

# 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 to secure the standards objectives<sup>1</sup>. Ofcom also has a duty to ensure that On Demand Programme Services ("ODPS") comply with certain standards requirements set out in the Act<sup>2</sup>.

Ofcom reflects these requirements in its codes and rules. The Broadcast and On Demand Bulletin reports on the outcome of Ofcom's investigations into alleged breaches of its codes and rules, as well as conditions with which broadcasters licensed by Ofcom are required to comply. The codes and rules include:

- a) [Ofcom's Broadcasting Code](#) ("the Code") for content broadcast on television and radio services licensed by Ofcom, and for content on the BBC's licence fee funded television, radio and on demand services.
- b) the [Code on the Scheduling of Television Advertising](#) ("COSTA"), containing rules on how much advertising and teleshopping may be scheduled on commercial television, how many breaks are allowed and when they may be taken.
- c) certain sections of the [BCAP Code: the UK Code of Broadcast Advertising](#), for which Ofcom retains regulatory responsibility for television and radio services. These include:
  - the prohibition on 'political' advertising;
  - 'participation TV' advertising, e.g. long-form advertising predicated on premium rate telephone services – notably chat (including 'adult' chat), 'psychic' readings and dedicated quiz TV (Call TV quiz services); and
  - gambling, dating and 'message board' material where these are broadcast as advertising<sup>3</sup>.
- d) other conditions with which Ofcom licensed services must comply, such as requirements to pay fees and submit information required for 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 (apart from BBC ODPS). Ofcom considers sanctions for advertising content on ODPS referred to it 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 requirements in the BBC Agreement, the Code on Television Access Services (which sets out how much subtitling, signing and audio description relevant licensees must provide), the Code on Electronic Programme Guides, the Code on Listed Events, and the Cross Promotion Code.

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

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

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

**It is Ofcom's policy to describe fully 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.**

## Broadcast Standards cases

### In Breach

#### Russell Brand

*Radio X, 28 May 2017, 11:00*

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#### Introduction

Radio X is a National DAB radio station providing an alternative music service for the 15-34s. The licence for Radio X is held by Global Radio Holdings Ltd ("Global" or "the Licensee").

*Russell Brand* is a weekly programme broadcast between 11:00 and 13:00 on Sundays. The programme on 28 May 2017 was pre-recorded.

Ofcom received a complaint about sexual content during and immediately following a conversation between Russell Brand, Matt Morgan (the programme's co-host on 28 May 2017) and Mr Gee (the programme's resident poet) in the studio, and an Elvis Presley tribute artist ('Guest'), who they had contacted on the phone. The complainant considered the exchanges unsuitable for broadcast when children were listening.

The unscripted conversation included the following:

Brand: *"Have you ever had sex as Elvis?"*

Morgan: [laughs]

Guest: *"Ooooo. Erm... "*

Brand: *"You 'ave ain't yer? I could tell from the Ooo: "Oooooo!"*

Morgan: *"With a bit of direct..."*

Brand *"No! Flat No!"*

Morgan: *"Why would you ask him that?"*

Brand: *"I'm outraged – How dare you!"*

Guest: *"I've done it without the jump suit, but I have kept the cape on".*

Brand: *"That's good, that's how to do it. You can't have sex with a jump suit on".*

Morgan: *"Did you do the voice?"*

Guest: *"Well the only difficulty with that is they're studded, you see, and they get very spikey and so they can cut you in places that you wouldn't imagine".*

Brand: *"I'm, I'm imagining them, James!"*

Guest: *"And if you're on top of somebody, you know..."*

Brand: *"Very, er, you're a bit of a brutal lover there, James!"*

Guest: *"Well, yes, I am, especially when I'm covered in Rhinestones!"*

Brand: *"Phwoar, that's the way to do it!"*

[...]

Guest: *"...and I try to get that into my acts but the audience don't like the throwing stars that I throw out at them".*

Brand: *"Cowards! They need to commit to Elvis, is what I would say! James, thank you very much for coming on the line and giving us such an elegant and nuanced view of Elvis tribute acts..."*

Guest: *"No problem".*

Brand: *"...and may dead Elvis live on".*

Guest: *"Thank you very much".*

Brand: *"Dead Elvis will live for ever! Thanks James. Take it easy mate".*

Morgan: *"Cheers, James".*

Guest: *"Thank you. Cheers Russell".*

Brand: *"What a lovely bloke. What a lovely fella he was".*

Morgan: *"I bet 'cos it's 40 years since he died..."*

Brand: *"You showed me up something rotten there, didn't you, in front of... pretend..."*

Morgan: *"You showed yourself up, as you always do".*

Brand: *"How? What did I do wrong?"*

Morgan: *"Sexualising everything: "Have you ever had sex as Elvis?"!"*

Mr Gee: *"Yeah".*

Morgan: *"Disgusting, dirty little question".*

Mr Gee: *"But do you remember that documentary where, whatsit, I think Elvis came out of a hotel and he said he'd just met a prostitute and he just goes to his friend, he just goes: "You know that prostitute you showed me? she gives tremendous head, tremendous head?""*

Brand: *"Yes, I do remember that. I remember thinking it was insensitive of Elvis to have said it!"*

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

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

Rule 1.5 "Radio broadcasters must have particular regard to times when children are particularly likely to be listening".

Ofcom requested comments from the Licensee on how the programme complied with these Rules.

### **Response**

Global said the item was a discussion about Elvis Presley, and "how he was apparently 'slipping from the public's consciousness'". It featured a 20-minute interview with James Burrell, which focussed primarily on "his role as a tribute act, including the costumes, Elvis's mannerisms and talent contests". Global added that "the comments highlighted by the complainant were a fleeting moment within this – there was no focus or emphasis on this topic".

The Licensee said Radio X targeted an 'alternative' audience and "maintains a distinction from other mainstream stations", with Russell Brand "a well-known comedian and broadcaster with a loyal following who are familiar with his style of humour". It added that "listeners therefore ... expect edgier content in his show than on family-orientated pop music stations". Global said it was, "nonetheless, aware of the need for more adult-themed material to be appropriately limited to protect any children in the audience" and "with this in mind the discussion was kept brief and non-descriptive, and broken up with humorous banter". The Licensee highlighted that, "when Mr Gee ... made some further comments the presenter was also quick to shut these down and move on to the next topic".

Global assured Ofcom that "consideration was given to the potential for younger listeners in the audience – and [it believed] the conversation would have been largely in line with the audience's expectations". However, the Licensee said that, "in hindsight [it acknowledged] that some of the further comments that followed the initial conversation – although brief – strayed into more mature themes", adding that "the complainant's concerns [had] therefore been noted and will certainly be taken on board for future shows".

### **Decision**

Reflecting our duties under the Communications Act 2003<sup>1</sup>, Section One of the Code requires that people under eighteen are protected from unsuitable material in programmes.

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.

Rule 1.3 states that children must be protected by appropriate scheduling from material that is unsuitable for them.

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<sup>1</sup> <http://www.legislation.gov.uk/ukpga/2003/21/section/319>



Ofcom's guidance on material that is unsuitable for children<sup>2</sup>, states:

"Appropriate scheduling is judged according to all the relevant factors. These include such points as: the nature of the content; the likely number and age range of children in the audience; and the nature of the station and the particular programming".

Rule 1.5 states that broadcasters must have particular regard to times when children are particularly likely to be listening.

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

"For the purpose of determining when children are particularly likely to be listening, Ofcom will take account of all relevant information available to it. However, based on Ofcom's analysis of audience listening data, and previous Ofcom decisions, radio broadcasters should have particular regard to broadcasting content at the following times: ...between 06:00 and 19:00 at weekends all year around...".

Ofcom first considered whether the material in this case was unsuitable for children.

The presenter asked Mr Burrell, the Elvis Presley tribute artist, whether he had ever had sex as Elvis. He responded by joking that he had kept his cape on, but not his studded jump suit, as *"they get very spikey and so they can cut you in places that you wouldn't imagine"*. After a brief studio reaction, the interview ended but was followed up by Mr Gee sharing an anecdote about Elvis Presley, which he had seen in a documentary. He claimed that the singer had left a hotel with a friend after having just met a prostitute, and told him that *"she gives tremendous head, tremendous head"*.

Ofcom took into account Global's view that Radio X targeted an 'alternative' audience and "maintains a distinction from other mainstream stations", with "edgier content in [Russell Brand's] show than on family-orientated pop music stations". Nevertheless, we did not consider the above was an appropriate topic of discussion for younger listeners and, in our view, it was unsuitable for children.

Ofcom next considered whether this material was appropriately scheduled.

The item was broadcast before lunchtime on a Sunday, when children were particularly likely to be listening, with no prior warning for listeners about what was going to be discussed.

Ofcom took into account the Licensee's observation that "the comments highlighted by the complainant were a fleeting moment" and "there was no focus or emphasis on this topic". Nevertheless, in our view, parents and carers were unlikely to have expected this material at this time, especially as the item focused primarily on the interviewee's role as a tribute act.

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<sup>2</sup> Paragraphs 27-32 of Ofcom's guidance on offensive language in radio, at:  
[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0014/40541/offensive-language.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0014/40541/offensive-language.pdf)

<sup>3</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0014/40541/offensive-language.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0014/40541/offensive-language.pdf)

Further, given the programme was pre-recorded, Ofcom considered the Licensee could have done more to limit the effect the 'adult themes' may have had on children in the audience. It is Ofcom's view that the material was inappropriately scheduled, in breach of Rule 1.3.

Ofcom then considered whether the broadcaster had had particular regard to times when children were particularly likely to be listening.

We took into account the Licensee's acknowledgement, "in hindsight ... that some of the further comments that followed the initial conversation – although brief – strayed into more mature themes". Ofcom considered that Global should have taken this into account when editing the pre-recorded programme.

It is Ofcom's view that Global had not had particular regard to times when children were likely to be listening, in breach of Rule 1.5.

### **Breaches of Rules 1.3 and 1.5**

## In Breach

### Top 3 in the Newspapers

#### *Al Magharibia TV, 9 February 2017, 04:30 and 10:35*

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#### Introduction

Al Magharibia is a television channel broadcasting in Arabic and French. The licence for Al Magharibia TV is held by Awraas TV Limited ("Awraas TV Ltd" or "the Licensee").

*Top 3 in the Newspapers* is a current affairs programme, covering the main political and social issues in Algeria.

During monitoring, we assessed two editions of *Top 3 in the Newspapers* presented by Djamaledine Benchenouf ("DB" or "the presenter") which contained statements about the policies and actions of the Algerian state and its authorities. Ofcom obtained independent translations of the programmes and gave the Licensee an opportunity to comment on their accuracy. Awraas TV Ltd made a number of non-substantive amendments to the translations which we took into consideration for this investigation.

#### Top 3 in the Newspapers – 04:30 edition

This 45-minute programme focused on the findings of recent international reports, including a US Department of State report and a French Parliamentary report, about alleged corruption and violations of human rights by the Algerian state and its authorities. The presenter was joined in the studio by Sammy Oussedik [SO], described in the programme as Chief Coordinator for Ibtyskar<sup>1</sup> and Brahim Younessi [BY], described as President of the UDM<sup>2</sup>. Ali Benouari [AB], described as President of Nida El Watan<sup>3</sup> joined the studio via phone.

The following discussion included several statements by the presenter and his guests about the policies and actions of the Algerian state and its authorities:

DB: *"We will therefore immediately start this episode, in which we will discuss international reports on Algeria. These reports are damning, to say the least. We will also talk about the reaction of the Algerian government to these reports".*

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<sup>1</sup> Sammy Oussedik created the movement "Ibtyskar" in 2015 and described it as being neither a political party, nor a think tank, but a movement for reflexion and action in the midst of the Algerian political and social crisis: [http://www.huffpostmaghreb.com/2016/05/09/oussedik-ibtikar-algerie\\_n\\_9869816.html](http://www.huffpostmaghreb.com/2016/05/09/oussedik-ibtikar-algerie_n_9869816.html)

<sup>2</sup> Union pour la Démocratie Musulmane (UDM) in Algeria describes itself as a political grouping of Algerian citizens to consolidate the link between Islam, democracy and modernity <http://udma.unblog.fr/a-propos/>

<sup>3</sup> Ofcom understands that Nida El Watan is an Algerian political party not officially recognised by the Algerian Government.

