediately counteracted this call for peace by adding certain conditions: *"but not at the expense of losing ourselves. Sikhi does not sign one-sided peace agreements…".*

In reaching its Decision, Ofcom took into account the Licensee's statement that the ethos of the channel "is to unite the global Sikh community with a message of peace, tolerance and love for one and all" and does not "endorse or condone" the views expressed made against "the back drop of a heightened situation in Punjab". It also stated that, "the programme would not have aired under normal circumstances". However, the Licensee has ultimate responsibility for the contents of all programmes it broadcasts, irrespective of whether the broadcast was aired in error and views expressed in the programme were contrary to those of the Licensee itself.

We also took into account the Licensee's arguments that the programme did not constitute "a blanket call for violence, disorder or criminality" and that viewers would have appreciated the context and theatrical delivery rather than perceive it as a call to action. We agreed that, in the particular circumstances of the case, the programme fell short of being likely to incite crime or disorder (see below). However, we have explained above how the content of this programme was nevertheless potentially harmful, even though in our view it stopped short of incitement.

Ofcom has also taken into account the likely expectations of the audience for the Sikh Channel when assessing the potential impact of the broadcast. Ofcom acknowledged that the target audience for this programme consisted of Sikhs with a particular interest in the concept of martyrdom (although we did not consider that such an interest is synonymous with agreement with the views expressed on the matter in the programme). While we acknowledge that the composition of the audience may be one relevant factor in assessing compliance with Rules 2.1 and 2.3 in a particular case, it is not the only one. Other potentially relevant factors are the nature of the editorial content itself and the nature of the service. Further, the likely expectations of the audience for a UK-licensed service are that the broadcaster applies generally accepted standards in a UK context. In this case, we considered that the content did not comply with generally accepted standards for a broadcast service in the UK.

We considered the Licensee's concern that the some of the factual inaccuracies raised may have affected how the content of the broadcast might have been perceived by Ofcom. As a result, we made a number of small corrections to footnotes, in light of the fact that a number of people and events are not well known outside the Sikh community. Having considered the minor nature and extent of these changes, we were content that they did not affect how the content was perceived as a whole nor our view on the application of relevant rules.

The Licensee said it broadcast an apology at various times on 23 and 24 January 2016 and had taken "timely and effective" steps and provided a "suitable explanation

to viewers as to why the incident occurred". It added that the Sikh Channel "prides itself on its regular and repeat viewers" and was therefore "highly probable that viewers of the Broadcast would have been…aware of the apology and retraction which would have dispelled any labouring thoughts that the Licensee endorsed the views expressed". We noted these apologies. However, they were broadcast over two months after the original programme. They therefore could not have served to mitigate adequately the potential for harm and/or offence created by the original broadcast on 15 November 2015. Further we took into account that by the Licensee's own admission it "was not aware of the Broadcast having been aired until" it was informed by Ofcom.

Overall therefore Ofcom concluded that the Licensee did not take sufficient steps to provide adequate protection to members of the public from the potentially harmful and offensive material in this programme, and there was a breach of Rule 2.1 of the Code.

Rule 2.3

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

For the reasons set out under our assessment of Rule 2.1, in our opinion the programme clearly included material capable of causing offence. In short this was because the programme contained numerous statements which glorified acts of murder committed within living memory, and which were linked to comments proposing that Sikhs in the UK should consider now making preparations for some form of *"armed conflict"* in the future.

Ofcom then went on to consider whether the material was justified by the context.

As noted above, while some historical individuals are widely accepted as "martyrs" by Sikhs, Ofcom understood that there is considerably less consensus in the Sikh community about describing as "martyrs" individuals killed or executed more recently in relation to serious criminal offences, such as Jinda and Sukha. Ofcom also acknowledged the long-standing dispute that exists between certain Sikhs in India and the Indian authorities as to the degree of self-determination that should be afforded to the Sikh community in India.

Consistent with both the right to freedom of expression and right to freedom of religion, the Code does not prevent broadcasters with a particular religious perspective from discussing acts of violence carried out in the name of religion, either in the UK or other countries. However, in doing so, a broadcaster must ensure that potentially offensive references to such acts are sufficiently contextualised to comply with Rule 2.3.

In this case, taking the programme as a whole, we considered that the Licensee had broadcast statements which sought only to describe in positive terms the actions of convicted individuals, such as the *"brave men"* Jinda and Sukha, for certain acts of murder (such as the killings of General Vaidya, Arjun Das and Lalit Maken as detailed in the Introduction). These actions in turn were described as ones of *"defiance"* and part of the *"struggle"* of Sikhs in the wake of Operation Blue Star and

the events unfolding in the state of Punjab at the time of broadcast involving the desecration of the Guru Granth Sahib. These statements were included in a standalone two hour programme, in which the speakers spoke directly to the camera and audience in a gurdwara. In Ofcom's opinion these factors increased the potential impact of the content, and so the potential for offence.

We noted the following statements during the closing speeches by Sarbjit Singh and Jagowale Jatha:

Sarbjit Singh: *"And in order to effect that change we need another Sukha and we need another Jinda. We need another Sardar Khalra, and we need another Jugraj Singh Toofan, and I'm afraid digital petitions, placards, protests and appealing to the two countries* [India and UK] *that we've done the most for and they've stabbed us in the back time and time again. Appealing to those two countries, signing petitions, doing Facebook posts and making hashtags won't give birth to another Sukha and Jinda. That's the job of the Khalsa".*

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Palwinder Singh: *"So until we stop the people responsible for these indignities and knock them for six, and knock the breath out of them these atrocities will continue, and this is what Harjinder and Sukha said to the Judge. Don't you understand our very struggle is that for Khalistan, and until we achieve this aim our women will continue to be violated and Sikhs will continue to be martyred for this struggle, and even if you hang us a hundred times we will still raise the slogan of Khalistan every time".*

We considered this strongly implied that, if certain circumstances were to occur, some young Sikhs may or should act in the same manner as Sukha and Jinda and this had the potential in our view to cause considerable offence (but did not, as explained further below under Rule 3.1, amount to an incitement or encouragement to commit a crime).

The speeches and songs referred to the murders of Arjun Das, General Vaidya and Lalit Maken, and these crimes took place relatively recently in the mid-1980s, and we considered it likely that a number of viewers would still have direct memories of these assassinations. This in our view also was likely to increase the potential for the material to cause offence, particularly when parallels were drawn with the tension then existing in the state of Punjab.

At no point was the praise for the crimes and their perpetrators challenged or otherwise in Ofcom's view sufficiently placed in context. The style and content of the narration of Jinda and Sukha's act of *"retribution"* and time prior to their execution – the latter detailing how the Judge of the trial was *"devastated"* at passing sentence on the two men and asking *"the lawyers of the two to give him…photographs* [of Jinda and Sukha] *so that he could admire these two individuals and place them next to a photo of Guru Gobind Singh"* – glorified the murder they had committed.

We took account of the fact that SCCBCL said it broadcast an apology at various times on 23 January and 24 January 2016. These apologies were broadcast over two months after the original programme however, and therefore could not have served to mitigate, and so justify by the context, the potential offence created by that original broadcast on 15 November 2015.

Ofcom also had regard to the representations made by the Licensee about Rule 2.1 – for example about context, Sikh religious culture, and audience expectations – which were also relevant to Rule 2.3 and Ofcom's responses (see above).

For all these reasons, our Decision was that there was insufficient context to justify the potential offence, and there was a breach of Rule 2.3 of the Code.

Rule 3.1

Ofcom also considered the statements in the programme in relation to Rule 3.1 of the Code which states that:

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

Rule 3.1 is intended to cover both direct and indirect forms of encouragement or incitement. It encompasses not only a direct call to action (such as an unambiguous, imperative statement calling for criminal conduct), but also an indirect call to action (for example material which, while falling short of an unambiguous statement, gives a clear message that an individual should consider it their duty to commit a criminal act). Depending on the individual circumstances, in Ofcom's view there could be an indirect call to action resulting not only from one or a few statements in a programme, but also as a cumulative result of content throughout a programme.

In considering Rule 3.1 we assess the likelihood of material encouraging or inciting the commission of crime or of it leading to some form of disorder. This is different from the test that would apply for bringing a criminal prosecution for one of the several offences in UK law relating to preparatory acts for criminal offences, both in terms of the precise nature of the test (including the degree of likelihood required) and the standard of proof required. Nevertheless, Ofcom's assessment under Rule 3.1 of the Code includes careful consideration of the precise nature of the criminal offence or disorder that could be potentially incited or encouraged, and the proximity of the link between the material and the potential crime or disorder.

Direct calls to action

In this case, we considered there were no unambiguous imperative calls in the broadcast for viewers to take action in a way that would amount to them committing criminal offences. We noted that there were some individual statements which when considered in isolation could potentially be seen as direct calls to action. When assessed in context however in our view these statements did not amount to direct calls to action likely to encourage or incite crime or lead to disorder. For example:

- the call to *"make sure you have weapons in every home"* was in the form of a song. In our view, audiences are less likely to take such statements in songs as literally as when delivered in the form of spoken advice. We also took account of the Licensee's submissions on the cultural role and context of such songs in these kinds of events. Additionally, we noted that holding weapons at home is not illegal in itself in the UK (although it can be in some circumstances) and this statement was made in the context of a song which centred on the perceived need for Sikhs in India to have weapons for lawful self-defence;

- the call to *"give up your lives"* in the service of Sikhism again appeared in the context of a repeated refrain in song lyrics. Additionally, while made in the context of individuals (Sukha and Jinda) considered as martyrs by some Sikhs

as a result of their violent actions, these words could be understood as a call to match their commitment to Sikhism rather than to directly copy their actions by committing criminal acts; and

- we considered the call to *"knock the breath out of them"* (referring to those deemed responsible for *"indignities"* against Sikhism) was ambiguous to some extent but, in our view, would have been likely to have been taken as metaphorical rather than literal suggestion, particularly as it followed a call to *"knock them for six"* (a cricketing metaphor).

Indirect calls to action

We also assessed whether the material – whether considering a few statements, or the cumulative effect of statements make throughout the programme – amounted to an indirect call to action which would be likely to encourage or incite the commission of crime or lead to disorder.

For example, as well as the statements immediately above, we were concerned that the programme included references to the need *"in time"* for Sikhs to *"build para-military forces"*, acts of violence as having been carried out as a matter of *"duty"*, and a prediction, "*that the day will come when lovers of the Guru will reach the perpetrators of cruelties upon Sikhs and their day of reckoning will come and they will perform their duty"*. We also noted the reference to the view that *"killing a sinner is* [a] *great act of goodness"*.