DB: *"Why have we chosen this TSA newspaper from 2016? It is to show you the different reaction that took place at that time. The Minister for Foreign Affairs, Ramtame Lamamra, reacted strongly to the report, which was about corruption and human rights violations. In contrast, this time, there has been almost no reaction to the French parliamentary informational report out on North Africa, which skewers Algeria on several matters".*

\*\*\*\*

DB: *"So, the American State Department issued a well-known report on Algeria in 2016, in which it discussed corruption and disregard for human rights, which are serious problems in Algeria. Mr. Lamamra reacted in a very strange way, saying that these are matters of national sovereignty".*

\*\*\*\*

BY: *"Whenever an assistant-director of a department or director of an agency praises the authorities [in Algiers], their policies, despite the corruption and human rights issues".*

\*\*\*\*

DB: *"So let's start by talking about this infamous American report, State report, from April 2016, that provoked a strong Algerian reaction, before moving on to the French report, by two French MPs who spent six months in North Africa and who carried out very in-depth research, and who then put out a pretty damning report on all of the countries of North Africa, especially Algeria. Tell us what you think of both reactions, in other words, the reaction to the American State Department report, and the total absence of a reaction to the French report, even though it says quite a lot".*

\*\*\*\*

AB: *"Going back to the American report. The American report, like the French report, once again, beggars belief. Not so much because of the content, since the Algerian opposition and Algerians have not waited for these countries to react in order to denounce corruption and contraventions of human rights and the freedom of the press".*

\*\*\*\*

DB: *"I also asked you why there wasn't a reaction as strong as yours, as reasonable...from the Algerian Regime".*

\*\*\*\*

DB: *"Either of you, what do you think of the lack of reaction by the Algerian authorities to these statements?"*

BY: *"The emotional reaction to the report has been expressed here in the studio".*

DB: *"You mean it's expressed here but not publicly? By the Algerian authorities?"*

BY: *"No, publicly, no, officially, no. There has been no reaction to the report".*

\*\*\*\*

BY: *"What they [referring to the French Parliamentary report] said is the undeniable truth, as you said, what one of the authors, Mr. Tessier, said, is the truth. The army controls the country. I'm very pleased that French officials, French MPs, and maybe even French ministers recognise that there is no democracy, that the Algerian regime is a military-mafia regime, that it's a military regime. A military dictatorship. It has to be said...I'm glad, that France agrees with the Algerian opposition and says, there are violations of human rights...Dr. Fekhar, a journalist was murdered, some of our countrymen are in prison, violations of human rights occur daily, etc. This is the truth".*

\*\*\*\*

AB: *"Only a corrupt parliament, a puppet parliament could take this kind of decision...Nonetheless, I'd like to add something, which is that the situation seems absolutely surreal, the French and American official reactions seem completely surreal...So, why surreal? Because they give the impression that they are criticising corruption, violations of human rights and the lack of freedom in Algeria, when in reality, they are doing the exact opposite...They are eager to come to Algiers to ask for support, financial or otherwise. The quid pro quo, of course, is that they contribute and continue to support the dictatorship in Algeria".*

\*\*\*\*

SO: *"I just want to add one more point to those raised in these reports. When we talk about human rights. You know, human rights isn't just a word. Behind human rights are individuals, who suffer, who are tortured, who are [unclear], who don't have access to lots of things. We mentioned Fekhar. I'm involved in defending him, there are bloggers, journalists, and others. We can't list them all because it would take several episodes. I want to remind people that behind these words, there are people, there is the suffering of our people, of our citizens".*

### Top 3 in the Newspapers – 10:35 edition

This 45-minute programme focused on allegations that a number of authorities within the Algerian state were: corrupt; violating human rights, including arbitrary arrests of activists; and, dividing the country's population through the use of violence. Ofcom understands that the debate in the programme focused on the crisis between 2013 and 2015 in the Mزاب Valley between Amazigh-speaking and Arabic speaking populations and the imprisonment of Algerian activist Kameleddine Fekhar who, at the time of the broadcast, was conducting a hunger strike in prison.

The presenter was joined in the studio by the following guests: Human rights activist Said Aknine [SA] and Youcef Hebib, President of the Society of Friends of the Berber Academy

Salah Dabouz [SD], lawyer for Kamaleddine Fekhar and President of the National Office of the Algerian League for the Defence of Human Rights joined the debate via phone.

The following statements were made by the presenter and his guests about the policies and actions of the Algerian state and its authorities during the programme:

DB: *"For those who know that the Algerian justice system cannot criticise itself, it was citizens, scapegoats, who were thrown in prison and accused of the worst crimes imaginable against the country".*

\*\*\*\*

DB: *"The Kamaleddine Fekhar issue is about the entire country, in that it shows how the regime has managed to turn us against each other, to poison our hearts, to use its security forces to make us angry, and its judicial system to gag and imprison those who refuse to bend before the despotism of a mafocracy that is willing to gamble with the lives of our children".*

\*\*\*\*

SA: *"After that, the judicial system, which operates on a political basis, has all the means it needs to justify arbitrary arrests in the media using artificial means".*

\*\*\*\*

SA: *"When the authorities start losing control, they foment tension in a region, even at the cost of their agents killing people, and create a media frenzy to distract people from the real problems and their own suffering".*

\*\*\*\*

SD *"Secondly, those who have been arrested are all political activists, mostly from the Mzab community. I myself was almost arrested and am still under judicial supervision because I have made statements that displease the authorities".*

DB: *"You were even targeted by the governor of Ghardaïa, who threatened you and made a very interesting statement, he came close to saying that he would use the judicial system to attack you. This shows that the judicial system is subject to political and governmental interests".*

SD: *"No, he clearly stated that he personally had decided to put me under judicial supervision, and that if I didn't keep quiet, if I didn't stop making statements, I would get thrown into Mne'a prison...He also said that he wouldn't take this kind of decision without consulting his higher-ups... it's a crime against an entire population, against a whole region, putting the police under military control, verbally...".*

\*\*\*\*

SA: *"The authorities have appropriated these differences to turn them into hatred. They have appropriated these differences to turn them into violence. They have*

*appropriated these differences to use them against the people... When I see a minister, a member of cabinet, an official, accusing one another, it becomes clear to me that it is a clanocracy, where some people pull strings to control society. So people who believe that the real power is in the institutions, in this facade, in these farcical elections, what do you think about freedom of expression, what do you think about freedom of association, what do you think about the activists who are rotting in prison. You have sold their blood, their futures, their lives, so that you can have [unclear]. You have conditioned people to the point that we refuse to give any freedoms to people”.*

DB: *“Yes, as you explained very well, this regime gets involved in everything and distorts everything”.*

Ofcom considered that these two editions of *Top 3 of the Newspapers* raised potential issues under the following Code rule:

Rule 5.5: “Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved”.

We requested comments from the Licensee on how the programmes complied with this rule.

## Response

Awraas TV Ltd explained that *Top 3 of the Newspapers* is “a live discussion programme focusing on matters in the news and current affairs”. It said that “the channel always seeks to maintain impartiality and show alternative perspectives within programmes or linked programmes or a series of programmes” and that in the past it had invited “many pro-regime officials to contribute”<sup>4</sup>.

The Licensee explained the challenge of inviting representatives of the Algerian Government to contribute in light of the political, economic and social context in Algeria. It said that “the channel is considered by the [Algerian] regime as an ‘enemy of the state’” and that the Home Office Minister “declared” it “against the ‘interest of the country’”. It added that “representatives who come on to the Channel and the show are subsequently approached by the Algerian Government and informed not to contribute”<sup>5</sup>. The Licensee also said that other media criticised Al Magharibia TV “for trying to get representatives of the Algerian Government as guests on the Programme”<sup>6</sup>.

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<sup>4</sup> For example, the Licensee said that in the past it had invited the following officials to take part in its programmes: Amar Sadani (Former Secretary General of the FLN (National Liberation Front)); Shafik Mesbah (Former Officer at the Intelligence Agency); Hamlat Ramadan (Former Colonel in the National Army); Mohamed Khalfaoui (Former Officer at the Intelligence Agency); Abdul-Aziz Moujahid (Retired General in the National Army); and General Ben Hadid (Retired General in the National Army).

<sup>5</sup> The Licensee said that this was “illustrated by the situation with General Ben Hadid after his appearance on the channel – who was subsequently arrested and detained” and referred to: <http://www.middleeasteye.net/news/algeria-generals-endless-autumn-429976202>

<sup>6</sup> See the news story dated 6 May 2017 which the Licensee referred to in its representations to Ofcom: <http://www.lematindz.net/news/24268-lamateurisme-mediatique-del-magharibia-et-le-jusquau-boutisme-du-pouvoir.html>

Awraas TV Ltd said that it was "important to consider" the programmes "in the context of the reports"<sup>7</sup> discussed. It argued that the "corruption and human rights violations" of the Algerian Government "have been widely reported and are not, generally and impartially, disputed"<sup>8</sup> and that "accordingly, the criticisms aimed at the Algerian government are akin to fact rather than opinion". In the Licensee's view, this made it less likely that anyone from the Algerian Government would be willing to provide alternative views.

Awraas TV Ltd also urged Ofcom "to recognise that as a broadcaster" it had "the right of freedom of expression under the Human Rights Act 1998 and the European Convention of Human Rights". It also said that it was "hugely important...to recognise the consensus of the vast majority of the Channel's viewers on issues relating to Algeria and to recognise that if certain other viewpoints are strongly presented then this would create huge controversy and an outcry from the Channel's viewing public which could be extremely damaging to the Channel's standing and integrity".

#### 04:30 edition

The Licensee argued that alternative viewpoints were included in the programme and that therefore due impartiality was preserved. For example, it said that:

- some of the guests were providing the viewpoint of the Algerian Government, because "[i]n some aspects they [the guests] side with the government, particularly on the issue of foreign interference";
- "[i]n some cases where criticism is levied at the Algerian Government it was not possible to obtain an alternate viewpoint". The Licensee explained that one of the guests said in the programme that there had been no official or public reaction of the Algerian Government to the findings of the international reports. It said that "in circumstances where the Algerian Government have not put forward an official stance there is no alternative view point for the editors, presenter or guests to express. Neither is there a viewpoint to express in captions. In the alternative, informing the viewers that there has been no official response should be considered as the alternative viewpoint";
- the guests were "not all members of the same Opposition leading to a mixed panel with alternative viewpoints";

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<sup>7</sup> The Licensee cited two reports:

- An information report from the French National Assembly on the European cooperation with the Maghreb countries dated 18 January 2017: <http://www.assemblee-nationale.fr/14/rap-info/i4384.asp>;
- A report from the United States Department of States published in 2014: <https://www.state.gov/documents/organization/236804.pdf>

<sup>8</sup> The Licensee referred to a report from Amnesty International about Algeria 2016/2017: <https://www.amnesty.org/en/countries/middle-east-and-north-africa/algeria/report-algeria/> and the 2016 report on Algeria from Freedom House: <https://freedomhouse.org/report/freedom-world/2016/algeria> that the Licensee referred to in its representations to argue that the "Algerian's struggle is considered legitimate"; and, "[i]nternational organisations agree with the views expressed within the Programmes".



- the “presenter makes sure that the speaking time is shared equally by asking another guest other questions”;
- the presenter invited alternative viewpoints when he said to his guests for example: “Don’t hesitate to interrupt each other, it would make things more lively...”; and,
- some of the guests’ statements were their “point of view”; “own analysis of the situation”; and, “own perspective as member of the Opposition”.

Awraas TV Ltd also argued that due impartiality was preserved because “an official statement from the Government about these reports...as it was published by the Algerian News Agency” was carried on two other programmes (*Al Hadath* and *Sada Chari*) broadcast on the same day. It said that in *Sada Chari*, the phone lines were opened to give “voice to anyone who would like to give their opinion about a subject whether they are from the public or from the Government, with no censorship whatsoever” and “some of the callers defended the point of view of the Government”.

#### 10:35 edition

The Licensee argued that alternative viewpoints were included in the programme and due impartiality was preserved. For example, it said that:

- “the views of both wings of the government of the country have been expressed” in the programme because it included ‘soundbites’ from the former leaders of the two major political parties (FLN and RND) in Algeria speaking during press conferences about the issues discussed in the programme;
- the guests were “not all highly critical of the Algerian Government”;
- the presenter disagreed with one of his guests who supported the separatist views of the prisoner, Kameleddine Fekhar and therefore the presenter was “defending the position of the Government”; and,
- guests were expressing their “point of view”.

In summary, the Licensee argued that the content of these editions of *Top 3 of the Newspapers* did not breach Rule 5.5 of the Code because they were: “merely factual” and “not a matter of controversy”; reflected “international law and the stance of the Algerian Government”; and, “alternative viewpoints” of the presenter, the guests and the Algerian Government were represented.

The Licensee also argued that the material was “consistent with audience’s expectations” which was to receive “specialist content and output...in light of the political, economic and social issues of concerns to the citizens of North Africa globally”.

In response to Ofcom's Preliminary View, the Licensee said it had adopted new measures to ensure compliance with the Code including, but not limited to: inviting guests with different views to appear on the programme; “try harder to offer alternative viewpoints” from presenters in the event guests are not available; “providing alternative viewpoints in linked programmes”; and, “opened up telephone lines to callers without censorship”. Awraas TV Limited added that it had suspended *Top 3 of the Newspapers* for August 2017 “so that a

complete review of the programme can be completed" and that "staff are to be sent on continuous professional development courses".

## Decision

Reflecting our duties under the Communications Act 2003<sup>9</sup>, Section Five of the Code requires that the special impartiality requirements are met. Rule 5.5 requires that due impartiality is preserved on matters of political or industrial controversy and matters relating to current public policy.

Ofcom takes account of the audience's and the broadcaster's right to freedom of expression set out in Article 10 of the European Convention on Human Rights. Ofcom must seek to balance broadcasters' freedom to discuss any controversial subject or point of view in their programming, and compliance with Section Five.

The Code makes clear that the term "due" means adequate or appropriate to the subject matter. "Due impartiality" does not therefore mean an equal division of time must be given to every view, or that every argument must be represented. Due impartiality can be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures this.

Ofcom underlines that the broadcasting of highly critical comments concerning the policies and actions of any government or state agency is not, in itself, a breach of due impartiality. However, depending on the specific circumstances, it may be necessary to reflect alternative viewpoints or provide context in an appropriate way to ensure that Section Five is complied with.

Ofcom's Guidance<sup>10</sup> to Section Five ("the Guidance") makes clear that "whether or not due impartiality has been preserved will also be dependent on a range of 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 what the audience's expectations are". The Guidance also makes clear that "[i]f a service is broadcast outside the United Kingdom, this fact may be taken into account when considering the application of due impartiality. However, the due impartiality requirements of the Code still apply to such services".

### Applicability of Rule 5.5

Ofcom first considered whether Rule 5.5 applied in this case – that is, whether these two editions of *Top 3 of the Newspapers* concerned matters of political or industrial controversy or matters relating to current public policy.

#### *04:30 edition*

This was a debate about the findings of recent American State Department and French parliamentary reports on the current political, social and economic situation in Algeria. The presenter said:

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<sup>9</sup><http://www.legislation.gov.uk/ukpga/2003/21/section/319>

<sup>10</sup>[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0018/24534/section5.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0018/24534/section5.pdf)

*“French officials, French MPs, and maybe even French ministers recognise that there is no democracy, that the Algerian regime is a military-mafia regime, that it's a military regime. A military dictatorship. It has to be said...I'm glad, that France agrees with the Algerian opposition and says, there are violations of human rights...”.*

The findings of these international reports included serious allegations that the Algerian state was: a “*military dictatorship*”; “*corrupt*”; and, violating human rights. We considered that any debate surrounding this topic was clearly a matter of political controversy in Algeria. Rule 5.5 was therefore engaged.

#### *10:35 edition*

This edition was broadcast later on the same day. It discussed the Algerian activist Kamaledine Fekhar's and other detainees' hunger strike in an Algerian prison and, more generally, the Algerian state's treatment of political activists in Algeria. The programme also referred to the findings of the international reports outlined above. The presenter said:

*“The Kamaledine Fekhar issue is about the entire country, in that it shows how the regime has managed to turn us against each other, to poison our hearts, to use its security forces to make us angry, and its judicial system to gag and imprison those who refuse to bend before the despotism of a mafocracy that is willing to gamble with the lives of our children”.*

Given this outlined the Algerian state's alleged violation of human rights, including the treatment of some of its citizens, Ofcom considered that any debate surrounding it was clearly a matter of political controversy in Algeria. Rule 5.5 was therefore engaged.

We therefore went on to assess whether due impartiality was preserved in these programmes.

#### The preservation of due impartiality

##### *04:30 edition*

As set out above, this edition contained several allegations against the Algerian state and its authorities. Repeated criticism included for example that: there was “*corruption and contraventions of human rights and the freedom of the press*”; “*the Algerian regime is a military-mafia regime... A military dictatorship*”; and, the Algerian parliament is “*corrupt*”.

Ofcom was of the view that the Algerian state's views in response to these allegations should have been represented to ensure due impartiality was preserved.

Ofcom took into account the Licensee's representations that the channel is considered by the Algerian state as an “*enemy of the state*” and “*against the interest of the country*” and that “*few are prepared to accept the Channel's invitation to participate in programme discussions*”. The Licensee argued that in this case, the Algerian Government had not officially responded to the findings of the report that was discussed in the programme and that in the absence of such view, it was not possible to put forward the viewpoint of the Algerian government. It added that “[i]n the alternative, informing the viewers that there has been no official response should be considered as the alternative viewpoint”.

The presenter did reference to *The Minister for Foreign Affairs, Ramtame Lamamra* saying he had *“reacted strongly to the [US State Department] report”*. There were also a couple of other references to the absence of Algerian state's reaction to the findings of the French report, for example: one guest said that the Algerian authorities did not react to the report *“publicly”* or *“officially”*. However, these viewpoints were significantly outweighed by the heavily critical statements made about the Algerian state.

The Licensee offered a number of other examples where it believed the guests provided alternative opinions. However, none of these opinions reflected the alternative or official viewpoint of the Algerian state on the substantive allegations and the range of criticism levelled at it. For example, Awraas TV Ltd said *“the guests are not highly opposed to [the Algerian] Government. Whilst they are from the opposition they do not all represent the same party”*. However, we considered these contributions were almost entirely critical of the Algerian state and its policies and actions. For due impartiality to be preserved about the matters discussed in the programme, alternative viewpoints, for example viewpoints that defended or explained the policies and actions of the Algerian state and its authorities in relation to the treatment of political activists and freedom of the press, needed to have been included and the criticism levelled at the Algerian state adequately challenged, for example by the presenter.

#### *10:35 edition*

As set out above, this programme included several statements about the policies and actions of the Algerian state and its authorities. The various comments implied that: the judicial system was corrupt, for example: *“the Algerian justice system cannot criticise itself, it was citizens, scapegoats, who were thrown in prison and accused of the worst crimes imaginable against the country”*; citizens who oppose the Algerian state were silenced and imprisoned, for example: *“its judicial system gags and imprison those who refuse to bend before the despotism of a mafocracy”*; and, some of the authorities of the Algerian state were responsible for fostering hatred amongst its population, for example: *“the security services side with one part of the population against the other”*; [i]t shows how the regime has managed to turn us against each other, to poison our hearts, to use its security forces to make us angry”.

The viewpoints expressed in this edition of the programme were highly critical of the policies and actions of the Algerian state and its authorities. Ofcom was of the view that the Algerian state's response to such critical references should have been represented to ensure due impartiality was preserved. We took into account the Licensee's argument that the programme included references to the Algerian state's viewpoint because two brief clips of two former leaders of the two main political parties in Algeria were included in the programme. However, we did not consider the comments made by these former officials could reasonably be said to represent the current official stance of the Algerian state on the matters discussed in the programme.

For due impartiality to be preserved, alternative viewpoints, for example those that defended or explained the policies and actions of the Algerian state on the treatment of political activists, should have been included. Again, Ofcom took into account of the Licensee's representations on the challenges it told us it faces in getting government officials to contribute to their programmes. However, this did not, in our view, remove the Licensee's obligation to seek to represent the Algerian state's viewpoint on the issues discussed in other ways, for example by the presenter or captions.

The Licensee argued that some of the statements made in the programme were guests expressing “their point of view”. We did not dispute that these viewpoints were personal opinions of political commentators on the different policies and actions of the Algerian state. The Licensee was free to broadcast a programme containing criticisms of the Algerian state’s policies and actions. However, in doing so, Awraas TV Ltd needed to comply with the Code, including the due impartiality requirements. In this case, all the views expressed in the programme, including the presenter’s, were implicitly or explicitly critical of the policies and actions of the Algerian state and they were not adequately challenged, nor was sufficient context provided to preserve due impartiality.

Rule 5.5 of the Code permits the preservation of due impartiality to be “achieved within a programme or over 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. The Licensee referred to two other news programmes, *Al Hadath* and *Sada Chari*, broadcast on the same day that it argued “should be considered editorially linked programmes” to the *Top 3 of the Newspapers* and that an “an official statement” of the Algerian Government on the findings of the international reports was included in these programmes. However, neither edition of *Top 3 of the Newspapers* referred to these two other programmes, nor was it made clear to the audience that the reaction of the Algerian Government to the findings of the international reports was an issue which would be discussed in other programmes broadcast later on the same day. We therefore considered that, on the basis of what was broadcast, these editions of *Top 3 of the Newspapers* were not editorially linked with the two other programmes the Licensee had identified.

We also took into account other arguments put forward by the Licensee that due impartiality was preserved:

Firstly, Awraas TV Ltd pointed out that the allegations against the Algerian state had been substantiated by two other recent reports from Amnesty International and Freedom House<sup>11</sup>, which, it argued, demonstrated that “international organisations agree with the views expressed within the programmes”. In Ofcom’s view, these reports did not, however, negate the need for the Licensee to reflect alternative viewpoints in the programmes to preserve due impartiality.

Secondly, we accepted the Licensee’s argument that its viewers would have expected programmes on the channel and in the *Top 3 of the Newspapers* series to address controversial issues and criticise the Algerian state and its authorities and to do so from an opposition perspective. However, just because the majority of the audience may share the same viewpoint as the provider of the service does not lessen the requirement on that service to reflect alternative viewpoints as appropriate. In this case, the programme gave a one-sided view which was highly critical of several policies and actions of the Algerian state and its authorities and it did not provide sufficient alternative viewpoints.

The Licensee argued it was “fundamental to allow the channel to broadcast an alternative perspective on current affairs compared to other mainstream channels”, and pointed to its right to freedom of expression. However, the right to freedom of expression is not absolute since the application of the due impartiality rules, which are derived directly from statute, requires broadcasters to ensure that neither side of a debate relating to matters of political controversy and matters relating to current public policy is unduly favoured.

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<sup>11</sup> See footnote 8.

We considered the nature of the channel and its audience's expectations. However, we considered that these contextual factors were not sufficient to ensure that due impartiality was preserved. Furthermore, in the absence of sufficient alternative viewpoints and/or challenge to the critical views expressed on policies and actions of the Algerian state, due impartiality was not preserved in these programmes. In addition, the Licensee did not provide any evidence of alternative viewpoints in editorially linked programmes.

We also took into account that the Licensee said it had taken steps to "improve its compliance" with the Code, including: a complete review of the programme; inviting guests with different views to appear on the programme; encourage presenters to be more "active" in challenging views; and, providing continuous professional development courses to staff. Nevertheless, for the reasons outlined above, Ofcom's Decision is that the Licensee failed to preserve due impartiality in the two editions of the *Top 3 of the Newspapers*, in breach of Rule 5.5 of the Code.

### **Breach of Rule 5.5**

## In Breach

### The Bigger Drive Home *City Beat Preston, 8 June 2017, 18:35*

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#### Introduction

City Beat Preston is a community radio station broadcasting in Preston, Lancashire. The licence for the service is held by Preston Community Radio 23 ( "Preston Community Radio" or "the Licensee").

*The Bigger Drive Home* is the station's drive-time programme, broadcast every Monday to Thursday between 15:00 and 19:00.

Ofcom received a complaint about an edition of the programme broadcast on 8 June 2017 which referred to transgender people.

Towards the end of the programme the presenter read out a list of people who were celebrating their birthdays on that date and then said:

*"And if you're out and about having a few drinks tonight, don't forget like I always tell you – if you are single and you meet somebody tonight, make sure you know exactly what they're gonna be looking like in the morning. I know [another CityBeat presenter], he does it all the time. Goes out, has a few beers, meets a girl and then wakes up in the morning and finds out it's, er, a transgender. Ah! [laughter] Can I say that? 'Course I can!"*

Around two and a half minutes later, and following an advertising break, the presenter said:

*"And by the way, I was only joking about transgenders and [another CityBeat presenter]"*.

Ofcom considered that the material raised issues under the following rule of the Code:

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

Ofcom requested comments from the Licensee on how the programme had complied with this rule.

#### Response

The Licensee apologised for any offence caused in the programme and explained that the remarks had been made "without thinking", adding that the presenter had "never done this kind of thing before". Preston Community Radio added that City Beat Preston had been successful in working with different communities in the area, culminating in a major public service broadcaster recently filming at the station.

## Decision

Reflecting our duties under the Communications Act 2003<sup>1</sup>, Section Two of the Code provides protection for members of the public from harmful and/or offensive material.

Ofcom takes account of the audience's and the broadcaster's right to freedom of expression set out in Article 10 of the European Convention on Human Rights. Ofcom must seek to balance its duties to ensure that listeners are given adequate protection from offensive material with the broadcaster's and audience's right to freedom of expression.

In reaching its Decision, Ofcom has also had due regard<sup>2</sup> in the exercise of its functions to the need to eliminate unlawful discrimination, to advance equality of opportunity and to foster good relations between those who share a relevant protected characteristic, such as gender reassignment, and those who do not.

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 listeners, the time of the broadcast and the service the material was broadcast on.

Ofcom first considered whether the broadcast contained material which could be considered offensive. The presenter sought to make a joke by referring to a colleague's experience with transgender people. We considered this had the effect of portraying transgender people in a negative and derogatory way and therefore had the potential to be offensive.

Ofcom went on to consider whether this content was justified by the context. In our view the topic of listeners' birthdays was likely to have been broadly in line with listeners' expectations of this drive-time programme, containing music, speech and listener interaction with a light-hearted, jovial tone. However, Ofcom considered that this context did not justify the potentially offensive reference to transgender people.

We took into account that the presenter went on to say: *"And by the way, I was only joking about transgenders and [another CityBeat presenter]"*. In Ofcom's view, this may have provided some limited mitigation to the potential offence. However, we considered that the presenter's use of the collective noun *"transgenders"* had further potential to cause offence<sup>3</sup>.

Therefore, for the reasons outlined above, we considered that the content was in breach of Rule 2.3 of the Code.

### Breach of Rule 2.3

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<sup>1</sup> <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

<sup>2</sup> Under section 149 of the Equality Act 2010.

<sup>3</sup> Ofcom's most recent audience research on the use of offensive language was conducted in 2016. It did not specifically include research on describing transgender people as "transgenders" but did find that describing gay people as "gays" was likely to be considered mildly offensive by audiences. The research is available at [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0022/91624/OfcomOffensiveLanguage.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0022/91624/OfcomOffensiveLanguage.pdf).