We considered the position on this point was quite finely balanced. However, in our view none of these statements when considered either by itself, or in conjunction with the others set out in the paragraphs immediately above, were sufficient to make this material likely to encourage crime or lead to disorder. In addition, we considered that there was unlikely to be a cumulative effect that would amount to an indirect call to action.

This was to a great extent because of a number of contextual factors which applied to all (or, depending on the individual comments, many) of the statements.

- The programme was filmed at a gathering at a gurdwara in Huddersfield, which has its roots in an annual event held in India to commemorate the martyrdom of the sons of the tenth Sikh Guru. The audience would, in our view, have taken account of this cultural and historical context and that the event (and the programme) were intended primarily as a celebration of those considered historically to be Sikh martyrs, rather than a programme to dispense religious advice or political instruction[30]. These factors reduced the likelihood of the material being taken as an indirect call to action.

- A number of the statements in question were contained in commemorative songs and poetry. As pointed out by the Licensee, it is to some extent the nature of celebrations of this type that they include an element of theatre and hyperbole as a result of including such traditional, commemorative songs. We considered this would have been understood by the audience.

- Linked to this point was that some of the more aggressive references were included within the lyrics of songs and poetry. While capable of causing concern,

[30] Ofcom noted that the poster for the event described it "in loving memory of martyrs of Khalistan."

we recognised that such lyrics differed in their likely effect from, for example, spoken advice given directly to camera in response to a specific question in terms of the prospect of encouraging criminal acts.

- The speakers featured, although clearly wishing to impress on the audience their views on the subject of Sikh resistance to perceived persecution, did not hold particularly significant positions of authority within the Sikh community. In our view, this tended to reduce the prospect of their comments being acted upon.

- While the programme included approving references to the violent actions of Sikhs in the relatively recent past (the 1980s and 1990s) which Ofcom viewed with concern, we noted that all these violent events happened more than 20 years ago in countries with a very different political context to the UK. References to more recent events were to incidents where Sikhs were characterised as victims rather than perpetrators of aggression. As to how viewers should respond to these more recent events now in the context of the UK, one speaker said for example: *"Our duty is to remain loyal to the Guru, and to those Sikhs* [back home] *and stand shoulder to shoulder with them, and to help and assist them in every way".* We did not see such a statement as likely to encourage criminal acts.

We also took into account that a number of these individual statements were either subject to various caveats (for example that *"in time"* Sikhs should *"build para-military forces"*), or made in a particular context which lessened the likelihood of them encouraging crime – for example the statement that *"killing a sinner is* [a] *great act of goodness"* was made in the context of Bhai Palwinder Singh explaining the origin of a song and the thought processes attributed to the assassins of General Vaidya.

In reaching a Decision on this issue, we had careful regard to all the contextual factors above. We recognised that holding extreme views (such as that some acts of murder are acceptable or even praiseworthy) may increase the risk of future criminal offending, for example by making individuals more vulnerable to being encouraged to commit crime by others either online or in person.

Rule 3.1 however must be applied proportionately. Ofcom must make a judgement on the *likelihood* of a programme's content encouraging crime and disorder. In our view, for example, a criminal or disorderly act would be significantly less likely to take place as a result of a broadcast if its occurrence was contingent on one or more other events in addition to the broadcast. Therefore, in general, we consider that material encouraging the audience to adopt or harden extreme views – where any potential for criminality or disorder could be contingent on a number of other events – may, in and of itself, involve a low likelihood of inciting crime (although it may well raise issues under other rules in the Code).

In reaching this judgement, Ofcom must take particular account of the rights to freedom of expression and religion of the broadcaster and its audience. In this case, in our view there was a relatively small likelihood of this programme when taken as a whole potentially encouraging an act of crime or disorder, and there were no clear grounds for Ofcom to reach the view that it was likely to encourage crime through potentially radicalising opinion in the longer term.

Having had regard to all the circumstances of this case, our Decision was that the comments made in the programme did not amount to an indirect call to action likely to encourage or incite crime or lead to disorder.

Ofcom however wishes to underline that our view on these points when considering Rule 3.1 should not be taken to mean that the statements themselves were acceptable under the Code, as made clear in our Decision on Rules 2.1 and 2.3.

For all these reasons, our Decision is that on balance there was no breach of Rule 3.1.

Conclusion

We acknowledged in this case the Licensee's clear admissions that this broadcast material breached the Code, it had been broadcast due to "human error" by its staff and that the Licensee has taken various steps to improve compliance and training in relation to the Code.

The Licensee made a number of submissions arguing that Ofcom should not impose a statutory sanction on it, but if a sanction were to be imposed "it should be at the lower end of the scale".

Ofcom had regard to the Licensee's submissions on whether these Code breaches should be considered for the imposition of a statutory sanction. However, we regarded the breach of Rule 2.1 in this case as serious because it contravened a fundamental requirement of the Code for broadcasters to provide viewers with adequate protection from potentially harmful content. Ofcom also considered the breach of Rule 2.3 to be serious because it arose from material which glorified acts of murder and involved proposals that Sikhs in the UK should consider now making preparations for some form of *"armed conflict"* in the future, without sufficient contextual justification.

We are therefore putting the Licensee on notice that these breaches will be considered for the imposition of a statutory sanction. When Ofcom considers this matter afresh in accordance with its published procedures on sanctions, and before Ofcom takes any decision on it, the Licensee will have a full opportunity to make representations.

Breaches of Rules 2.1 and 2.3
Not in Breach of Rule 3.1

In Breach

Geo World News

Geo News, 28 July 2016, 11:00

Introduction

Geo News is a digital satellite news channel broadcasting in Urdu and aimed at the Pakistani community in the UK and Europe. The licence for Geo News is held by Geo TV Limited ("Geo TV" or "the Licensee").

During routine monitoring, we identified a news report broadcast on the channel about what was described as a *"torture cell"* operating in the Punjab, and allegedly being run by politically influential individuals. The item included secretly filmed and poor quality footage of a man, naked from the waist up, being subjected to a violent beating in the *"torture cell".*

Ofcom translated the material from Urdu to English and provided the Licensee with an opportunity to comment on the transcript. Geo TV did not provide any comments on its accuracy.

Following a *"Breaking News"* caption, the news item started at 11:12 with the presenter introducing the report as follows:

> *"We will now update you on some news from Rahim Yar Khan, where a torture cell operated by some very influential people has been discovered. Dozens of secretly taken videos have come to light, which we are currently showing on your TV screen".*

The first broadcast of the footage was shown split screen as the presenter introduced the item as above. The repeated slaps and punches to the victim's unclothed upper body could be heard throughout. This clip showed:

- the victim kneeling on the floor with his hands in front of him and pleading to a man seated in front of him, who was only partially visible;
- as he pleaded, the arm of the seated man reached forward and slapped the victim's face twice;
- a second man then appeared behind the victim and slapped him on the other side of his face followed by a further slap from the seated man; and
- the victim was shown cowering and holding his hands up to his face to protect himself.

The same sequence was broadcast full screen and then returned to split screen and was shown eight times. As the footage of the beating was broadcast, scrolling text appeared over the images which read: *"Geo News Exclusive"* and the *"Breaking News"* caption appeared intermittently. Another caption also appeared which stated: *"Dozens of secretly taken videos of a torture cell have come to light".*

After the eighth repeat, a slightly extended sequence was broadcast four times which included the same images as above, as well as the audio, captions and scrolling text, and also included:

- a third man appearing in the footage, with his back to the camera, repeatedly beating the victim on the back with both hands with up to 20 blows to his bare torso;
- a fourth man striking the victim and pulling the victim's hair;
- the first man also pulling the victim's hair; and
- the victim protecting his face from the slaps.

The news presenter commented as follows as the two versions of the clip were repeated on a loop for a total of 12 times throughout the rest of the report:

> *"Blows rain down but the perpetrators in these videos show no concern. At the torture cell there are* [indistinct] *who make them the target of their torture. Whether it is a dispute over inheritance or a civil dispute, or teaching someone a lesson, the most minor of matters are taken up and dealt with this at this torture cell. People are brought into this torture cell and they are subjected to torture.*
>
> *You can see the images on screen but at the same time we would like to say that children and those of a sensitive disposition should not watch this. Let's get some more details about this incident from Geo's reporter Aslam Malik…".*

At this point the broadcaster's own 'PG'[1] logo was shown for the rest of the news report. As the two versions of the footage continued to be repeated, several times both full screen and split screen, the presenter and reporter explained the background to the footage:

> *"After receiving these videos and investigating the matter, Rangers*[2] *have discovered that this torture cell has been set up in Satellite Town*[3]*, where people are subjected to torture. It would appear that people are kidnapped and brought here and subjected to torture. These people* [the perpetrators of torture] *have protection, and to date they have not been apprehended. After we investigated and spoke to some of the victims we found out that they were poor people, and nobody was listening to their complaints. The police were not taking any action, nor were any other authorities. They said that they were labourers and that they were picked up from their place of work taken to this location and detailed. There*

[1] 'PG' is widely recognised as the film classification 'Parental Guidance' applied by the British Board of Film Classification (BBFC). A 'PG' film is suitable for: "[G]eneral viewing, but some scenes may be unsuitable for young children. A 'PG' film should not unsettle a child aged around eight or older. Unaccompanied children of any age may watch, but parents are advised to consider whether the content may upset younger, or more sensitive, children." Broadcasters should note the further information about the use of 'PG' symbols in the Decision section. 'PG' is not a regulatory classification recognised by Ofcom for broadcast material as Section One of the Code makes clear it is the responsibility of the licensee to ensure all children, some of whom may be watching unaccompanied, are protected from material which is unsuitable for them when it is broadcast before the watershed.

[2] An official force of the Pakistan government used for law enforcement duties.

[3] A suburb of the large town, Rahim Yar Khan, where the beatings took place.

they were badly beaten and they begged the perpetrators to cease the beatings but their pleas were ignored. We found out that dozens of people had been taken here, and in addition to the torture videos were made of their beatings. We are only showing you some of the videos when in fact there were dozens in circulation".