## In Breach

### Behind the Success

**Channel i, 16 May 2017, 12:00**

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#### Introduction

Channel i is a news and general entertainment channel aimed at the Bangladeshi community in the UK and Europe. The licence for Channel i is held by Prime Bangla Limited ("Prime Bangla" or "the Licensee").

Ofcom received a complaint about *Behind the Success*, a series of programmes profiling the careers of successful people.

The guest being interviewed in this episode was Mr Badruddoza, the Managing Director of Shapla City Limited, a property development and Real Estate Business based in Bangladesh. The presenter said:

*"I would like to let the viewers know that the Shapla City is building 160 buildings in Dhaka. The filings have already been started. If you have any question you can call, SMS, or email us. Let's share the success story of this big project and 160 developments with the viewers".*

Details of the building project were discussed throughout the programme, including: information about the health and safety measures in the buildings; the location; and surrounding traffic. Viewers were invited to call, email, or text the programme with their questions for Mr Badruddoza, and the presenter advised viewers to call the "back office" if they wanted the contact number for Shapla City Limited. One text resulted in the following exchange:

Presenter: *"Dear viewers, welcome back to BTS after the break. Let's hear and share the success story of Brother Badruddoza, the Managing Director of Shapla City. Before going into that let me quickly read two SMSs that we have received. The first SMS is from [name]. He has conveyed his salaam to you and he is your client. [name] has written that he has been thinking of purchasing and he has been watching it online. So, [name] and [name], thank you for your SMS. Mr Badruddoza, how many flats do you have in each building?"*

Mr Badruddoza: *"We have 72 units in each building".*

Presenter: *"How many bedrooms, two/three?"*

Mr Badruddoza: *"There are 36 flats in each side. In one side 700 sq feet, one-bedroom flat. In another side, we have 3 bedroom flats and they are 1091 sq feet".*

Presenter: *"So every flat has separate sitting and drawing rooms?"*

Mr Badruddoza: *"Yes. In the 700 sq ft flat, there is one bedroom and drawing/dining attached, one kitchen, two toilets, and one balcony".*

Presenter: *"In Bangladesh we have a separate toilet for the maids. Do you have that facility?"*

Mr Badrudoza: *"First of all, these are low-budget flats, studio flats. If I want to make it bigger, it won't be possible, as the costing will increase. If someone wants, we can merge two flats and make those facilities available".*

Presenter: *"Please do not mind, I need to ask some free and frank questions on behalf of the audience of Channel i. We have seen many projects and invested in them in Bangladesh. We lost money. There is no trace of them now. Where is the guarantee that this Shapla City will remain?"*

Mr Badrudoza: *"My warranty is in my payment system. It is designed in such a way – nowhere in the world does any developer say, 'Don't pay now, leave the payment till you get the flat and start living in it'".*

Presenter: *"Explain it to me more clearly please".*

Mr Badrudoza: *"So let's say the cheapest flat costs 27,500,000 BDT<sup>1</sup>. Before taking possession of the flat, you pay 21,500,000 BDT. You pay the rest of the money, 6,500,000 BDT after taking possession. We are giving more guarantees as well. And also the 27,500,000 BDT will be paid in instalments. Any big lump sum that is related to any big work will be taken after a contract is signed. For example, if you see the piling is going on, you are satisfied, you pay for it, you see the roof is being made, you pay for it. When you see the finishing work is going on, you pay 500,000 BDT. Contract is made like that. If I do not do those works, I cannot ask for money".*

Presenter: *"I see".*

Mr Badrudoza: *"This is not a small project. It will finish in 2030. The amount of money we are spending for branding the company, I don't think many companies even have that much capital. Branding does not give me any return now. It will do so in future".*

Presenter: *"I see. Do you have any offices in the UK or in Europe?"*

Mr Badrudoza: *"Yes, I have many offices in Europe: in Madrid and Barcelona in Spain; Rome, Napoli and Milan in Italy; also in France. We have been thinking recently about building offices in Sweden and Portugal. We also have offices in the UK, which are at 124 Whitechapel".*

We requested information from the Licensee about any commercial arrangements associated with the references to Shapla City Limited. Based on the information provided, Ofcom considered that the material raised issues under the following code rules:

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

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<sup>1</sup> BDT, or Bangladeshi Taka, is the currency of Bangladesh.

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

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

Ofcom asked the Licensee for its comments on how *Behind the Success* complied with these rules.

### Response

The Licensee apologised for the content of this programme. It stated that: “this was not done intentionally. It is purely a[n] editorial mis-judgment and we will make sure this will not repeat again”.

### Decision

Reflecting our duties under the Communications Act 2003<sup>2</sup>, Section Nine of the Code limits the extent to which commercial references can feature within television programming. This ensures there is a distinction between advertising and programming, and prevents broadcasters exceeding the limits on the amount of time they are allowed to use for advertising.

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

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

Under Rule 9.5, no undue prominence may be given in programming to a product, service or trade mark. Rule 9.5 makes clear that undue prominence may result from a reference to a product, service or trade mark where there is no editorial justification, or from the manner in which a product, service or trade mark is referred to. Ofcom's published Guidance on Rule 9.5 explains that “the level of prominence given to a product, service or trade mark will be judged against the editorial context in which the reference appears”.

Ofcom accepts that programmes that profile successful individuals may reference the individual's current business ventures. However, when doing so, care is needed to ensure the programme is not used as an advertising platform. In this case, the interview featured the guest's building project and included frequent information on pricing, buying options and investment security. Further, the locations of the guest's offices were given and although the

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<sup>2</sup> <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

telephone number for the featured business was not provided during the broadcast, viewers were advised to call the "back office" of Channel i to obtain this information. Ofcom's therefore considered that the programme was in breach of Rule 9.4 of the Code.

In our view, the programme was so promotional in nature, that it also gave undue prominence to the building project. Therefore our decision was that the programme was also in breach of Rule 9.5.

Ofcom continues to be concerned about the Licensee's compliance with Section Nine of the Code and is considering whether further regulatory action is necessary.

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

## In Breach

### Amader Khobor

**Channel i, 1 February 2017, 09:30**

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#### Introduction

Channel i is a news and general entertainment channel aimed at the Bangladeshi community in the UK and Europe. The licence for Channel i is held by Prime Bangla Limited ("Prime Bangla" or "the Licensee").

Ofcom received a complaint about an item in *Amader Khobor*, a news programme, which featured references to a fish shop in Birmingham called Bangla Fish Bazaar.

As the programme was in Bengali, Ofcom commissioned an independent translation of the material and gave the Licensee an opportunity to comment on the accuracy of the translation. The Licensee did not provide any comments, therefore we relied on the translation for the purposes of the investigation.

Introducing the item, the news presenter stated:

*"The Bangla Fish Bazar at the Coventry Road, Birmingham has been fulfilling Bengalis' demand for fish with their huge collection. On their second anniversary, fish is being sold at a reduced price for customers at the Bangla Fish Bazar".*

During the item, while footage of the shop was shown, a reporter made comments about the store, including:

*"Due to the success of the Bangla Fish Bazar at the Small Heath, Birmingham, a special offer has begun at their fish festival as a part of their community service. This offer will run from 30th January to 5th February".*

The item also included a customer stating:

*"A sale started last Sunday at the Bangla Fish Bazar at the Coventry Road, Birmingham. Fish from Bangladesh has arrived. I invite you to come. This sale will continue till 5<sup>th</sup> of February. I invite all of you to come. Many big fish have arrived. Thank you all".*

We requested information from the Licensee about any commercial arrangements associated with the references to the fish shop. Based on the information provided, Ofcom considered that the material raised issues under the following Code rules:

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

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

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

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

Ofcom asked the Licensee for its comments on how *Amader Khobor* complied with these rules.

### Response

When the Licensee responded to Ofcom's request for information about commercial arrangements associated with the references to the fish shop, it stated “normally this news [is] broadcast with business news, but unfortunately they [the news team] broadcast this as a normal news”.

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

### Decision

Reflecting our duties under the Communications Act 2003<sup>1</sup>, Section Nine of the Code limits the extent to which commercial references can feature within television programming. This ensures there is a distinction between advertising and programming, and prevents broadcasters exceeding the limits on the amount of time they are allowed to use for advertising.

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

Rule 9.4 requires that products, services and trade marks must not be promoted in programming. Ofcom's published guidance<sup>2</sup> on Rule 9.4 states: “Where a reference to a product or service features in a programme for purely editorial reasons, the extent to which a reference will be considered promotional will be judged by the context in which it appears. In general, products or services should not be referred to using favourable or superlative language and prices and availability should not be discussed”.

Under Rule 9.5, no undue prominence may be given in programming to a product, service or trade mark. Rule 9.5 makes clear that undue prominence may result from a reference to a product, service or trade mark where there is no editorial justification, or from the manner in which a product, service or trade mark is referred to. Ofcom's published Guidance<sup>3</sup> on Rule 9.5 explains that “the level of prominence given to a product, service or trade mark will be judged against the editorial context in which the reference appears”.

We took into account the Licensee's statement that this type of item would normally be broadcast as business news but, in this case, the report was included in “normal news” in error. Ofcom recognises that there is scope for broadcasters to include stories about local

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<sup>1</sup> <http://www.legislation.gov.uk/ukpga/2003/21/section/319> and <http://www.legislation.gov.uk/ukpga/2003/21/section/320>

<sup>2</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0014/33611/section9\\_may16.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0014/33611/section9_may16.pdf)

<sup>3</sup> See [footnote 2](#)

businesses in their news output. However, care is needed to ensure that when doing so, news (in whatever form) is not used, or is perceived as being used, as a promotional platform for the featured business.

In this case, we considered that the references to the sale taking place at the featured business were promotional and could not be editorially justified.

Ofcom's Decision is therefore that that the programme was in breach of Rules 9.4 and 9.5 of the Code.

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

## In Breach/ Not In Breach

### The World Right Now

**CNN International, 9 May 2017, 20:00**

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#### Introduction

CNN (Cable News Network) is a US based news channel that also broadcasts current affairs and documentaries via digital platforms worldwide. The Ofcom licence for its global service CNN International is held by Cable News Network Incorporated ("CNNI" or the Licensee").

We received a complaint about an edition of *The World Right Now*, which featured a substantial news item, containing graphic footage of the aftermath of an apparent chemical weapon attack on the town of Khan Sheikhoun in Syria on 4 April 2017. The report showed several lengthy images of children suffering extreme pain. The report also showed one child who had died and several other children who appeared to have died, or to be dying from their injuries.

The complainant argued that, despite repeated warnings and editorial justification for the broadcast, the harrowing footage was inappropriate for broadcast at this time.

This exclusive lead news item lasted for 25 minutes and comprised a headline sequence, a studio introduction, a seven and a half minute pre-recorded news package and a follow up studio discussion. The news sequence included several verbal and on screen warnings.

In the headline sequence the presenter said:

*"Tonight, shocking footage of a horrific attack. CNN brings you exclusive and very disturbing video of the aftermath of last month's chemical attack inside Syria".*

This was accompanied by a caption which stated:

*"Harrowing new video of chemical attack".*

The news item was then introduced:

*"We begin tonight with video from inside Syria that we must warn you is extremely disturbing..."*

This was accompanied by a smaller caption in the corner of the screen:

*"Warning: Disturbing video".*

The caption remained on screen as the presenter then introduced the channel's senior international correspondent, Clarissa Ward ("CW") in the studio, who also gave a verbal warning about the content that was about to be shown:

*"I do just want to re-iterate to our viewers that this is extremely disturbing material, if you have children at home you might want to have them leave the room. When the chemical attack hit Khan Sheikhoun some very brave journalists from the Aleppo Media*



*Centre went straight to the scene at enormous personal risk. The footage that they shot offers an unvarnished, unsanitised, up-close look at the horror of a war crime which is why we felt it is very important to show you".*

The "Warning" caption remained on screen throughout the seven and a half minute pre-recorded news package which contained very graphic eyewitness video footage, shot during the aftermath of the attack. It opened with a distant establishing shot of smoke rising from Khan Sheikhoun, followed by images of what appeared to be a cloud of gas lingering over the rooftops.

During the opening sequences of the report, before the dramatic images of the victims of the attack were broadcast, CW included another verbal warning in her script:

*"We must warn you these images are shocking".*

A lengthy sequence followed, which included these very graphic and disturbing images:

- a 25-second wide tracking shot, showing several motionless adults lying in a muddy street, ending in a mid-shot of a partially clothed young child lying motionless on cardboard debris;
- a four second close-up shot of a young child foaming at the mouth;
- a mid-shot and wide shot of a convulsing man being hosed with water; and
- a 33 second two-shot sequence, starting with a close-up of a young child lying on her back, crying and gasping for breath in the back of an open truck. The shot panned across to show, in medium close-up, more young children lying across or beside one another in their underwear gasping for breath, foaming at the mouth or lying motionless in the truck. The sequence ended with a mid-shot of two of the children being hosed with water in an attempt to resuscitate them, before fading to black.