The presenter then commented:

"Aslam [Aslam Malik, the news reporter]*, this is an affront to humanity that people should be treated in this way and beaten so mercilessly. Further it is appalling that these individuals are allowed to take the law into their own hands. Added to which these videos are then uploaded on to the internet and the victims are subjected to further humiliation".*

The reporter, Aslam Malik, went on to provide further information of the footage:

"When I heard about these videos, and contacted the police about them I was told by them that these videos are at least two years old. We now know that in the last two months a case [investigation] *has been lodged against these unknown individuals, and in the last two months no further progress has been made in apprehending these individuals, particularly as so far no victim is willing to come forward".*

The presenter explained that another victim had spoken to Geo News and had appeared in the news report with his face obscured. Following the interview with this victim, the material featuring the beatings was shown again and the presenter provided a further warning:

"Simply on the accusation of using abusive language this person was subjected to a severe beating at the behest of an influential person. Not only can you see that was he subjected to a severe beating but we have circled the face of the person at whose behest this has happened. You can see that this person is receiving a severe beating and we would again remind viewers that children and those of a weak disposition should avoid watching this segment. We still have Geo's reporter Aslam Malik – can you confirm what the police have told you and whether they are investigating this matter and whether this torture cell is still operating nowadays?"

Ofcom considered this material warranted investigation under the following Code rules:

Rule 1.3: "Children must…be protected by appropriate scheduling from material that is unsuitable for them".

Rule 2.3: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context…Appropriate information should also be broadcast where it would assist in avoiding or minimising distress".

We therefore sought comments from the Licensee as to how the material complied with these rules.

Response

Geo TV explained that Geo News is an Urdu language rolling news and current affairs channel with its primary operations based in Karachi in Pakistan. Accordingly, much of its content "goes live" with editorial and compliance staff reviewing the content "as it is sent to the output team."

Geo TV stated that the news item arose following notification by a news correspondent in Punjab in Pakistan that a "torture cell" was being run allegedly by "a politically influential individual". When the news reporter had contacted local police no action had been taken. Given this and "the high likelihood of further serious abuse of people", the Licensee stressed that it was in the public interest "to promptly take the story on air so that the abuse was brought to the attention of the public/competent authorities in public offices so that they would be forced to take appropriate action".

The Licensee then set out why, in its view, the news report was not in breach of Rules 1.3 and 2.3. It said that:

- Geo News is an Urdu language rolling news channel aimed at Urdu speaking adults. It has "a negligible (if at all) audience of Urdu speaking children" and anyone watching the service "would know immediately the nature of the broadcasting channel";

- if any children had been viewing, however, Geo TV said it did "sufficiently protect children who may be watching by the use of the 'PG' rating and by the on screen and verbal warnings by the anchor";

- with regard to scheduling, the Licensee stated this content complied with the Code because: Geo News is a rolling news service which is not aimed at children; the number of child viewers would be "negligible"; and "sufficient" on-screen and verbal warnings were given;

- it was made "abundantly clear" that the abuse taking place was "abhorrent". For example, the presenter said: "…this is an affront to humanity that people should be treated this way…"; and

- in its view, the news report required immediate broadcast and was justified at the time of broadcast because it was in the public interest to: stop the abuse taking place; to force the authorities to take action; and for the safety of those being abused. The Licensee said this was a responsible action and by not showing the material "we may have allowed further abuse to take place".

The Licensee stated that the presenter had only provided a warning to viewers about the strong nature of the content after it had begun to be shown due to "human error" and it had given guidance to its compliance and news teams to ensure this did not happen again.

For all these reasons, Geo News submitted that there was a "unique set of circumstances" (namely, the failure of the authorities to respond and the likelihood of further abuse and accordingly there was a "public interest reason that the story should be aired before the watershed") and therefore, in its view, there was no breach of the Code. The Licensee added however that should Ofcom find Geo TV contravened the Code this was "an inadvertent breach" given the circumstances set out above.

In the light of Ofcom's contact with the Licensee in this case, Geo TV said it had issued guidance to its news team. It had advised that in addition to verbal and on-screen warnings such footage should either be blurred or still images used which are appropriate for broadcast before the watershed. The Licensee considered this would be sufficient "to mitigate risk in the future and evidences how seriously we take Ofcom's investigation".

Decision

Under the Communications Act, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, which include ensuring that persons under the age of eighteen are protected from material that is unsuitable for them, and providing adequate protection for members of the public from harmful and/or offensive material. These objectives are reflected in Sections One and Two of the Code.

In reaching this Decision, Ofcom has taken careful account of the broadcaster's and audience's right to freedom of expression set out in Article 10 of the European Convention on Human Rights. Ofcom must therefore seek an appropriate balance between, on the one hand, its duties to ensure that viewers are given adequate protection from offensive material and on the other the broadcaster's and audience's right to freedom of expression.

It is important that news programmes shown before the 21:00 watershed are able to report freely on distressing events. In doing so however they must comply with the Code. When including offensive or distressing content in the news before the watershed broadcasters must ensure that such material must be appropriately scheduled and justified by the context. Ofcom recognises that this involves news broadcasters often making finely nuanced decisions, under considerable time pressure.

Rule 1.3

Rule 1.3 states that children must be protected by appropriate scheduling from material that is unsuitable for them. Appropriate scheduling is judged by a number of factors including: the nature of the content, the time of broadcast, the likely audience expectations and the availability of children to view taking into account school time, weekends and holidays.

We first considered whether the programme contained material unsuitable for children.

The news item included footage (as detailed in the Introduction) showing a half clothed man being violently slapped and beaten about the face and body and his hair forcibly pulled by up to four men in what was described in the news item as a *"torture cell"*. The man's face and body were not blurred and the audio of the impact of the slaps on the man's body and the verbal abuse could be heard clearly. The clip of the beatings was repeated 12 times over a period of about nine minutes. In Ofcom's view the repeated broadcast of this footage was capable of causing distress to children, because it showed a defenceless man being physically attacked by up to four men. Further, for child viewers who did not understand Urdu, the violent content still had the potential to cause distress, especially given that the images were shown repeatedly over an extended period of time. This material was therefore unsuitable for children.

We went on to assess whether the news report was appropriately scheduled. The item was broadcast on a news and current affairs channel on a weekday from 11:12. We noted Geo TV's comments that Geo News has "a negligible (if at all) audience of Urdu speaking children". We agreed that, given the nature of this rolling news and current affairs service, the likely number of children in the audience overall would have been limited. Nevertheless, this material was broadcast during the school summer holidays so Ofcom had concerns that children could have been in the audience.

Ofcom's guidance on Section One of the Code states:

> *"It is accepted that it is in the public interest that, in certain circumstances, news programmes may show material which is stronger than may be expected pre-watershed in other programmes as long as clear information is given in advance so that adults may regulate the viewing of children".* [4]

Ofcom noted that the presenter gave his first warning about the content (stating: *"…children and those of a sensitive disposition should not watch this"*) only some 20 seconds *after* the footage had begun to be broadcast. As a result, viewers (and particularly parents and carers) had no advance information about the nature of this potentially distressing material before it appeared. A similar warning was given six minutes after the clips first began to be broadcast. However, during those first six minutes the first clip was repeatedly broadcast several times on a loop and viewers could have come across the material unawares and seen the footage at any time between those warnings.

We noted that the Licensee inserted a 'PG' rating logo onscreen from approximately 40 seconds after the images were broadcast until the end of the report nine minutes later. In the Licensee's view this "sufficiently" protected children because "[A]ny parent or child watching would have been appropriately warned about the content".

Ofcom disagreed. A 'PG' certification is a widely recognised classification used by the BBFC to denote a film suitable for general viewing but which contains some scenes which may be unsuitable for younger children. Parents are "advised to consider whether the content may upset younger, or more sensitive, children."[5] A BBFC classified 'PG' film, for example, while not a rating applied to broadcast content by Ofcom, may be broadcast pre-watershed if, in Ofcom's view, its content is edited suitably for broadcast pre-watershed so that it complies with the Code.

Although the Licensee may have considered it was suitable to apply its own rating to the news item in this case, it was clearly inappropriate to do so for two reasons. Firstly, given the widespread understanding amongst consumers that a 'PG' logo indicates that the material has been reviewed and certified by the BBFC, broadcasters are not entitled to use such a symbol unless the content has in fact been classified by the BBFC. Second, it was Ofcom's view that in any event the material was not suitable for broadcast pre-watershed. Therefore, the use of a 'PG' logo was not only a misuse of the BBFC classification but potentially misleading for viewers and not sufficient to advise parents and carers that the material was unsuitable. Warnings may be useful as a guide to viewers in some circumstances. However, warnings must: not indicate to viewers that the content has been certified by the BBFC when this is not correct; be accurate in terms of the advice on the

[4] http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section1.pdf

[5] See: Footnote 1

suitability of the content; and, may not alone be sufficient to ensure that material is appropriately scheduled.

Taking all these factors into account, we considered that the content was not appropriately scheduled, and Rule 1.3 was breached.

Rule 2.3

Rule 2.3 states that in applying generally accepted standards broadcasters must ensure that potentially offensive material is justified by the context. Context includes but is not limited to, editorial content of the programme, warnings given to viewers, the time of the broadcast and the service the material was broadcast on.

Ofcom first considered whether the material was potentially offensive.

As detailed above, this news story contained repeated footage of a man being violently slapped across the face and body, his hair forcibly pulled and being abused verbally by up to four men. None of these images were blurred and the impact of footage was heightened by the accompanying audio of the repeated slaps on the man's bare skin. Therefore, there was sufficient detail in what was shown and in the commentary of the news correspondent for the viewers to be clear about what had taken place. This impact was then considerably magnified by the repetition of this clip of footage – 12 times over a period of nine minutes. We therefore considered the material was capable of causing offence to viewers.

We went on to consider whether the broadcast of this material was justified by the context.

We noted that Geo News is a rolling news channel which typically broadcasts news and current affairs programmes with greater appeal to adults. In line with the right to freedom of expression, it is important for news programmes to be able to choose how to report freely on events which they consider to be in the public interest – and audiences expect them to do so. However, broadcasters must comply with the Code, and in particular must take into account that viewers have different expectations before and after the 21:00 watershed.

We took into account the steps Geo TV said it took to help mitigate the offence caused by showing the material with a verbal warning (albeit after the footage commenced) and the tone of the presenter's comments during the broadcast. However, in this case Ofcom noted that from 11:12 footage was shown repeatedly (12 times over a period of nine minutes) of a defenceless man being physically and verbally abused by up to four men. In our opinion, the repetition of the footage considerably increased its potential to shock and cause offence. Further, the warning was given after the footage in the news item was first shown. As a result, viewers had no advance information about the broadcast of this potentially offensive material. For all these reasons, Ofcom was of the view that to show this material on this channel at this time was likely to have exceeded the audience's expectations.

Ofcom noted the Licensee's view that this news item was a breaking story and that the broadcast of footage was in the public interest because: it would "stop the abuse taking place"; "force the authorities to take action"; and provide help for those being abused. Accordingly, it had taken an editorial decision that "the story should be aired before the watershed."

Ofcom acknowledged that there may have been a public interest in alerting viewers in a timely way to the operation of a *"torture cell"* being allegedly run by politically influential individuals. We also noted the Licensee's comments that when the local police were contacted "they took no action" and there was, in its view, a "high likelihood of further serious abuse of people" if the material had not been broadcast. These facts, the Licensee argued, had guided its decision to "take the story promptly to air" and broadcast this "exclusive footage" before the watershed.

However, Ofcom also noted, from the Licensee's representations, that when the reporter (Aslam Malik) was interviewed by the presenter he stated that the police had advised that the footage shown on Geo News was *"at least"* two years old. Therefore, Ofcom considered whether the Licensee's decision to show this particular footage in the way it did before the watershed was justified by these arguments. Our view was that it was not. Adult viewers expect news broadcasters to report on challenging stories in a timely way before the watershed. However, that does not mean that broadcasters have unlimited latitude. They must comply with the Code by ensuring generally accepted standards are applied. This means that when broadcasting offensive material broadcasters must ensure it is justified by the context. In this case, our view was that there was arguably a public interest in broadcasting this story before the watershed. However, this public interest was limited by the fact that the footage was, according to Geo News' own reporter, at least two years old. Also in our opinion the Licensee could and should have used a variety of editorial techniques to lessen the impact of the violence, for example not playing the clips of material on a loop, or using still pictures or blurring them in some form.

For all these reasons, Ofcom's Decision was that to broadcast this potentially offensive material was not justified by the context, and there was also a breach of Rule 2.3.

Conclusion

Ofcom was very concerned that the Licensee considered the broadcast of this material to be acceptable before the watershed. This was in particular because material unsuitable for children and inappropriately scheduled was broadcast on the same news service and found to be in breach of Rule 1.3 and Rule 2.3 earlier this year[6].

After the previous breaches recorded in issue 299 of the Broadcast and On Demand Bulletin, Geo TV said it briefed its news teams on providing appropriate warnings before broadcasting news stories containing challenging material and gave Ofcom assurances that it had provided further training for its staff. We also noted that with regard to this latest case the Licensee accepted that it had made an error in not broadcasting the verbal warning before the footage was first broadcast, and that in addition to the verbal and on-screen warning it would, in future, use blurred footage or still images.

As Ofcom has previously advised[7], broadcasters that all the BBFC certification symbols are both registered and unregistered intellectual property rights of the BBFC

[6] Ofcom Broadcast and On Demand Bulletin 299, 22 February 2016, https://www.ofcom.org.uk/__data/assets/pdf_file/0025/49741/issue_299.pdf

[7] See issue 205 of the Ofcom Broadcast Bulletin, 8 May 2012, http://webarchive.nationalarchives.gov.uk/20160702162827/http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb205/obb205.pdf

and cannot be used unless under licence. These rights extend to similar looking symbols. Ofcom advises broadcasters not to use BBFC symbols or similar looking symbols without prior consultation with the BBFC. The misuse of a BBFC classification in a broadcast is likely to give rise to a legal claim by the BBFC against the licensee.

It was of serious concern in the current case that the Licensee had not taken sufficient measures to ensure compliance with the Code. Ofcom will therefore be requesting that the Licensee attends a meeting to set out and reassure Ofcom of its compliance arrangements as soon as possible.

In addition, Ofcom puts the Licensee on notice that it will monitor this service. If any similar compliance issues are identified, Ofcom will consider taking further regulatory action including the imposition of a statutory sanction.

Breaches of Rules 1.3 and 2.3

In Breach

Playing It Cool

Universal Channel, 10 September 2016, 20:00

Introduction

Universal Channel is a general entertainment channel that broadcasts on cable and satellite platforms. The licence for the service is held by NBC Universal International Networks Limited ("NBC Universal" or "the Licensee").

Playing It Cool is an American romantic comedy film. Ofcom received a complaint from a viewer about the use of strong language in this broadcast. The film started at 20:00 and finished at 21:50.

Before the film commenced, there was a warning by the continuity presenter which alerted viewers to *"mild language"*.

Ofcom noted that the following offensive language broadcast before 21:00:

- 18 uses of the words "shit" or "shitty" or "shitter";
- six uses of "pussy";
- one use of "bastards"; and
- one use of "fucking"[1].

We therefore considered the material raised potentially substantive issues that warranted investigation under the following rules of the Code:

Rule 1.14: "The most offensive language must not be broadcast before the watershed…".

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

Rule 2.3: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context (see meaning of "context" below). Such material may include, but is not limited to, offensive language…Appropriate information should also be broadcast where it would assist in avoiding or minimising offence."

We therefore asked the Licensee to provide comments on how the programme complied with these rules.

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[1] There were no further uses of offensive language broadcast until after 21:20. Ofcom did not consider that the uses of offensive language after the watershed raised issues warranting investigation.

Response

The Licensee acknowledged that "the amount of moderately offensive language in this 20:00 version was inappropriate for a programme starting before 21:00". NBC Universal said "this was likely exacerbated because of one instance of the most offensive language, which should not have been broadcast, [but] was also missed when the material was compliance-screened".

The Licensee stated that "*Playing It Cool* is an adult romantic comedy and Universal Channel is an adult-targeted channel with a low appeal to children". NBC Universal added that "both the slot in which the film was broadcast and the channel as a whole have a low child index". The Licensee said that "it was in this context that the compliance screener erroneously considered that because most of the moderate language in question was used colloquially, often as part of banter between the characters and in a non-aggressive manner, it would be potentially acceptable for post 20:00 broadcast if the programme carried a language warning". However, NBC Universal stated that "for the avoidance of doubt, we do recognise that a warning for moderate or mild language pre-watershed, cannot be used to justify the frequent use of offensive language".

The Licensee submitted that "the inclusion of the single instance of strongly offensive language, and the overall volume of moderately offensive language, were in this case both due to human error". NBC Universal added that it regretted "any offence caused to the viewer who complained" and said it had reviewed its working practices "to minimise the likelihood of this happening again".

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives. These include that people under eighteen are protected, 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". These objectives are reflected in Sections One and Two of the Code.

Rule 1.14

Rule 1.14 of the Code states that "the most offensive language must not be broadcast before the watershed…". Ofcom's research on offensive language[2] clearly states that the word "fuck" and similar words are considered by audiences to be among the most offensive language and unacceptable for broadcast before the watershed.

In this case, the word "fucking" was broadcast before the watershed. Our Decision was therefore that the material was in breach of Rule 1.14.

[2] http://www.ofcom.org.uk/__data/assets/pdf_file/0017/27260/offensive-lang.pdf. Broadcasters should note that on 30 September 2016, Ofcom published updated research in this area: Attitudes to potentially offensive language and gestures on television and radio, available here: (http://www.ofcom.org.uk/__data/assets/pdf_file/0022/91624/OfcomOffensiveLanguage.pdf); (http://www.ofcom.org.uk/__data/assets/pdf_file/0023/91625/OfcomQRG-AOC.pdf).

Rule 1.16

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

Ofcom's Guidance on Rule 1.16 of the Code[3] says that: "Milder [offensive] language in the early part of the evening may be acceptable…However, in general, viewers...do not wish to hear frequent or regular use of such language…before 2100". In this case there were 25 instances in total of mild or moderately offensive language broadcast before the watershed i.e. "shit", "shitty", "shitter", "bullshit", "pussy" and "bastard". We considered this clearly constituted frequent use, and noted that the Licensee immediately accepted that such frequent use was "inappropriate" before the watershed. The content was therefore in breach of Rule 1.16.

Rule 2.3

Rule 2.3 of the Code states that broadcasters must ensure that material which may cause offence is justified by the context.

In Ofcom's view the use of the most offensive language and 25 instances of milder offensive language before the watershed were clearly capable of causing offence.

We therefore considered whether this offensive material was justified by the context. Given that *Playing It Cool* was a romantic comedy film shown on a channel targeted at adults, viewers might have expected some offensive language. We also noted that a warning which preceded the film alerted viewers to "*mild language*". However, this film started at 20:00, one hour before the 21:00 watershed, and in Ofcom's view the nature and frequency of offensive language used would have exceeded audience expectations for a general entertainment programme broadcast at this time on this channel.

For these reasons our Decision was that the broadcast of frequent offensive language and one use of the most offensive language in this case was not justified by the context, and breached Rule 2.3.

Conclusion

Ofcom noted that the Licensee had explained that the pre-watershed broadcast of this programme on Universal Channel occurred as a result of human error. We took account of the fact the Licensee had given us assurances that it had reviewed its working practices to avoid a repeat of these errors. However, the broadcast of this film at 20:00 resulted in clear breaches of Rules 1.14, 1.16 and 2.3.

Breaches of Rules 1.14, 1.16 and 2.3.

[3] http://www.ofcom.org.uk/__data/assets/pdf_file/0017/24704/section1.pdf.

In Breach

Ayurvedic

DM News Plus, 3 October 2015, 16:00

Introduction

DM News Plus is a news and entertainment channel broadcast in Urdu, Punjabi, Pothohari and English to the UK Asian community. The licence for the service is held by DM Global Media Limited ("DM Global" or "the Licensee").

Ayurvedic was a talk show in Urdu which featured Rama Chande, an ayurvedic[1] practitioner. A complainant alerted Ofcom to the broadcast of potentially harmful claims that medical conditions could be treated or cured by ayurvedic products. Ofcom viewed the material and translated the programme from Urdu to English[2].

A slate containing the following text in English was shown at the beginning and at the end of the content:

> *"DM Global Network takes no responsibility of the content of this programme. The person giving this advice is not a medical practitioner the herbal remedies/Ayurveda remedies suggested in this programme should be used at viewers own discretion. This programme dose* [sic] *not sell medications. All viewers must consult their own GP/Qualified medical practitioner before taking any remedies".*

A rolling caption shown throughout the material stated:

> *"This programme does not give any medical advice. Please seek your GP advice before any treatment*".