This sequence was followed with a short interview with a doctor, translated and narrated by CW:

*"All of the cases were suffering from suffocation, convulsions, narrowing of the pupils, increased sweating and difficulty breathing. All this is proof that a chemical agent was used...I asked the rescue workers to first wash the victims with water and take off their clothes. This was the only first aid we could provide".*

The news item continued with more wide shots of victims lying on the street and a mid-shot of a young man convulsing on the ground, followed by an interview conducted later, after his recovery:

*"I fell down and couldn't feel a thing, I felt myself laying on the ground and my hands were hitting the ground and then I fainted...it was if I was hitting myself, I had no control, I couldn't see anything with my eyes".*

The report then went on to show footage of the treatment of victims including:

- a 33 second sequence inside the town's medical clinic showing a distressed man with his lifeless young daughter, including a mid-shot of her face and body, while he was told that his daughter had died;
- a sequence which included two explosions and their aftermath inside and outside the clinic apparently caused by further air strikes;
- wide shots of adult and child victims being brought out of ambulances;
- adult and child victims being treated; and
- a mid-shot of a baby being resuscitated with oxygen.

The report concluded with footage of families burying their dead, including shots of:

- a body in a tarpaulin being taken away for burial;
- a weeping man being consoled by a fellow mourner;
- the face of a child's corpse wrapped in a blanket; and
- a man crying at the graves of his family members who had been killed in the attack, including two sons, his brother and cousin.

Back in the studio CW concluded her report:

*"American, British and French intelligence as well as chemical weapons experts who we have spoken with all agree that this attack was almost certainly carried out by President Assad's forces. Samples taken from the scene have shown that the nerve agent was likely sarin gas which has been outlawed since the end of the First World War. In an interview shortly after the attack, Mr Assad denied it had ever taken place, he went as far as to say he was calling it 100% a fabrication, it never happened".*

CW was then asked a follow up question by the presenter to which she replied:

*"Those heartbreaking images of those children, those babies, that we agonised over whether we should even show these, but they are the most vulnerable and it is important".*

Ofcom considered the report raised potential issues under the following rules 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...Appropriate information should also be broadcast where it would assist in avoiding or minimising offence".

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

Ofcom asked the Licensee for its comments on how the news report complied with these rules.

## Response

CNNI said it had a serious commitment to its compliance responsibilities and a rigorous process for assessing challenging reports from its bureaux around the world. It strongly defended the coverage, saying it “took all reasonable steps to balance its reporting with its obligations under the Code and revealing such a distressing war crime to its viewers”.

### Background

The Licensee provided background to its decision to broadcast the footage of the attack on Khan Sheikhoun:

- on 4 April 2017, the attack had been denounced by the United States, when it was proposing a United Nations resolution condemning the Syrian regime. Several photographs were released to the media showing the effect of the attacks on children and others;
- on 7 April 2017, the US had launched missile strikes on Syria while debate continued internationally about the details of the attack and exactly who was responsible;
- on 13 April 2017, the Syrian President had denied his forces had carried out the attack and claimed his regime had no chemical weapons. He had also questioned whether anyone had died or been injured in the attack and whether children had been harmed in any way, saying reports of the attack had come from al-Qaeda allies opposed to the Syrian regime; and
- on 27 April 2017, as media efforts continued to establish whether a war crime had been committed, CNNI said it had been contacted by a trusted journalist from the Aleppo Media Centre with what seemed to be eye witness video footage of the immediate aftermath of the 4 April attack. After securing the content, the Licensee said that there was a lengthy verification, translation and editing process before the report was broadcast.

### Editorial justification

The Licensee argued that it had decided “at the highest level” to broadcast the report because “the reporting of conclusive evidence of a war crime was more than sufficient editorial justification for showing the undiluted images of death and suffering that had been denied by the Syrian President”. In its view, it was essential that the images were shown in full without blurring or other editing techniques being used, “...to refute the arguments put forward by President Assad and any subsequent argument that might arise that the new footage was not genuine”.

CNNI also argued that “the footage of the children had to be included in the report to specifically counter the arguments of President Assad that no children had been harmed in the attack”. It said that the images also provided “irrefutable evidence” that a chemical agent was the primary cause of the suffering. It added that it did not believe “these important points about the nature of the attack and its effects could have been made in any other way and the unedited images were essential to the reporting of this war crime”.

## Scheduling

CNNI explained that *The World Right Now* is the flagship daily evening news programme on CNN International, which contains detailed reporting and analysis of the most important news stories of the day. It said the programme is also “the final news bulletin of the day that is available for Europe, the Middle East and Africa audiences...it provided the last opportunity in the day for CNNI to broadcast the Syria report” for these audiences.

It pointed out that it was its “editorial policy and intent that such an important story as the report on the Syria gas attack should break in the most watched programme by our audiences across the world”. The Licensee also added that this bulletin “is seen in the Middle East as a regional bulletin of record”. Noting that there had been “a complete denial” by President Assad that the attack had happened, CNNI argued that a later transmission time would have resulted in the broadcast being missed by “a significant number of viewers”.

The Licensee said that the US Secretary of State, Rex Tillerson, was due to attend a meeting in Washington DC with the Russian Foreign Minister, Sergey Lavrov, the day after the CNNI broadcast on safe havens for Syrian civilians. CNNI believed it was essential that the broadcast took place in time to inform the debate prior to the meeting.

It argued that: “...viewers of *The World Right Now* expect to be confronted by serious reporting on the gravest matters. The Syria report would therefore not be beyond the general expectations of the audience at the time of broadcast. Whilst the images are undoubtedly difficult to watch and clearly had the potential to offend some viewers, CNNI is not aware of any general pattern of complaint to suggest that the broadcast has caused widespread offence...”. It said it had not received any complaints directly from its viewers about the broadcast.

The Licensee also pointed out that it had broadcast the report in full only once during the programme, and it had chosen not to repeat any images from the report, taking account of the potential offence that their repetition might cause.

## Warnings

The Licensee argued that as a specialist news channel, CNNI does not attract children. It said that audience data did not predict that there would be any children viewing the channel at 20:00.

CNNI highlighted that “it was agreed nevertheless that the report needed a strong verbal and visual warning to viewers about the nature of the images contained within it and that the warning should be given in time for viewers to decide whether to watch the report or not”.

The Licensee added that this initial warning “was supplemented by on screen text throughout the report that it contained disturbing images”. It also pointed to an additional verbal warning immediately before the distressing images in the report of the after effects of the chemical agent.

CNNI said that these were the strongest warnings it had ever given before broadcasting a report, which included a specific suggestion that children should not be in the room “in the

unlikely event that they were present". It argued that "the warnings that were given were clear and timely in order to minimise the potential offence".

## Decision

Reflecting our duties under the Communications Act 2003<sup>1</sup>, Section One of the Code requires that people under eighteen are protected from unsuitable content in programmes. Section Two of the Code requires that generally accepted standards are applied so as to provide adequate protection for members of the public from the inclusion of harmful or offensive material.

In preparing a Decision in this case, Ofcom has taken careful account of the right to freedom of expression set out in Article 10 of the European Convention on Human Rights. Ofcom considered it was clearly legitimate for CNNI to broadcast this report with important new evidence on a subject of major international interest.

It is in this context that Ofcom must seek an appropriate balance between the broadcaster's and audience's right to freedom of expression while ensuring children are protected from unsuitable material and viewers in general are protected from potentially offensive material.

This content was some of the most harrowing footage Ofcom has been called upon to assess as part of its regulatory duties. The images clearly showed the aftermath of what has been widely accepted to be a chemical weapons attack with the victims in extreme distress, and some, including children, clearly shown in anguish and apparently near or at the point of death.

The Code places no absolute prohibition on distressing or graphic content as there may be occasions where the broadcast of such material is justified. Ofcom believes that, taking into account the right to freedom of expression, it is important for news programmes to be able to report freely on events which broadcasters consider to be in the public interest. However, when transmitting distressing material broadcasters must comply with Rule 2.3 (offensive content must be justified by the context) and Rule 1.3 (to protect under-eighteens from material that is unsuitable for them by appropriate scheduling).

Against this background, Ofcom considered whether this programme complied with Rules 2.3 and 1.3 of the Code.

### Rule 2.3

Rule 2.3 states broadcasters must ensure 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 is broadcast, the degree of harm or offence likely to be caused by the material, the time of broadcast and the likely expectation of the audience.

We first considered whether this content was potentially offensive. As set out earlier, this report included lengthy and graphic images of extreme suffering among adults and young children. This material, showing as it did details of the aftermath of a chemical weapons attack, including young children apparently near or on the point of death. The footage was particularly harrowing. And, as mentioned above, was amongst the most distressing news

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<sup>1</sup> <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

footage that Ofcom has been called upon to assess. We considered it had clear potential to be offensive to viewers.

We then went on to consider whether this content was justified by the context. In Ofcom's view, given the strength of the broadcast material, it would require a proportionally very high level of contextual justification to be compliant with Rule 2.3.

When considering the nature of the editorial content in this case, we took into account the Licensee's various argument that "the reporting of conclusive evidence of a war crime was more than sufficient editorial justification for showing the undiluted images of death and suffering that had been denied by the Syrian President". Ofcom also considered CNI's argument that it was essential that the images were shown in full without blurring or other editing techniques being used, "to refute the arguments put forward by President Assad and any subsequent argument that might arise that the new footage was not genuine". We also took into account the Licensee's representations that the children had to be included in the report to "specifically counter the arguments of President Assad that no children had been harmed in the attack"; and that the images also provided "irrefutable evidence" that a chemical agent was the primary cause of the suffering.

We also took particular account of the right to freedom of expression in this case. Ofcom acknowledges that all broadcasters must have the editorial freedom to report on difficult, controversial and upsetting events. In reporting significant new evidence of potential war crimes, they must also have the freedom to select and present the information and facts as they wish in line with their right to freedom of expression, which also includes the audience's right to receive information and ideas. Accordingly, Ofcom must be careful to ensure that any regulatory intervention it takes, is both proportionate and necessary, while ensuring compliance with the Code.

Ofcom acknowledges that broadcasters should retain the freedom to report the reality of war and its consequences accurately to their audiences. We understand it is a fundamental duty of news programmes to inform their audiences about matters of public importance so informed debate can take place. At times this may mean the inclusion of disturbing images or distressing events in order to report conflicts accurately. In this case, we considered that, given the denials by President Assad about the involvement of his forces in a chemical attack on Khan Sheikhoun, this footage provided potential new evidence of a chemical attack and the extreme suffering that had been caused to the victims of that attack and therefore inform the debate regarding the attack on Khan Sheikhoun. Given the circumstances around this attack had been disputed, Ofcom accepted CNI's representations that this footage provided potential evidence to refute claims made by the Syrian Government regarding the attack and its impact on civilians. Therefore, Ofcom considered it was in the public interest to broadcast this footage, to inform public opinion and a wider debate about an international news story.

The Licensee argued that the content in this case would not be beyond the general expectations of the audience at the time of broadcast. We acknowledged that graphic images of war reporting would normally be within audience expectations of an established news channel such as this. However, in the particular and unique circumstances of this case, it was clear to Ofcom that CNI had carefully considered the implications of broadcasting these images. This was reflected in the repeated, clear and very strong warnings both before and during the broadcast of this report. There were verbal and visual warnings in the programme headline sequence, the introduction to the report and within the news report

itself. These warnings made clear to viewers that the footage would be “*shocking*”, “*horrific*” and “*very disturbing*”. Given how extensive these warnings were, we considered that adult viewers would have been left in no doubt that the report was going to include highly distressing footage of the aftermath of a chemical attack. Ofcom also took into account CNNI’s decision not to repeat any images from the report, taking account of the potential offence that their repetition might cause.

It is without doubt that editorial techniques, such as: appropriate blurring; editing; or the use of still images, would have clearly lessened the potential distress and offence caused by the broadcast of this material. However, we also considered that that, in light of the denials by President Assad about the involvement of his forces in any such attack and the potential new evidence this report brought to that international debate, there was a particular and exceptional contextual justification in broadcasting the material in an uncensored form, that made clear the clear and extreme suffering that had been caused to the victims, including young children.

In Ofcom’s view, this was a very difficult and finely balanced decision. The report included highly distressing and harrowing images that required an exceptionally high level of contextual justification in order to be broadcast in compliance with Rule 2.3. After careful consideration, it is Ofcom’s view there was a particular and exceptional contextual justification in broadcasting the material in an uncensored form to inform public opinion and a wider debate about a significant international news story.

Therefore, it is our Decision this broadcast was not in breach of Rule 2.3.

### Rule 1.3

This rule 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; and likely audience expectations.

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

During this 25-minute news item, large sections of the pre-recorded news package included images which were likely to be extremely distressing for many viewers, particularly children. There were several lengthy images of what appeared to be corpses of both adults and young children, and also adults and children shown in extreme distress as they lay injured and dying. The 33 second sequence of a young child crying and gasping for breath which developed to show several others lying in the back of a truck, either dead or in the most extreme distress, was likely to have been especially disturbing.

Given the graphic nature of this report, over several minutes, Ofcom took the view that it was unsuitable for children. We went on to examine whether the report was appropriately scheduled.

As reasoned above under Rule 2.3 Ofcom accepted CNNI’s view that it was important to bring this report to viewers’ attention, given reported denials by the Syrian regime that any children had been victims of this attack, and in light of the ongoing public debate about the impact on Syrian citizens.