In his introduction, the presenter, Mehboob Khan, explained:

> *"Viewers, this programme that we present every Saturday between 4 and 5 pm is about your physical body. For instance, if someone is losing their hair, we will talk about that, or if you have any physical ailment, for instance like cholesterol, kidney problem, want to lose weight".*

Viewers were then invited to call the studio to put questions to Rama Chande about a range of health conditions. These health conditions included general hair loss, reduced kidney function, alopecia, psoriasis, black jaundice, skin pigmentation, weak bones, fatty liver, gall stones, body rash, excessive gas, constipation and leucorrhoea. Rama Chande offered advice and specific ayurvedic treatments to address symptoms mentioned by callers.

Some examples are set out below in the order in which they appeared.

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[1] Ayurvedic products are usually made up of minerals and/or plant extracts. Ayurvedic medicine is a Hindu system of traditional medicine native to India and is a form of alternative medicine.

[2] Ofcom sent a copy of the translation to DM News Plus to give it an opportunity to comment and to confirm its accuracy before preparing this Preliminary View; the Licensee chose not to reply.

In response to a caller who asked about *"the best option"* for *"a person whose kidney is not working properly"* Rama Chande stated:

> *"For cleaning your kidneys, as I have always mentioned previously, I use the medicines of Dr Pankaj Naram*[3] *and I use his tablets. In addition, I provide my medicine, and you will see a difference in your kidney function and it will lower levels of creatinine in your kidneys. Our medicine comprises of tablets and a powder, and also pure ghee and as a result we will remove all the impurities in your kidneys. As a result, slowly, slowly, your kidneys will start to work better. For kidneys, I have a large number of customers".*

In response to a caller asking whether Rama Chande had *"a cure"* for *"black jaundice"*[4]:

> *"For the liver we use Dr Pankaj Naram's medication. It's very good, and it doesn't have just one ingredient, but seven. In addition, you will need to eat a handful of channa* [chickpeas], *you have it either boiled or roasted either way, it is very good for the liver. In addition, I will recommend one other thing for fatty liver, or cirrhosis of the liver, and that is a table spoon of cider vinegar which is very beneficial. Always mix it with water in a glass of water as it is very acidic. Use warm water in a cup. Take it every morning and you can have it at least two or three times a day. Always take it on an empty stomach. Also bear in mind that that the apple cider vinegar that we have over here, that is different, and the one that I offer is from Dr Pachuk, I have the agency for that".*

In response to a question from Mehboob Khan about *"fatty liver"*[5], Rama Chande stated:

> *"As I explained you have fatty liver and liver cirrhosis, and if you have fatty liver it becomes cirrhosis and if you don't treat it, it becomes cancer. This is why it is imperative that you get it treated. As I explained we have tablets for this condition, and you should eat channa every day, and apple cider vinegar, and that makes a very big difference".*

The presenter Mehboob Khan made comments at various points during the content supporting the effectiveness of the treatments offered by Rama Chande. For example:

> *"My sister let me explain to you something about Rama Chande- she is innocent. She is so simple and down to earth. You have some people who say one thing and then act differently. But with her, whatever she says leads to a positive result. I think we have a caller now. Assalamoalaikum! …hello…hello…okay never mind. Rama Chande's prescriptions will always give you some benefit, and as Mrs Butt from Milton Keynes has previously said-the one who had eczema. Rama Chande will not first give you a cream for your condition, but will instead give you some medicine to treat you internally, for instance to purify your blood. Its only when*

[3] An ayurvedic practitioner.

[4] "Black jaundice" is an alternative name for the bacterial infection leptospirosis. In severe cases, the condition is known as Weil's disease and may cause liver, kidney and heart failure.

[5] "Fatty liver" is a term for a range of conditions caused by a build-up of fat in the liver. In severe cases, fat build up can lead to cirrhosis, a major cause of liver cancer.

you have been treated internally that you can be cured externally. Let's take a call now. Assalamoalaikum!"

*****

"…I just want to tell you that if you use the prescriptions of Rama Chande, then you will find out for yourself. If I was to read the list in front of me, then it might take an hour to read the entire list…For instance [audio indistinct] *arthritis, everything, and all the other conditions that my sisters suffer from, such as Leucorrhoea* [vaginal discharge]. *She has the perfect treatment for that condition. In addition, we will talk about those who suffer from Asthma. Many friends point out that constipation is the root cause of many illnesses so we will talk about that, because she has the perfect treatment for that too. In other words there is nothing that she doesn't treat…"*

The following caption was shown throughout the content:

"Pre-Booking [landline number given] [mobile number given]

LIVE CALL [landline number given]*"*.

Below this caption, a further scrolling message was shown stating the name, full address and telephone numbers of a company (owned by Rama Chande) which sold ayurvedic products to the public. The telephone numbers given were the same as for the *"Pre-Booking"* line noted above.

Ofcom sought information from DM News Plus about how the material was produced and funded and whether there were any commercial arrangements in place between the Licensee and Rama Chande (or any party connected to either).

Based on the information provided, that there was no commercial contract between the programme makers and Rama Chande (or any party connected to either), Ofcom considered the content raised issues warranting investigation under the following Code rules:

Rule 2.1: "Generally accepted standards must be 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".

Rule 9.2: "Broadcasters must ensure that editorial content is distinct from advertising."

Rule 9.4: "Products, services and trademarks must not be promoted in programming".

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

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

- the manner in which a product, service or trade mark appears or is referred to in programming".

Response

The Licensee did not respond to Ofcom's request for comments.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appears to it best calculated to secure the standards objectives, including that it must ensure that "the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with". These obligations include ensuring compliance with the Audiovisual Media Services ("AVMS") Directive.

The AVMS Directive contains a number of provisions designed to help maintain a distinction between advertising and editorial content, including requirements that television advertising is kept visually and/or audibly distinct from programming in order to prevent programmes becoming vehicles for advertising and to protect viewers from surreptitious advertising.

The requirements of the Act and the AVMS Directive are reflected in Section Nine of the Code, including, among other rules, Rule 9.2 which requires that editorial content is kept distinct from advertising, and Rules 9.4 and 9.5 which prohibit both the promotion and the undue prominence of products, services or trademarks in programming.

Under the Act, Ofcom must also ensure that "generally accepted standards are applied to the contents of television…services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material". This objective is reflected in Section Two of the Code, including Rule 2.1, which is specifically concerned with providing adequate protection from harmful (or offensive) broadcast material in programmes.

Rule 9.2

Rule 9.2 states that broadcasters must ensure that editorial content is distinct from advertising.

In cases involving a lack of distinction, there is an inherent potential harm to viewers on the basis that they can be misled that they are watching, and can trust, independent editorial content, when in fact they are watching promotional material.

In this case, Ofcom judged that the content was presented, in its entirety, as editorial. This was reflected in the wording of the disclaimer that appeared at the beginning and end of the piece, which stated that the content was a "programme":

"DM Global Network takes no responsibility of the content of this programme".

This was also reflected in the scrolling disclaimer shown throughout the material, which stated:

"This programme does not give any medical advice. Please seek your GP advice before any treatment".

In addition, the host Mehboob Khan opened the piece by stating:

"Viewers, this programme that we present every Saturday between 4 and 5pm is about your physical body".

Ofcom also considered that the studio set up and style in which the phone-in was presented to the audience were also likely to have led viewers to believe that they were watching an editorial programme.

Regardless of the precise nature of the arrangements in place between the Licensee and Rama Chande, in our view, there were a number of elements in this material that were more closely associated with advertising.

First, throughout the material, viewers could see a caption containing the telephone number of Rama Chande's company, inviting them to call to book consultations and/or purchase the remedies promoted on air:

"Pre-Booking [landline number given] [mobile number given]

LIVE CALL [landline number given]*"*.

Secondly, Rama Chande made a number of promotional references to the products she could offer viewers, such as:

"For cleaning your kidneys, as I have always mentioned previously, I use the medicines of Dr Pankaj Naram and I use his tablets. In addition, I provide my medicine, and you will see a difference in your kidney function and it will lower levels of creatinine in your kidneys. Our medicine comprises of tablets and a powder, and also pure ghee and as a result we will remove all the impurities in your kidneys. As a result, slowly, slowly, your kidneys will start to work better. For kidneys, I have a large number of customers".

"As I explained you have fatty liver and liver cirrhosis, and if you have fatty liver it becomes cirrhosis and if you don't treat it, it becomes cancer. This is why it is imperative you get it treated. As I explained we have tablets for this condition…".

"For the liver we use Dr Pankaj Naram's medication. It's very good, and it doesn't have just one ingredient, but seven. In addition, you will need to eat a handful of channa [chickpeas]*, you have it either boiled or roasted either way, it is very good for the liver. In addition, I will recommend one other thing for fatty liver, or cirrhosis of the liver, and that is a table spoon of cider vinegar which is very beneficial. Always mix it with water in a glass of water as it is very acidic. Use warm water in a cup. Take it every morning and you can have it at least two or three times a day. Always take it on an empty stomach. Also bear in mind that that the apple cider vinegar that we have over here, that is different, and the one that I offer is from Dr Pachuk, I have the agency for that".*

Thirdly, we identified a number of claims by Rama Chande that alternative remedies she was able to supply could cure, successfully treat or prevent medical conditions including reduced kidney function, black jaundice, psoriasis and other liver conditions. She claimed that treatment for "fatty liver" consisting of tablets she could supply for this condition and eating chickpeas and drinking a particular apple cider vinegar, which only she could supply, *"makes a big difference."* (as set out above in the Introduction). We considered that these claims about the efficacy of Rama Chande's products were clear advertising messages.

Finally, live testimonials were broadcast featuring people claiming to have been cured of serious medical conditions by taking Rama Chande's remedies:

> *"I just wanted to say something about the lady in the studio, that she really is…my wife's kidneys were working only 45 to 50%. The doctors had been working on her for 3 to 4 years without any success. Finally, they said they would make a hole and carry out some tests. But then my wife and I went to Manchester* [where Rama Chande's company is based] *and came back with some medicines which took three months and even though we didn't take it properly (regularly), but despite that Masallah they are now working 90%".*

The presenter also endorsed the effectiveness of the treatments, claiming: *"Whatever she says leads to a positive result, Rama Chande's prescriptions will always give you some benefit".* Rama Chande claimed that *"All our medicines are effective and work very well".*

Ofcom considered that this material amounted to the promotion to viewers of the products and services provided by Rama Chande. It included repeated and unchallenged positive messages and claims regarding the efficacy of the products available. In addition, it included contact details that enabled viewers to purchase Rama Chande's products and services. In Ofcom's view, this material served the purpose of advertising.