Bringing news of global, national and local events to viewers’ attention is clearly the purpose of news channels, and one in which there is substantial public interest. There is a long history

of news channels reporting on war, conflicts, and other potentially distressing global events. The Licensee argued that the content in this case would not be beyond the general expectations of the audience at the time of broadcast. We acknowledged that graphic images of war reporting would normally be within audience expectations of an established news channel like CNN International.

Ofcom also recognised that as a news channel, CNN International's programming is aimed at adults and does not attract children. However, we took into account that this report was broadcast at 20:00, at a time when children could have come across it unawares, potentially while watching, unsupervised, by an adult.

We also took into consideration CNNI's view that if the report had been broadcast any later it may have been missed by a "significant numbers of viewers". We acknowledge that broadcasters, and particularly those broadcasting strong public interest news stories, will aim to attract the highest possible number of viewers for their content. However, this does not outweigh the requirement on broadcasters to ensure that any content that may be unsuitable for children is appropriately scheduled.

We considered the steps CNNI had taken to limit the possibility of any children in the audience watching this report by bringing the distressing nature of the content to viewers' attention. There were clear verbal and on screen warnings in the programme, throughout the headline and introduction sequences, as well as the pre-recorded package. The introduction also included a specific warning for parents and carers about children who might be viewing.

*"I do just want to re-iterate to our viewers that this is extremely disturbing material, if you have children at home you might want to have them leave the room".*

In our view, CNNI made concerted efforts to alert viewers to the distressing nature of the report. However, such warnings — while they may be useful in alerting adult viewers to disturbing or potentially offensive content — are not always sufficient to ensure that material is appropriately scheduled. In particular, we considered these warnings were likely to have had limited impact in the case of children potentially viewing content when unsupervised by adults.

In reaching our Decision, we took into account the strong editorial justification for broadcasting this report, the steps CNNI had taken to bring its distressing nature to viewers' attention, and the relatively low likelihood of children being in the audience of a specialised news channel. However, we considered that the extremely graphic, prolonged and distressing nature of the report could have caused significant distress to any children who had inadvertently viewed it. For these reasons, it is Ofcom's view that this report was too graphic for broadcast at 20:00, an hour before the watershed, and was therefore inappropriately scheduled.

It is therefore our Decision the content was in breach of Rule 1.3.

### **Not in breach of Rule 2.3**

### **Breach of Rule 1.3**



## Advertising scheduling cases

### In Breach

#### Advertising minutage

##### *Travel Channel, 3 and 8 April 2017, various times*

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#### Introduction

Travel Channel broadcasts documentaries and reality programmes related to leisure and world travel. The licence for the service is owned by Scripps Networks Limited ("the Licensee").

Ofcom was alerted to incidents when the Slovenian feed of Travel Channel broadcast 13 minutes and 59 seconds of advertising between 22:00 and 23:00 on 3 April 2017, and 17 minutes and 38 seconds between 16:00 and 17:00 on 8 April 2017.

Ofcom considered that this raised issues under Rule 2 of the Code on the Scheduling of Advertising (COSTA), which states:

"Time devoted to advertising and teleshopping spots on any channel in any clock hour must not exceed 12 minutes".

Ofcom therefore sought comments from the Licensee as to how the content complied with this rule.

#### Response

The Licensee said that Travel Channel operates as a pan-regional feed and in some territories, including Slovenia, advertisements may be inserted locally by a third-party sales house. It explained that triggers are embedded in the channel signal to prompt the insertion of local advertisements for scheduled durations.

The Licensee explained that the incidents were caused by additional unscheduled triggers which caused additional advertisements to be inserted automatically. It said that the root cause of the unscheduled triggers had not yet been identified but was believed to be local to the technical partner of the third-party sales house.

The Licensee said that the third-party sales house and its technical partner are developing an enhanced automated monitoring system to provide alerts and prompt appropriate action if an advertising break triggers at an unscheduled time. In the meantime, the technical partner of the third-party sales house has implemented manual hourly checks to ensure that breaks remain in synchronisation with scheduled breaks.

The Licensee added that while these breaches were unintentionally caused by a technical fault, it took this matter seriously and had reminded its third-party sales house and technical partner of their contractual responsibilities, and of Scripps' overriding obligations under its Ofcom licence. The Licensee said it would monitor the situation and the implementation of the automated monitoring system, and would continue to consider process and system enhancements to prevent further breaches.

## Decision

Reflecting our duties under the Communications Act 2003<sup>1</sup>, COSTA sets limits on the amount of advertising than can be broadcast ("advertising minutage").

We took into account the Licensee's statement that these overruns were unintentionally caused by a technical fault, and the measures it had taken to mitigate the likelihood of a recurrence. However, in this case, the Licensee exceeded the permitted allowance by one minute and 59 seconds and five minutes and 38 seconds in two respective clock hours. Therefore, Ofcom's Decision is that Rule 2 of COSTA was breached.

This compliance failure follows a previous breach recorded by Ofcom covering a series of advertising minutage overruns on Travel Channel<sup>2</sup>. In that case the overruns were caused by the unintentional absence of triggers to transmit local advertising resulting in breaks overrunning their allotted time. The Licensee explained that its sales house had introduced a new process of reviewing the daily break schedule to ensure that no triggers were missing, and it had also reminded the sales house of its contractual obligations with regard to Scripps' compliance with Ofcom rules.

However, the different set of circumstances in this case notwithstanding, Ofcom expects the Licensee to ensure its systems are sufficiently robust to prevent breaches of Rule 2 of COSTA. We will monitor the Licensee's compliance with COSTA and consider appropriate action should another breach occur.

## Breaches of Rule 2 of COSTA

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<sup>1</sup> <http://www.legislation.gov.uk/ukpga/2003/21/section/322>

<sup>2</sup> See: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/97640/Issue-323-of-Ofcoms-Broadcast-and-On-Demand-Bulletin.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/97640/Issue-323-of-Ofcoms-Broadcast-and-On-Demand-Bulletin.pdf)

## In Breach

### Advertising minutage

#### *TLC (Slovenia), 26 February 2017, various times*

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#### Introduction

TLC (Slovenia) broadcasts documentaries and reality programmes. The licence for the service is owned by Discovery Communications Europe Limited ("Discovery" or "the Licensee").

Ofcom received a complaint that on 26 February 2017 TLC (Slovenia) broadcast:

- 13 minutes and 58 seconds of advertising between 14:00 and 15:00;
- 13 minutes and 20 seconds of advertising between 15:00 and 16:00;
- 12 minutes and 43 seconds of advertising between 16:00 and 17:00; and
- 13 minutes and six seconds of advertising between 22:00 and 23:00.

Ofcom considered that this raised issues under Rule 2 of the Code on the Scheduling of Advertising (COSTA), which states:

"Time devoted to advertising and teleshopping spots on any channel in any clock hour must not exceed 12 minutes".

Ofcom therefore sought comments from the Licensee as to how the content complied with this rule.

#### Response

Discovery said that it was not aware of the issue at the time, but understood that it resulted from a software error in the advertising system used by its affiliate in Slovenia. The error meant that advertisements were transmitted instead of programme material.

The Licensee said that this software error had since been rectified and was unrelated to the previous COSTA related issues, all of which resulted in published breaches<sup>1</sup>.

Discovery said it takes regulatory compliance very seriously and that it was concerned that it had been unable to resolve the various COSTA issues that had arisen to date. It said that it was in the process of implementing a new system for inserting advertising in its Slovenian feed and was exploring additional measures to ensure compliance with COSTA.

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<sup>1</sup> See:

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0020/50582/issue\\_278.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0020/50582/issue_278.pdf);  
[https://www.ofcom.org.uk/data/assets/pdf\\_file/0025/54358/issue\\_292.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0025/54358/issue_292.pdf); and  
[https://www.ofcom.org.uk/data/assets/pdf\\_file/0026/97640/Issue-323-of-Ofcoms-Broadcast-and-On-Demand-Bulletin.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0026/97640/Issue-323-of-Ofcoms-Broadcast-and-On-Demand-Bulletin.pdf)

## Decision

Reflecting our duties under the Communications Act 2003<sup>2</sup>, COSTA sets limits on the amount of advertising that can be broadcast.

We took into account the Licensee's statement that the advertising overruns were unintentional, caused by a technical fault, and that it had taken measures to prevent a recurrence. However, in this case, the Licensee exceeded the permitted allowance on four occasions in one 24-hour period. Therefore, Rule 2 of COSTA was breached.

This compliance failure follows three previous breaches recorded by Ofcom against the Licensee regarding TLC (Slovenia)<sup>3</sup> over two years and four months, in each of those cases the service broadcast more advertising than permitted. Ofcom met with this Licensee in March 2017 to discuss its compliance with Rule 2 of COSTA. While that meeting occurred after the broadcast of the material subject to this finding, and the technical issues behind the fault in this case are different to those involved in the previous breaches, we are concerned about the Licensee's compliance with COSTA and will consider appropriate action should another breach occur.

### Breach of Rule 2 of COSTA

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<sup>2</sup> <http://www.legislation.gov.uk/ukpga/2003/21/section/322>

<sup>3</sup> [See footnote 1.](#)

## Broadcast Licence Conditions cases

### In Breach

#### Retention and production of recordings

##### *Radio Ramadan Stoke, 30 May 2017, 16:50*

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#### Introduction

Radio Ramadan Stoke was a local radio station aimed at the Muslim community in Stoke-on-Trent. It broadcast under a Restricted Service Licence from 26 May 2017 to 26 June 2017. The licence for the station was held by an individual, Muhammed Shah ("the Licensee").

Ofcom received a complaint that the station had broadcast a legal discussion that the complainant considered was misleading. Ofcom therefore requested a recording of the programme from the Licensee to assess the content.

The Licensee responded that, due to a series of technical difficulties, he had not made a recording of the programme.

Ofcom considered that the Licensee's inability to provide a recording raised potential issues under Conditions 8(2)(a) and (b) of Radio Ramadan Stoke's licence, which stated that:

"the Licensee shall:

- (a) make and retain, for a period of 42 days from the date of its inclusion, a recording of every programme included in the Licensed Service...
- (b) at the request of Ofcom forthwith produce to Ofcom any such recording for examination or reproduction..."

Ofcom therefore asked the Licensee how he had complied with Licence Conditions 8(2)(a) and (b) in this case.

#### Response

The Licensee apologised that he had been unable to provide a recording. He said that as soon as the technical problem was noticed an engineer addressed the issue and new equipment was installed.

The Licensee said that he takes his licence responsibilities extremely seriously and asked that Ofcom take into consideration his "impeccable record since 2001"<sup>1</sup> when coming to its decision.

In response to Ofcom's Preliminary View, the Licensee commented on why he considered the original broadcast was compliant with the Broadcasting Code. However, we did not consider these representations were relevant to our Decision as to whether the Licensee had complied with Licence Conditions 8(2)(a) and (b).

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<sup>1</sup> The Licensee has previously held 14 RSL licences and has no prior breaches recorded against him.

## **Decision**

In each broadcaster's licence there are conditions that require the licensee to retain recordings of all its broadcast output and to comply with any request by Ofcom to produce these recordings. For Restricted Service Licences, this is reflected in Licence Conditions 8(2)(a) and (b).

In this case, the Licensee failed to make and provide the requested recording. Therefore, Ofcom's Decision is that the Licensee had breached Conditions 8(2)(a) and (b).

We noted the Licensee's apology. However, these breaches were significant because they resulted in Ofcom being unable to fulfil its statutory duty to properly assess and regulate broadcast content.

### **Breaches of Licence Conditions 8(2)(a) and (b)**

## Fairness and Privacy cases

### Upheld

#### **Complaint by Mr Muhammed Asghar News, Channel 44, 27 January 2017**

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##### **Summary**

Ofcom has upheld Mr Muhammed Asghar's complaint of unjust or unfair treatment in the programme as broadcast.

The news programme made allegations of fraud against Mr Asghar. Mr Asghar complained that the allegations were "wrong and baseless" and that he was not given the opportunity to respond to them.

Ofcom found that:

- The broadcaster had not taken sufficient care to satisfy itself that the material facts were not presented in the programme in a way that was unfair to Mr Asghar.
- Given the seriousness of the allegations made in the programme, the broadcaster was required to offer Mr Asghar an appropriate and timely opportunity to respond. Its failure to do so resulted in unfairness to Mr Asghar.

##### **Programme summary**

Channel 44 is an Urdu language channel broadcast under an Ofcom licence held by City News Network (SMC) Pvt Ltd. As the programme was broadcast in Urdu, an English translation was transcribed by Ofcom and provided to the complainant and the broadcaster for comment. Neither party commented on the translation and both confirmed to Ofcom that they were content for the translation to be used for the purpose of investigating the complaint.

On 27 January 2017, Channel 44 broadcast an edition of its news programme. The presenter stated:

*"This is about a case of fraud relating to a British national. A member of the European Parliament, Afzal Khan, has written to the Chief Justice Lahore High Court, and to the British Ambassador in Pakistan".*

Three letters dated 23 January 2017 from Mr Afzal Khan, a Member of the European Parliament ("MEP"), written on behalf of Mr Aftab Hussein, were shown. The letters were addressed to: the Lahore High Court, Pakistan; the British High Commission, Islamabad; and, the High Commission of Pakistan in the UK. The letters, which were in English, stated:

*"Ch. Muhammad Asghar [the complainant] fraudulently transferred the share of the applicant and his fathers which is 66% in of the property on his own vide sale deed no 1014. That the applicant has always strived hard for the welfare of the overseas Pakistani but the applicant has been defrauded by a Pakistani from a valuable property of worth in Billions".*

The presenter said:

*"The affected British citizen, Aftab Hussein, states that he, along with his father, had invested in some properties in Pakistan. He states that following the death of his father, some influential persons had deprived him of his inheritance and taken possession of these properties. He further stated that he had taken the matter up at all the appropriate forums, and had filed a case in court. Unfortunately, the accused is a man of influence, and that is why as a British citizen he contacted his MEP and other relevant individuals. [The] Member of the European Parliament in an interview confirmed that he had written to the Chief Justice of the Lahore High Court and to the British Ambassador in Pakistan, and to the Pakistani Ambassador in Britain".*

Footage of Mr Hussein being interviewed was then shown. He said:

*"I have asked MP Afzal Khan who is an MP of the European Parliament to write to the Chief Justice of the Lahore High Court. He has met with me and listened to what I have to say, and has shown great sympathy, and he is really saddened that such injustice is committed against us overseas Pakistanis, there are Lords, you know, there are Councillors, Mayors and we are meeting with all of them. On my behalf, they have contacted the High Commission here and the British High Commission in Islamabad".*

During the report, the following captions were shown repeatedly:

*"A case of fraud with a Pakistani British citizen".*

And,

*"A letter written by MP Afzal Khan to the Chief Justice, Lahore and Pakistan Ambassador".*

The report ended.

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

- a) Mr Asghar complained that he was treated unjustly or unfairly in the programme as broadcast because "wrong and baseless" allegations were made against him, namely that he was accused of committing fraud. Mr Asghar said that the programme stated incorrectly that he had taken possession of Mr Aftab Hussein's property. Mr Asghar said that the broadcast of the programme had affected his family, caused him financial loss, and badly damaged his reputation.

In response, Aston Brooke Solicitors ("Aston Brooke"), on behalf of Channel 44, said that the programme included an allegation of fraud against Mr Asghar. It said that the allegations raised by Mr Hussein had been around since 2016 and the programme was produced on the basis of the information available at the time of broadcast (online news articles and other various documents, including the three letters included in the programme, were provided to Ofcom). Aston Brooke said that this was exemplified by the inclusion of the interview footage of the purported victim, Mr Hussein.

Channel 44's target audience was the Pakistani community and the channel had documented the progress of Mr Hussein's case against Mr Asghar. Aston Brooke said



that the item concerned British Pakistani individuals and a high-profile allegation of fraud which had been formally referred to the Chief Justice of the Lahore High Court. The case was therefore, newsworthy, informative, and was of public interest to the target audience.

Aston Brooke said that the programme clearly stated and portrayed that the case concerned an *allegation* (emphasis by Aston Brooke) of fraud and that it was for the relevant authority to investigate and adjudicate on whether Mr Asghar had been involved in fraudulent activity. It said that Channel 44 did not seek to act as the adjudicator in respect of this matter.

Regarding the repeated captions shown during the programme, Aston Brooke said that this further demonstrated that the programme included a report on a case of fraud. It said that the programme did not seek to establish or confirm whether Mr Asghar was guilty of the offence. It also said that the primary concern of the programme was to "...depict the evidence of the correspondence which was sent to various dignitaries, by Mr Hussein, in raising his complaint. It was not the mechanism of a campaign to 'point-finger' at the complainant in respect of the accusations made against him".

- b) Mr Asghar also complained that he was treated unjustly or unfairly in the programme as broadcast because he was not given the opportunity to respond to the allegations made about him in the programme.

In response, Aston Brooke said that Channel 44 refuted that Mr Asghar was not contacted to provide his response to the claims made in the programme. It said that Mr Asghar was contacted on 21 November 2016 (a copy of a call log was provided to Ofcom), with regards to the intended broadcast of another news programme broadcast in November 2016. It said that during this call, the complainant advised Channel 44 that he did not wish to provide representations, or respond to the allegations of fraud made against him and advised that "...he would be reserving his position in respect of issuing a response".

Aston Brooke said that it was in Channel 44's interests to broadcast programmes which contained "both sides of the story", so that its target audience was fully informed. It said that given the complainant "refused to pass comment on the allegation of fraud", Channel 44 was entitled to proceed with the broadcast of the programme, based on the information that was available, and in the absence of any comment from Mr Asghar.

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

Ofcom prepared a Preliminary View that Mr Asghar's complaint should be upheld. Both parties were given the opportunity to make representations on the Preliminary View, however, neither party did so.

### **Decision**

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

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

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

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

In addition to this rule, Section Seven (Fairness) of the Code contains "practices to be followed" by broadcasters when dealing with individuals or organisations participating in, or otherwise directly affected by, programmes, or in the making of programmes. Following these practices will not necessarily avoid a breach where it results in unfairness to an individual or organisation in a programme.

- a) We first considered Mr Asghar's complaint that he was treated unjustly or unfairly in the programme as broadcast because "wrong and baseless" allegations were made against him.

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

It is important to emphasise that Ofcom is unable to make findings of fact on the allegations made about Mr Asghar in the programme. Our role is to consider whether by broadcasting the allegations the broadcaster took reasonable care not to present, disregard or omit material facts in a way that was unfair to Mr Asghar.

The Code recognises the importance of freedom of expression and the public interest need to allow broadcasters the freedom to broadcast matters in programmes. However, in presenting material in programmes, reasonable care must be taken by broadcasters not to do so in a manner that causes unfairness to people or organisations in programmes. Whether a broadcaster has taken reasonable care to present material facts in a way that is not unfair to an individual or organisation will depend on all the particular facts and circumstances of the case including, for example, the seriousness of any allegations and the context within which they are made.

We began by considering the seriousness of the allegations and whether they had the potential to materially and adversely affect viewers' opinion of Mr Asghar in a way that was unfair. We then went on to consider whether or not, if the allegations did have this potential, the manner in which they were presented in the programme resulted in unfairness.

Having carefully watched the programme and examined the translated transcript of it, we considered that an allegation was made accusing Mr Asghar of committing fraud and taking possession of Mr Hussein's property (as set out in detail above in the 'Programme summary' section). In Ofcom's view, these comments were very serious in nature in that they alleged that Mr Asghar was involved in criminal activity and wrongdoing which had the clear potential to materially and adversely affect viewers' opinions of him.

We then considered whether the inclusion of the particular comments in the programme as broadcast resulted in unfairness to Mr Asghar.

We considered it legitimate for a broadcaster to make and broadcast a programme examining allegations of fraud, especially in the context of a story which was already in the public domain and the subject of media discussion; we acknowledged the news articles provided by Aston Brooke which were published in November 2016. However, even where the details of a particular story may already be in the public domain, broadcasters must ensure that all broadcasts comply with the Code. Ofcom therefore assessed what steps, if any, the broadcaster had taken to satisfy itself that material facts were not presented, disregarded or omitted in a way that was unfair to Mr Asghar.

From the information provided to Ofcom by both parties, it was clear that the allegations against Mr Asghar were the subject of an ongoing dispute between Mr Asghar and Mr Hussein. As such, it was neither possible, nor appropriate for Ofcom to determine the accuracy or otherwise of the comments about Mr Asghar.

It was, however, clear to Ofcom that the viewpoint of Mr Asghar on the allegations was not included in the programme. For the reasons set out above, Ofcom considered that the allegations were very serious and had the clear potential to materially and adversely affect viewers' opinion of Mr Asghar. We considered that this was particularly the case given the allegations were made in the context of a news bulletin, and the news reader did not question the allegations or explain that there was an ongoing dispute between the parties as to their validity.

Given all the above, we considered that this resulted in the broadcaster failing to take reasonable steps in accordance with Practice 7.9 to satisfy itself that material facts about Mr Asghar had not been presented, disregarded or omitted in a way that was unfair to him. We therefore considered that the programme resulted in unfairness to Mr Asghar.

- b) We next considered Mr Asghar's complaint that he was treated unjustly or unfairly in the programme as broadcast because he was not given the opportunity to respond to the allegations made about him in the programme.

Practice 7.11 states:

"If a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond".

Practice 7.12 states:

"Where a person approached to contribute to a programme chooses to make no comment or refuses to appear in a broadcast, the broadcaster should make clear

that the individual concerned has chosen not to appear and should give their explanation if it would be unfair not to do so".

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

While Aston Brooke said that Channel 44 had contacted Mr Asghar for his response to the allegations ahead of a separate news broadcast in November 2016, it provided no evidence that Channel 44 had attempted to contact Mr Asghar ahead of the programme broadcast on 27 January 2017 (which was broadcast two months after Aston Brooke said that Channel 44 had previously contacted Mr Asghar). Even if Channel 44 had contacted Mr Asghar in relation to the January 2017 broadcast and he had refused to provide any comment on the allegations of fraud (as Aston Brooke had said that he had done regarding the November 2016 broadcast), the programme did not include any statement to this effect.

Therefore, given all the above and the seriousness of the allegations made in the programme about Mr Asghar, we considered that the broadcaster was required to offer him an appropriate and timely opportunity to respond. Its failure to do so resulted in unfairness to Mr Asghar.

**Ofcom has upheld Mr Asghar's complaint of unjust and unfair treatment in the programme as broadcast.**

## Not Upheld

### **Complaint by Mrs Sara Webb on her own behalf and on behalf of Mr Jonathan Webb**

#### ***The Nightmare Neighbour Next Door, Channel 5, 16 March 2017***

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#### **Summary**

Ofcom has not upheld this complaint made by Mrs Sara Webb on her own behalf, and on behalf of her husband, Mr Jonathan Webb, of unwarranted infringement of privacy in the programme as broadcast.

The programme, which showed disputes between neighbours, included a segment which featured a dispute between the complainants and their neighbour. A photograph of Mrs Webb and footage of Mr and Mrs Webb's house and cars were included in the programme without their consent.

Ofcom found that Mr and Mrs Webb did not have a legitimate expectation of privacy in relation to the material included in the programme as broadcast. Therefore, there was no unwarranted infringement of Mr and Mrs Webb's privacy in this case.

#### **Programme summary**

On 16 March 2017, Channel 5 broadcast an edition of *The Nightmare Neighbour Next Door*, a series that featured a number of stories of disputes between neighbours. One such dispute was that between the complainants, Mr and Mrs Webb, and their neighbour, Mr Philip Taylor. Mr Taylor contributed to the programme, Mr and Mrs Webb did not.

The story began with the programme's narrator introducing Mr Taylor as an "84-year-old army veteran" who had lived in Whitby, North Yorkshire, since 1989. The narrator said that the dispute had started one day in December 2013, when Mr Taylor's "love of nature caught the attention of his neighbours, Mr and Mrs Webb". Mr Taylor explained that he had been tending to his plants on the other side of the fence, which he had done for the past 26 years, when Mr and Mrs Webb came from their house and told him that he "had no right to be doing what he was doing". The narrator said that Mr Taylor "had been planting bulbs on the Webb's land for years" and explained that Mr and Mrs Webb had built their home behind Mr Taylor's property in 2007 and had purchased a strip of grassland that bordered Mr Taylor's garden which resulted in what had "previously been a dis-used strip on the other side of Philip's [Mr Taylor's] fence" becoming private property. Mr Taylor said that he could not understand why Mr and Mrs Webb would take offence at him "trying to brighten it [the grass strip] up". However, the narrator also explained that Mr Taylor had been using the land for more than just gardening and that he had been using it to get his caravan in and out of his own garden. Although Mr Taylor had not used the caravan for a long time, the narrator said that he continued to access his garden through the land that belonged to Mr and Mrs Webb.

Mr Taylor then recounted an incident one morning when he saw Mr and Mrs Webb with a chainsaw cutting the branches of a tree. The narrator said that while the tree was rooted in Mr Taylor's garden, "Mr and Mrs Webb were in fact only sawing off branches that were hanging over the fence into their land, something that they were entitled to do" and that by law, tree cuttings should be returned to the owner. However, Mr Taylor was unhappy

because the large amount of branch cuttings had been left in a bulk bag that was too big and heavy for him to lift unaided. The narrator said that to Mr Taylor, Mr and Mrs Webb's actions were a *"declaration of war"*, but that what he did next *"would have serious consequences"*.