For the reasons set out above, in Ofcom's opinion, viewers were likely to have wrongly understood that they were watching editorial content. Ofcom's Decision is therefore that the Licensee did not ensure that it kept editorial content distinct from advertising, in breach of Rule 9.2.

The Licensee's presentation of advertising as editorial is of particular concern to Ofcom where such content is used to advertise products and services for the treatment of medical conditions. This is because the BCAP Code: the UK Code for Broadcast Advertising[6] has special provisions under section 11 for broadcast advertising relating to medicines, medical devices, treatments and health. These include strict rules on the substantiation of health claims, on the professional qualifications and financial interests of those individuals making recommendations, and on implying cure as distinct from symptom relief. This reflects the higher level of scrutiny required for health claims in advertising.

There are a number of aspects of the material which we considered would raise issues under the BCAP Code had it been correctly classified and presented as advertising. For example, one relevant rule in the BCAP Code (Rule 11.15) states that, "Unless allowed by a product licence, words, phrases or illustrations that claim or imply the cure of an ailment, illness, disease or addiction, as distinct from the relief of its symptoms, are unacceptable". In this case, the content repeatedly claimed and implied that the products offered could not merely alleviate symptoms but could cure medical conditions, and therefore the content could not have been broadcast as advertising.

In light of this, Ofcom did not go on to consider the content in relation to Rules 2.1, 9.4 and 9.5 of the Broadcasting Code.

Proper distinction between editorial content and advertising is important for consumer protection, and this is particularly the case for products and services, such as those

[6] https://www.cap.org.uk/Advertising-Codes/Broadcast.aspx

of a medical or health related nature, where strict rules apply to broadcast advertising to protect audiences. Recognising the potential for this type of content to cause harm to the audience, and the risk of broadcasters attempting to circumvent strict advertising restrictions in this area, we are putting the Licensee on notice that we intend to monitor its output and will consider taking further regulatory action if similar content is broadcast again.

Breach of Rule 9.2

Resolved

Hogan's Heroes

Forces TV 18 July 2016, 07:55

Introduction

Forces TV is a news and entertainment service for those interested in military issues. The service is available on digital satellite and cable platforms and is operated by Services Sound and Vision Corporation ("SSVC" or "the Licensee").

Hogan's Heroes is an American sitcom set in a German prisoner of war camp during World War II. It was originally broadcast in America between 1965 and 1971.

Ofcom was alerted by a viewer to the end of this programme, where an advertising 'pack shot' of a packet of Marlboro cigarettes appeared next to German and American military headwear over the closing credits. The cigarette packet was visible for nearly 30 seconds.

Ofcom considered that the complaint raised issues warranting investigation under Rule 9.5 of the Code, which states:

> "No undue prominence may be given in programming to a product, service or trade mark. Undue prominence may result from:
>
> - the presence of, or reference to, a product, service or trade mark in programming where there is no editorial justification; or
>
> - the manner in which a product, service or trade mark appears or is referred to in programming."

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

Response

The Licensee said that the image of the cigarette packet was in the original programme and was not added by SSVC. The Licensee said there was no payment, or promise of payment, or other valuable consideration received by SSVC for the inclusion of the image within the end credits.

The Licensee said that it "has a well-established compliance process with a pool of experienced compliance viewers. These viewers have a wealth of experience across a number of channels." SSVC added that on "this occasion the compliance advice was that the image was acceptable because of the historical context of the programme and the fact that [the inclusion of the cigarette packet] was not paid for."

The Licensee added that "nevertheless, we appreciate that the image at the end of the programme is [of] a commercial product and essentially served no editorial purpose. We also understand that the product was tobacco, which requires extra care. The image should have been blurred".

SSVC said that once "senior management became aware after receiving the complaint, [it] immediately reviewed and revised [its] compliance processes." The Licensee said it has also introduced new training for its staff on the Code and BCAP Code.

Decision

Under the Communications Act 2003 ("the Act"), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure a number of standards objectives, one of which is "that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with". These obligations include ensuring compliance with the Audiovisual Media Services ("AVMS") Directive.

Both the Act and the AVMS Directive contain a number of provisions that prevent the promotion of cigarettes and other tobacco products within programmes. The AVMS Directive also contains provisions designed to help maintain a distinction between advertising and editorial content. The requirements of the Act and the AVMS Directive are reflected in Section Nine of the Code.

In this case, Ofcom recognised that this was an archive programme produced many years prior to the introduction of restrictions on the advertising and promotion of tobacco products. We also accepted that the Licensee had received no commercial benefit from featuring the image of the cigarette pack in the programme.

On this basis, Ofcom considered whether the inclusion of the image of a cigarette packet in the programme's end credits complied with Rule 9.5 of the Code, which prevents programmes giving undue prominence to products. Ofcom's published guidance[1] on Rule 9.5 states: "Whether a product … appears in a programme for solely editorial reasons…or as a result of a commercial arrangement between the broadcaster or producer and a third party funder…there must be editorial justification for its inclusion. The level of prominence given to a product, service or trade mark will be judged against the editorial context in which the reference appears."

The branded cigarette packet was plainly visible on screen for nearly 30 seconds – the only other images shown during the end credits were an American air force flying hat, draped over a German military helmet. In our view, the inclusion of an advertising-style image of the packet of cigarettes in the end credits did not form part of the narrative of the programme and could not be editorially justified. We therefore judged that the image was not compliant with the requirements of Rule 9.5.

However, Ofcom took into account that, after being made aware of the complaint, SSVC acted to blur the product from the end credits of all episodes of *Hogan's Heroes*, and that it has introduced new compliance procedures and training for staff. In light of these actions, Ofcom's Preliminary View was that the matter was resolved.

Resolved

[1] https://www.ofcom.org.uk/__data/assets/pdf_file/0014/33611/section9_may16.pdf

Not in Breach

Coronation Street

ITV, 29 August 2016, 19:30

Introduction

Coronation Street is a long-running and well-established soap opera broadcast five times a week on ITV.

Ofcom received 473 complaints about a comment by the character Eva Price during a scene in the local hair salon. Looking at her dyed hair, she said:

> *"Yeah, look* [pointing at her hair] *I've got more roots than Kunte Kinte*. *No idea who that is by the way, it's summat my mum used to say".*

Kunte Kinte is the lead character in Alex Haley's 1976 novel *Roots: The Saga of an American Family* which was later adapted into a popular television series called *Roots*. The story chronicles the life of an 18th century African man who was captured and sold into slavery in the United States.

The complainants considered the play on the word *"roots"* was unacceptable as the basis for a joke given the subject matter of the Alex Haley story, and therefore felt that the comment was racially offensive.

In Ofcom's view the material raised issues warranting investigation under Rule 2.3 of the Code.

Rule 2.3: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context… Such material may include, but is not limited to… discriminatory treatment or language (for example on the grounds of…race...). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence".

We therefore asked ITV Broadcasting Limited ("ITV") how the material complied with this rule.

Response

ITV said it regretted that this comment had caused offence to complainants and emphasised that this was not the intention. It explained that Eva Price's light-hearted play on the word *"roots"* was both a reference to her dyed blonde hair needing to be retouched and the title of the US historical drama, *Roots*.

ITV said the comment was also included to convey an aspect of Eva's character, because she simply repeated a phrase that she had learned from her mother without any understanding of its meaning. ITV submitted that this reflected "her slightly foolish and shallow character".

ITV stated that the comment was never intended to be interpreted as derogatory towards the character of Kunta Kinte. Neither was "it intended to suggest that black characters in fiction or black people generally are figures of fun or derision", or that

Eva was expressing any sort of racist sentiment. ITV pointed out that the comment did not make any reference to Kunta Kinte being black or make light of the subject matter of the story. It therefore did not believe that the majority of viewers would have construed it as having any racist intent.

ITV said that it did not believe the comment exceeded generally accepted standards given its context in the drama and the fact that it was used to demonstrate Eva's lack of cultural awareness. It reiterated that Eva was not seeking to be offensive or racist and its belief that most viewers would not have considered the comment to have treated the character of Kunte Kinte in a derogatory manner.

Although ITV believed the material complied with the Code, it said it had written to all viewers who had complained to it directly to express its "regret for any offence given", and published a statement apologising if the dialogue had caused any offence to viewers. ITV said that it took the additional step of editing out the comment in the omnibus repeat of the programme shown later that week.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including 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". This duty is reflected in Section Two of the Code.

In reaching its Decision in this case, Ofcom has taken account of the ITV's and audience's right to freedom of expression, as set out in Article 10 of the European Convention on Human Rights.

Rule 2.3 of the Code requires that potentially offensive material is justified by the context. Context is assessed by reference to a range of factors including: the editorial content of the programme, the service on which the material was broadcast, the degree of harm or offence likely to be caused, and likely audience expectations.

Ofcom first considered whether the comment in this particular scene had the potential to cause offence. Slavery and ethnicity are subjects that broadcasters should approach with due caution, especially when they are referred to in a light-hearted context which could result in sensitivities being heightened. In Ofcom's view, viewers who were aware of the Alex Haley story or the *Roots* series would have been likely to associate Eva's reference to Kunte Kinte with the story, and with slavery. In the light-hearted context in which the remark was made, we considered that this reference to slavery had the potential to offend viewers.

Ofcom went on to consider if the broadcast of the material was justified by the context.

Eva Price's comment was a play on the word *"roots"*, which referred to both the colour of her hair at its roots and, through the reference to Kunte Kinte, the title of the 1970s television series. Although the series is well known for depicting the African slave trade in 18th century America, we noted that Eva's comment did not mention this at all. She only referred to the title of the television series and name of its lead character. We took into account, in particular, that at no point was language broadcast which referred directly to ethnicity or slavery, or in Ofcom's view, was derogatory or discriminatory.

Ofcom also took into account Eva's subsequent remark that she did not understand who Kunte Kinte was, and that she was repeating the phrase because it was something her mother used to say. This reflected the foolishness, and lack of sensitivity and cultural awareness, of her character. For her to speak in this thoughtless fashion without understanding what she was referring to, or that it might cause offence, was likely to have been consistent with the audience's expectations of her character. There is a long history of characters in the UK's television soaps behaving controversially. Soap writers use these situations as a means of developing the characters and the storylines they feature in. This does not give broadcasters unlimited freedom to include offensive material in soaps but it does provide context for difficult or challenging material to be included where it serves a clear editorial purpose and is consistent with audience expectations.

We acknowledged that relatively high number of viewers complained to Ofcom, and that some viewers clearly felt very strongly about the remarks in this case. We noted the measures taken by ITV to mitigate the potential offence to these viewers by: writing to all complainants who contacted it directly, making a public statement to the press apologising if the remark had caused any unintended offence, and removing the phrase from subsequent broadcasts of the episode.

Having taking into account all the above factors, we were of the view that this potentially offensive material was justified by the context. Therefore, the material was not in breach of Rule 2.3 of the Code.

Not in Breach of Rule 2.3

Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed between 31 October and 13 November 2016 and decided that the broadcaster or service provider did not breach Ofcom's codes, rules, licence conditions or other regulatory requirements.

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

Programme	Broadcaster	Transmission date	Categories
Programming	Bay FM	01/09/2016	Due accuracy

For more information about how Ofcom conducts investigations about content standards on television and radio programmes, go to: https://www.ofcom.org.uk/__data/assets/pdf_file/0020/55109/breaches-content-standards.pdf

Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 31 October and 13 November 2016 because they did not raise issues warranting investigation.

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

For more information about how Ofcom assesses complaints about content standards on television and radio programmes, go to: https://www.ofcom.org.uk/__data/assets/pdf_file/0020/55109/breaches-content-standards.pdf

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Halloween Weekend (trailer)	5Star	18/10/2016	Scheduling	1
Lip Sync Battle (trailer)	5Star	04/10/2016	Sexual material	1
News	Asian Sound Radio	20/10/2016	Due accuracy	1
News	BBC / ITV / Channel 4	12/10/2016	Due impartiality/bias	1
BBC News / Sky News	BBC / Sky News	12/10/2016	Generally accepted standards	1
BBC News	BBC 1	07/10/2016	Nudity	2
BBC News	BBC 1	10/10/2016	Race discrimination/offence	2
BBC News	BBC 1	08/11/2016	Generally accepted standards	1
Citizen Khan	BBC 1	04/11/2016	Nudity	1
EastEnders	BBC 1	28/10/2016	Generally accepted standards	1
EastEnders	BBC 1	28/10/2016	Gender discrimination/offence	2
EastEnders	BBC 1	04/11/2016	Generally accepted standards	1
EastEnders	BBC 1	10/11/2016	Generally accepted standards	2
Match of The Day	BBC 1	05/11/2016	Generally accepted standards	1
Money For Nothing	BBC 1	31/10/2016	Generally accepted standards	1
Planet Earth II	BBC 1	05/11/2016	Animal welfare	1
Poldark	BBC 1	23/10/2016	Sexual material	41
Strictly Come Dancing	BBC 1	01/10/2016	Offensive language	1
The Andrew Marr Show	BBC 1	06/11/2016	Crime and disorder	1
The Apprentice	BBC 1	03/11/2016	Gender discrimination/offence	1
The Great British Bake Off	BBC 1	26/10/2016	Other	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
The National Lottery	BBC 1	29/10/2016	Materially misleading	1
The One Show	BBC 1	04/11/2016	Dangerous behaviour	1
Watchdog	BBC 1	09/11/2016	Crime and disorder	1
BBC News	BBC 1 and BBC News Channel	09/11/2016	Other	1
Look North	BBC 1 North East	20/10/2016	Violence	1
Nolan Live	BBC 1 Northern Ireland	19/10/2016	Generally accepted standards	1
Nolan Live	BBC 1 Northern Ireland	19/10/2016	Offensive language	1
Antiques Roadshow	BBC 2	25/09/2016	Dangerous behaviour	1
Newsnight	BBC 2	03/11/2016	Generally accepted standards	3
The Fall	BBC 2	27/10/2016	Sexual material	1
The Fall	BBC 2	28/10/2016	Harm	2
Victoria Derbyshire	BBC 2	28/10/2016	Generally accepted standards	1
Victorian Bakers	BBC 2	03/11/2016	Offensive language	1
Who's Spending Britain's Billions?	BBC 2	23/10/2016	Offensive language	2
Chris Evans	BBC Radio 2	08/11/2016	Generally accepted standards	1
It's Not What You Know	BBC Radio 4	20/10/2016	Sexual material	1
PM	BBC Radio 4	08/11/2016	Race discrimination/offence	1
Pursuit of Power	BBC Radio 4	26/10/2016	Age discrimination/offence	1
The Unbelievable Truth	BBC Radio 4	24/10/2016	Scheduling	1
Today	BBC Radio 4	14/10/2016	Harm	1
Laurence Reed	BBC Radio Cornwall	28/09/2016	Race discrimination/offence	1
Nick Ahad	BBC Radio Leeds	22/10/2016	Sexual orientation discrimination/offence	1
Kaye Adams	BBC Radio Scotland	17/10/2016	Generally accepted standards	2
James Watt	BBC Radio Stoke	12/10/2016	Other	1
Looney Tunes	Boomerang	21/10/2016	Scheduling	1
Cricket (trailer)	BT Sport 1	28/10/2016	Violence	1
Cricket (trailer)	BT Sport 2	23/10/2016	Violence	1
Ant Payne	Capital FM	28/10/2016	Sexual material	1
Programming	Capital FM Scotland	28/10/2016	Sexual material	1
Warner Hotels' sponsorship of Grown Up evenings on CBS Action	CBS Action	18/10/2016	Age discrimination/offence	1
My Reality	CBS Reality	17/10/2016	Generally accepted standards	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Black Cinema Season (trailer)	Channel 4	31/10/2016	Race discrimination/offence	1
Britain's Benefit Tenants (trailer)	Channel 4	24/10/2016	Generally accepted standards	1
Celebrity Island with Bear Grylls	Channel 4	06/10/2016	Animal welfare	1
Celebrity Island with Bear Grylls	Channel 4	09/10/2016	Animal welfare	2
Channel 4 News	Channel 4	17/10/2016	Elections and Referendums	1
Channel 4 News	Channel 4	27/10/2016	Due impartiality/bias	1
Channel 4 News	Channel 4	31/10/2016	Due impartiality/bias	1
Channel 4 News	Channel 4	31/10/2016	Offensive language	1
Dispatches: ISIS and the Missing Treasures	Channel 4	18/04/2016	Materially misleading	1
Gogglebox	Channel 4	10/10/2016	Offensive language	1
Hollyoaks (trailer)	Channel 4	19/10/2016	Flashing images/risk to viewers who have PSE	1
Hollyoaks (trailer)	Channel 4	21/10/2016	Flashing images/risk to viewers who have PSE	2
Hollyoaks (trailer)	Channel 4	24/10/2016	Flashing images/risk to viewers who have PSE	1
Hollyoaks (trailer)	Channel 4	27/10/2016	Flashing images/risk to viewers who have PSE	1
Hunted	Channel 4	27/10/2016	Dangerous behaviour	1
Hunted	Channel 4	27/10/2016	Generally accepted standards	3
National Treasure	Channel 4	27/09/2016	Offensive language	1
The Good Terrorist	Channel 4	27/08/2016	Generally accepted standards	1
The Secret Life of Four Year Olds	Channel 4	08/11/2016	Race discrimination/offence	1
The Secret Life of Prisons	Channel 4	10/11/2016	Generally accepted standards	1
Ben Fogle: New Lives in the Wild	Channel 5	08/11/2016	Animal welfare	1
Can't Pay? We'll Take It Away!	Channel 5	19/10/2016	Generally accepted standards	2
Home and Away	Channel 5	31/10/2016	Disability discrimination/offence	1
The Nightmare Neighbour Next Door	Channel 5	27/10/2016	Materially misleading	52
The Wright Stuff	Channel 5	19/10/2016	Race discrimination/offence	1
The Wright Stuff	Channel 5	01/11/2016	Due impartiality/bias	1
The Wright Stuff	Channel 5	04/11/2016	Generally accepted standards	1
The Yorkshire Vet	Channel 5	01/11/2016	Animal welfare	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Classic FM Dating (trailer)	Classic FM	27/09/2016	Harm	1
Station ident	Classic FM	n/a	Materially misleading	1
Super Scoreboard	Clyde 1	31/10/2016	Sexual orientation discrimination/offence	1
Deadliest Pests Down Under	Dave	31/10/2016	Offensive language	1
Unspun with Matt Forde	Dave	19/10/2016	Generally accepted standards	1
Daytime Diverse	Diverse FM (Luton)	03/10/2016	Offensive language	1
Rohani Masayl	DM News Plus	20/05/2016	Exorcism, the occult and the paranormal	1
Black-ish (trailer)	E4	25/10/2016	Race discrimination/offence	1
Body Fixers (trailer)	E4	01/10/2016	Generally accepted standards	1
Hollyoaks (trailer)	E4	16/10/2016	Flashing images/risk to viewers who have PSE	1
Made in Chelsea	E4	31/10/2016	Generally accepted standards	6
Naked Attraction	E4	08/11/2016	Nudity	1
Black Cinema Season (trailer)	Film4	31/10/2016	Race discrimination/offence	1
Black Cinema Season (trailer)	Film4	09/11/2016	Race discrimination/offence	1
Film trailers	Film4	29/10/2016	Scheduling	1
Squeal	Film4	31/10/2016	Generally accepted standards	1
Titanic	Film4	27/10/2016	Nudity	1
Titanic	Film4	27/10/2016	Offensive language	1
Matt Wilkinson (Euro Millions Competition)	Heart Radio	30/09/2016	Competitions	1
Ek Tamanna Lahasil Se	Hum Europe	29/09/2016	Violence	1
Coronation Street	ITV	21/10/2016	Violence	8
Coronation Street	ITV	07/11/2016	Suicide and self harm	5
Emmerdale	ITV	21/10/2016	Violence	1
Emmerdale	ITV	03/11/2016	Disability discrimination/offence	2
Emmerdale	ITV	08/11/2016	Dangerous behaviour	2
Fishing Impossible	ITV	01/11/2016	Dangerous behaviour	1
I'm a Celebrity...Get Me Out of Here! (trailer)	ITV	31/10/2016	Dangerous behaviour	1
I'm a Celebrity...Get Me Out of Here! (trailer)	ITV	05/11/2016	Dangerous behaviour	1
ITV Evening News	ITV	02/11/2016	Gender discrimination/offence	1
ITV Hub (trailer)	ITV	30/10/2016	Generally accepted standards	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
ITV News	ITV	19/10/2016	Elections and Referendums	1
ITV News	ITV	20/10/2016	Due impartiality/bias	1
ITV News at Ten	ITV	09/11/2016	Other	1
Jeremy Kyle's Emergency Room	ITV	30/09/2016	Nudity	1
Judge Rinder	ITV	09/11/2016	Generally accepted standards	1
Loose Women	ITV	17/10/2016	Due impartiality/bias	1
Loose Women	ITV	19/10/2016	Race discrimination/offence	2
Loose Women	ITV	24/10/2016	Gender discrimination/offence	1
Loose Women	ITV	25/10/2016	Fairness	1
Loose Women	ITV	09/11/2016	Gender discrimination/offence	1
Loose Women	ITV	09/11/2016	Materially misleading	1
Lorraine	ITV	02/11/2016	Gender discrimination/offence	1
Lorraine	ITV	03/11/2016	Gender discrimination/offence	1
Meet the Parents	ITV	29/10/2016	Other	1
Meet The Parents	ITV	05/11/2016	Generally accepted standards	2
Off Their Rockers	ITV	06/11/2016	Sexual material	11
Off Their Rockers (trailer)	ITV	09/11/2016	Crime and disorder	1
Party Political Broadcast by the UK Independence Party	ITV	12/10/2016	Generally accepted standards	1
Peston on Sunday	ITV	06/11/2016	Generally accepted standards	1
The Agenda	ITV	25/10/2016	Due impartiality/bias	1
The New Clampers: Where's My Car Gone?	ITV	18/10/2016	Dangerous behaviour	1
The Next Great Magician	ITV	06/11/2016	Dangerous behaviour	3
The X Factor	ITV	05/10/2016	Fairness	1
The X Factor	ITV	08/10/2016	Scheduling	1
The X Factor	ITV	16/10/2016	Scheduling	2
The X Factor	ITV	22/10/2016	Offensive language	1
The X Factor	ITV	22/10/2016	Undue prominence	1
The X Factor	ITV	22/10/2016	Race discrimination/offence	3
The X Factor	ITV	23/10/2016	Generally accepted standards	1
The X Factor	ITV	23/10/2016	Sexual material	1
The X Factor	ITV	29/10/2016	Disability discrimination/offence	1
The X Factor	ITV	29/10/2016	Offensive language	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
The X Factor	ITV	29/10/2016	Religious/Beliefs discrimination/offence	1
The X Factor	ITV	29/10/2016	Scheduling	1
The X Factor	ITV	29/10/2016	Voting	1
The X Factor	ITV	30/10/2016	Other	2
The X Factor	ITV	30/10/2016	Sexual material	3
The X Factor	ITV	30/10/2016	Voting	5
The X Factor	ITV	05/11/2016	Other	1
The X Factor	ITV	05/11/2016	Voting	1
The X Factor	ITV	05/11/2016	Dangerous behaviour	3
The X Factor	ITV	05/11/2016	Race discrimination/offence	21
The X Factor	ITV	06/11/2016	Voting	2
This Morning	ITV	01/11/2016	Crime and disorder	1
Tonight	ITV	27/10/2016	Due accuracy	1
ITV News Meridian	ITV News Meridian	24/10/2016	Other	1
ITV News Wales at 6	ITV Wales	19/10/2016	Due impartiality/bias	1
I'm a Celebrity...Get Me Out of Here! (trailer)	ITV2	05/11/2016	Dangerous behaviour	1
The Xtra Factor	ITV2	23/10/2016	Drugs, smoking, solvents or alcohol	1
Cash Cowboys	ITV4	01/11/2016	Offensive language	1
Fray Bentos' sponsorship of Compulsive Viewing	ITV4	30/10/2016	Sponsorship credits	1
Wahlgrens Värld	Kanal 5	n/a	Generally accepted standards	1
Mike and Kelly	Key 103	29/10/2016	Crime and disorder	1
Ian Collins	LBC 97.3 FM	06/11/2016	Generally accepted standards	1
James O'Brien	LBC 97.3 FM	14/10/2016	Generally accepted standards	13
James O'Brien	LBC 97.3 FM	04/11/2016	Generally accepted standards	1
Katie Hopkins	LBC 97.3 FM	18/09/2016	Generally accepted standards	3
Maajid Nawaz	LBC 97.3 FM	30/10/2016	Generally accepted standards	2
Nick Ferrari	LBC 97.3 FM	03/11/2016	Generally accepted standards	1
Nigel Farage	LBC 97.3 FM	30/10/2016	Crime and disorder	1
Grand Designs	More4	01/11/2016	Generally accepted standards	1
Programming	n/a	various	Race discrimination/offence	1
Bajirao Mastani	Rishtey Cineplex	28/10/2016	Violence	1
Crosstalk	RT	19/10/2016	Due impartiality/bias	1
News	RT	19/10/2016	Due impartiality/bias	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Programming	RT	19/10/2016	Due impartiality/bias	1
Exclusive Interview with Warwickshire Police	Sikh Channel	13/09/2016	Due impartiality/bias	1
Murnaghan on Sunday	Sky News	23/10/2016	Due impartiality/bias	1
Sky News	Sky News	21/10/2016	Due accuracy	1
Sky News	Sky News	27/10/2016	Animal welfare	4
Sky News	Sky News	28/10/2016	Transgender discrimination/offence	1
Sky News	Sky News	31/10/2016	Due accuracy	1
Sunrise	Sky News	01/11/2016	Due accuracy	1
Sky News / BBC News	Sky News / BBC News Channel	20/10/2016	Due impartiality/bias	1
DC Legends of Tomorrow	Sky1	03/11/2016	Sexual material	1
Harry Hill's Tea Time	Sky1	06/11/2016	Scheduling	1
Jon Holmes Show	talkRADIO	28/10/2016	Religious/Beliefs discrimination/offence	1
Late Nights with Iain Lee	talkRADIO	24/10/2016	Religious/Beliefs discrimination/offence	1
Alan Brazil Sports Breakfast	Talksport	29/10/2016	Materially misleading	1
Alan Brazil Sports Breakfast	Talksport	01/11/2016	Generally accepted standards	1
Jim White	Talksport	27/10/2016	Materially misleading	1
Robbie Williams takes over Tay FM	Tay FM	06/11/2016	Other	1
Oxfordshire News Now	That's Oxfordshire TV	12/10/2016	Due impartiality/bias	1
Dating Naked / Undressed (trailers)	TLC	16/10/2016	Nudity	1
Programme trailers	TLC	various	Sexual material	1
Wake Up To Wayne	Town 102	20/09/2016	Offensive language	1
Not Another Teen Movie	TV3 Sweden	14/10/2016	Nudity	1
Ramadhan Fundraising Appeal	Ummah Channel	05/07/2016	Appeals for funds	1
Horror film trailers	Various	22/10/2016	Generally accepted standards	1
Kya Kehte Hain Sitare	Venus TV	04/10/2016	Materially misleading	1

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

For more information about how Ofcom assesses complaints about broadcast licences, go to: https://www.ofcom.org.uk/__data/assets/pdf_file/0019/31942/general-procedures.pdf

Licensee	Licensed service	Categories
ESTV Limited	London Live	Television Access Services
Your Radio Limited	Your FM	Provision of licensed service.

Complaints outside of remit

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

For more information about what Ofcom's rules cover, go to: http://consumers.ofcom.org.uk/complain/tv-and-radio-complaints/what-does-ofcom-cover/

Complaints about television or radio programmes

For more information about how Ofcom assesses complaints about television and radio programmes, go to: https://www.ofcom.org.uk/__data/assets/pdf_file/0020/55109/breaches-content-standards.pdf

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Bangla TV News	Bangla TV	04/10/2016	Advertising content	1
BBC News / Breakfast	BBC 1	01/11/2016	Other	1
BBC News / The One Show	BBC 1	09/11/2016	Due impartiality/bias	1
BBC News	BBC Channels	09/11/2016	Other	1
Advertisement	Comedy Central	19/10/2016	Advertising content	1
Create and Craft	Create and Craft	12/10/2016	Advertising content	1
Advertisement	ITV	21/10/2016	Advertising content	1
Advertisement	ITV	24/10/2016	Advertising content	1
Advertisement	ITV	07/11/2016	Advertising content	1
Advertisement	ITV	09/11/2016	Advertising content	1
Advertisement	ITV	20/11/2016	Advertising content	1
Advertisement	Sky Sports 1	23/10/2016	Advertising content	1
Advertisement	Sky Sports 1	30/10/2016	Advertising content	1
Viceland (trailer)	Sky Sports 2	16/10/2016	Violence	1
Advertisement	YouTube / ITV	10/11/2016	Advertising content	1

Investigations List

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

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

Here are alphabetical lists of new investigations launched between 31 October and 13 November 2016.

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

Programme	Broadcaster	Transmission date
Frank Skinner Show	Absolute Radio	1 October 2016
Jeeto Pakistan	ARY Digital	28 June 2016
The Fall	BBC 2	28 October 2016
Gangland: Murder	Channel 5	8 September 2016
Trigger Happy TV	London Live	3 September 2016
The Walking Dead	Fox	24 October 2016
Fox News Extra	Fox News	various
Emmerdale	ITV	20 October 2016
The Chase	ITV	2 November 2016
Programming	MATV	28 September 2016
News	Times Now	26 September 2016
Sitare Kya Kahte Hai	Venus TV	4 October 2016
Desi Beat	Colors	various
Now We're Talking	That's Manchester	8 October 2016

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

Investigations launched under the Procedures for the consideration and adjudication of Fairness and Privacy complaints

Programme	Broadcaster	Transmission date
Can't Pay? We'll Take It Away!	Channel 5	1 October 2016

For more information about how Ofcom considers and adjudicates upon Fairness and Privacy complaints about television and radio programmes, go to: https://www.ofcom.org.uk/__data/assets/pdf_file/0031/57388/fairness-privacy-complaints.pdf

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

Licensee	Licensed Service
ARY Network Limited	ARY Digital
ARY Network Limited	ARY News
Furness College	Cando FM 106.3
Hub Media CIC	The Hub

For more information about how Ofcom assesses complaints and conducts investigations about broadcast licences, go to: https://www.ofcom.org.uk/__data/assets/pdf_file/0019/31942/general-procedures.pdf