Later in the programme, the narrator stated that Mr and Mrs Webb were police officers with the *"local Whitby force"* and a photograph of Mrs Webb was shown. The photograph showed Mrs Webb leaning forward on a desk with her arms folded in front of her. She was wearing a police uniform. The narrator said that Mr Taylor refused to remove the branches himself and decided on a *"more aggressive tactic"*. Mr Taylor then said that to prove he still had a right of access into his own property, he decided to park his car on Mr and Mrs Webb's land. The narrator said that Mr Taylor used the land to park his car for six weeks, despite having his own driveway. However, one day as he returned home, Mr Taylor said that Mr and Mrs Webb and two to three other men were laying boulders along the land. He said that he had driven his car in around the boulders and had parked on the land as he had been doing for the past six months. Mr Taylor then said that when he came to use his car again in the morning, he found that the boulders had been placed in such a way that his car was *"blocked in completely"*. Mr Taylor then said that he picked up a hammer and hit one of the boulders several times until a piece of it broke off and that it was *"my intention and I was quite pleased to see it happen"*. The narrator said that *"before long, the police arrived"* and that Mr Taylor was *"arrested for criminal damage"*. After spending 24 hours in custody, Mr Taylor was bailed on condition that he did not contact Mr and Mrs Webb. Mr Taylor went on to state that the police insisted on confiscating his shotguns, given *"the situation"*, to which Mr Taylor said *"I've never been considered a danger with a gun by any authority"*. The narrator said that Mr Taylor was given a caution five weeks later and that the programme makers had asked *"Mr and Mrs Webb to comment on these events, but they haven't got back to us"*. The narrator then said that Mr Taylor's *"behaviour did make news and he now believes he has support"* and Mr Taylor said of the boulders that *"an awful lot of people just consider them an eyesore. In fact, somebody's painting the rocks now"*. The narrator said that while the boulders and the land legally belong to Mr and Mrs Webb, Mr Taylor remained undeterred. The story concluded with Mr Taylor stating that he had *"always used the land and as far as I'm concerned it's just open ground with access into the back of my property"*.

Apart from the photograph of Mrs Webb shown in the programme, no further images of Mr or Mrs Webb were shown. Nor were Mr and Mrs Webb's full names used in the programme. Footage of Mr and Mrs Webb's land, as well as footage of the exterior of their house and their cars parked outside, was also included in the programme.

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

Mrs Webb complained that her and her husband's privacy was unwarrantably infringed in the programme as broadcast because a photograph of Mrs Webb and footage of Mr and Mrs Webb's house and cars were included in the programme without their consent. Mrs Webb said that although they were approached by the programme makers to contribute to the programme, she and her husband had no interest in taking part in the programme and had told the programme makers this. As a result of the programme, Mrs Webb said that both she and her husband had suffered stress and had been *"trolled"* on social media.

Channel 5 said that it did not agree that either Mr or Mrs Webb's privacy had been unwarrantably infringed in the programme as broadcast. It said that in order for there to have been an infringement of privacy, there was a pre-requisite that some private information had been disclosed which, it argued, had not been the case in this instance. It

said that the information about which the complaint was made is and was at the time of broadcast widely in the public domain. Channel 5 said that even if the information was not already in the public domain, the information pertaining to the complaint was not information that could be said to be private or would engage Article 8 of the European Convention of Human Rights.

Channel 5 said that the dispute between Mr and Mrs Webb and their neighbour, Mr Taylor, had been widely reported, and had first come to media attention in 2014 when Mr Taylor had been arrested and subsequently cautioned for striking one of the boulders placed around the perimeter of Mr and Mrs Webb's land. Mr Taylor had spoken to the press at this time and an article was published in the *Yorkshire Post* on 26 July 2014 which included the same photograph of Mrs Webb as that used in the programme (Channel 5 provided Ofcom with a link to the online article).

Channel 5 explained that the programme was first broadcast on 6 May 2015. It said that it had subsequently been broadcast over 20 times and had been available online for a year from its first broadcast, and without complaint from Mr and Mrs Webb. It said that the programme did not include Mr and Mrs Webb's full names, did not disclose the location of the properties, other than to say they were in Whitby, and did not identify the vehicles parked outside Mr and Mrs Webb's property.

Channel 5 said that on 5 August 2016, the *Whitby Gazette* had reported on the outcome of a hearing in York Magistrates Court in which Mr Taylor was found guilty of harassing Mr and Mrs Webb (Channel 5 provided Ofcom with a link to the online article). It said that on 30 and 31 August 2016, the court case and outcome was widely reported on in the national media (Channel 5 provided links to various online articles). It said that the trial had taken place in open court and rehearsed what by then amounted to an eight-year dispute between Mr and Mrs Webb and their neighbour. The media coverage of the case had included photographs of Mrs Webb, photographs which showed Mr and Mrs Webb's property and their neighbour's property and the disputed strip of land. It said that most of the newspaper articles gave the location details of the disputed land.

Channel 5 said that by the time Mr and Mrs Webb submitted their complaint to Ofcom, the photograph of Mrs Webb, and photographs and footage of the outside of Mr and Mrs Webb's house and unidentified cars parked outside their house had already been broadcast and widely published for "months or years" in connection with the long-running dispute with Mr Taylor. Channel 5 also said that the history of the dispute had been aired in detail over a two-day period in open court. Channel 5 said that given the extent to which the information was already in the public domain at the time of broadcast, neither Mr or Mrs Webb could have had any legitimate expectation of privacy in relation to the material included in the programme. The broadcaster said that in any case, none of the information complained about could be regarded as being private.

With regard, specifically, to the photograph of Mrs Webb, Channel 5 said that the photograph of Mrs Webb included in the programme appeared to be a publicity photograph for her work as a police officer. The broadcaster said that therefore Mrs Webb must have expected that it would be published and in such circumstances, she could not have had a legitimate expectation that the photograph would remain private. Channel 5 said that, at the time the programme was made, there was a photograph of Mrs Webb on the North Yorkshire police website. Channel 5 said that the photograph of Mrs Webb disclosed no private or sensitive information about her, and that a person's appearance was not private.

With regards to the footage of Mr and Mrs Webb's house included in the programme, Channel 5 said that the exterior of a property is not private information. It said that, in this case, the footage included in the programme was shot at a distance and from a public place. Channel 5 said that there was nothing particularly distinctive about the property that would have made it readily identifiable to anyone who did not know the area well. Channel 5 said while the programme referred to the fact that Mr and Mrs Webb lived in Whitby, the exact location of theirs and Mr Taylor's properties was not included in the programme. Channel 5 said that the footage did not disclose any private or sensitive information about Mr and Mrs Webb.

With regards to the footage of the cars included in the programme, Channel 5 said that footage of a vehicle was not private information. It said that, in this case, included in the footage of Mr and Mrs Webb's property that was filmed from a distance, was footage of two cars parked in their driveway. Other than the colour of the vehicles, to the untrained eye, neither the make nor model of either vehicle could be ascertained. Channel 5 said that the footage that included two "anonymous" vehicles disclosed no private or sensitive information about Mr or Mrs Webb.

Channel 5 said that in all the circumstances, at the time of broadcast of the programme complained of, neither Mr nor Mrs Webb had a legitimate expectation of privacy in relation to the detail of their long running dispute with their neighbour, the photograph of Mrs Webb, or footage showing the exterior of their house with two cars outside.

Channel 5 said that even if Ofcom did consider that Mr or Mrs Webb had a legitimate expectation of privacy that had been infringed in some way by the broadcast of the programme, any right to privacy on the part of Mr and Mrs Webb was outweighed by both Mr Taylor and Channel 5's right to freedom of expression, and the public interest in broadcasting the programme.

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

Ofcom prepared a Preliminary View on this case that the complaint should not be upheld. Both the complainant and the broadcaster were given the opportunity to make representations on the Preliminary View, but neither chose to do so.

### **Decision**

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

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



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

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

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

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

In assessing Mr and Mrs Webb's complaint that their privacy was unwarrantably infringed in the programme as broadcast, Ofcom had regard to Practice 8.6 of the Code which states:

"If the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted".

In considering whether Mr and Mrs Webb's privacy was unwarrantably infringed in the programme, Ofcom first assessed the extent to which they had a legitimate expectation of privacy with regard to the inclusion of the photograph of Mrs Webb and the footage of Mr and Mrs Webb's house and cars in the programme. The Code's statement on the meaning of "legitimate expectation of privacy" makes clear that such an expectation:

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

As set out in the "Programme summary" section above, the programme included a photograph of Mrs Webb which was shown for approximately four seconds, and footage of the outside of Mr and Mrs Webb's house, with their two vehicles parked outside.

With regards to the photograph of Mrs Webb included in the programme, the photograph showed her wearing a police uniform. Mrs Webb's face was clearly shown and we therefore considered that she would have been identifiable to anyone who knew her. However, we also acknowledged that the photograph had previously been included in a local newspaper article about the dispute between Mr and Mrs Webb and their neighbour. This article, as well as several others which published stories about the dispute, also included both Mr and Mrs Webb's full names (the programme did not), and that they were both police officers in

the local Whitby force. Therefore, we considered that the photograph and details of the dispute were already in the public domain.

We also considered that the inclusion of the photograph of Mrs Webb in the programme did not reveal any private or sensitive information about Mrs Webb apart from her appearance and the fact that she was a police officer. It was our view that the revealing of a person's appearance, in itself, could not reasonably be regarded as revealing sensitive or private information about them. Likewise, police officers wear uniforms to enable members of the public to identify them as being members of the police force. We therefore also did not consider that being a uniformed police officer could be regarded as private or sensitive information about a person.

We took into account the fact that Mr and Mrs Webb were identified in the context of a story about the ongoing dispute they were having with their neighbour, and that the details of such a dispute may be considered private and sensitive information to those involved. However, in the circumstances of this case, the details of the particular dispute between the neighbours was already in the public domain; the matter had been discussed in open court and the media had reported on the case.

Taking all these factors into account, in the circumstances of this case, we did not consider that either Mr or Mrs Webb had a legitimate expectation of privacy with regards to the inclusion in the programme of the photograph of Mrs Webb.

With regards to the footage of the outside of Mr and Mrs Webb's house and cars included in the programme, we observed that the footage appeared to have been filmed at a distance from a public street. In our view the filming and inclusion in a programme of the exterior of an individual's property and vehicles, visible from the public street, alone, could not reasonably be regarded as attracting a legitimate expectation of privacy.

However, in considering this point, in addition to having regard to Practice 8.6 of the Code, we also took account of Practice 8.2 which states:

"Information which discloses the location of a person's home or family should not be revealed without permission, unless it is warranted".

Although the programme referred to Mr and Mrs Webb's neighbour living in Whitby, North Yorkshire, details of the exact location of the house, for example the street name or the house number, were not included in the programme, nor were the registration number plates of the cars at the property. We therefore considered it unlikely that viewers who were not familiar with the houses in the area would have been able to identify Mr and Mrs Webb's house and its location, or be able to identify their vehicles from the footage included in the programme.

Additionally, we took into account the news articles provided to Ofcom by Channel 5, which featured the story of the dispute between Mr and Mrs Webb and their neighbour. The articles included images of Mr and Mrs Webb's house with their vehicles parked outside, and in some cases, details about the location of Mr and Mrs Webb's property, including the name of the road on which it's located.

Taking all the above factors into account, we considered that Mr and Mrs Webb did not have a legitimate expectation of privacy in relation to the inclusion of the footage of their house and cars in the programme as broadcast.

Having found that Mr and Mrs Webb did not have a legitimate expectation of privacy with regards to either the inclusion in the programme of the photograph of Mrs Webb or the footage of Mr and Mrs Webb's house and their cars, it was unnecessary for Ofcom to consider whether any infringement of their privacy was warranted.

**Ofcom has not upheld Mrs Webb's complaint, made on her own behalf and on behalf of her husband, of unwarranted infringement of privacy in the programme as broadcast.**

## Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed between 1 and 20 August 2017 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

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission date</b>	<b>Categories</b>
Aaron Outram's Morning Show	RedRoad FM	06/07/2017	Offensive language
Sunrise	Sky News	06/07/2017	Due accuracy
Programming <sup>1</sup>	Sangat	28/02/2017	Generally accepted standards

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

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<sup>1</sup> This table has been edited to retrospectively include an investigation which was Not in Breach

## Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 1 and 20 August 2017 because they did not raise issues warranting investigation.

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Naked Attraction	4Seven	27/07/2017	Generally accepted standards	1
The Big Charity Show	British Muslim TV	29/07/2017	Materially misleading	1
Through the Morning	Cando FM	08/08/2017	Offensive language	1
Through The Morning	Cando FM	14/08/2017	Offensive language	1
Medical Detectives	CBS Reality	27/07/2017	Generally accepted standards	1
8 Out of 10 Cats Does Countdown	Channel 4	16/07/2017	Generally accepted standards	1
Channel 4 News	Channel 4	16/06/2017	Due accuracy	1
Channel 4 News	Channel 4	22/07/2017	Due impartiality/bias	1
Channel 4 News	Channel 4	09/08/2017	Materially misleading	1
Channel 4 News	Channel 4	09/08/2017	Race discrimination/offence	1
Couples Come Dine With Me	Channel 4	17/08/2017	Generally accepted standards	1
Eden: Paradise Lost	Channel 4	08/08/2017	Gender discrimination/offence	1
Eden: Paradise Lost	Channel 4	10/08/2017	Generally accepted standards	8
Excluded at Seven (trailer)	Channel 4	22/07/2017	Race discrimination/offence	1
Get a House for Free	Channel 4	08/08/2017	Generally accepted standards	1
Is Love Racist?	Channel 4	17/07/2017	Race discrimination/offence	1
Isis: The Origins of Violence	Channel 4	17/05/2017	Materially misleading	1
Naked Attraction	Channel 4	20/07/2017	Generally accepted standards	2
Naked Attraction	Channel 4	28/07/2017	Sexual material	5
Naked Attraction	Channel 4	30/07/2017	Nudity	1
Naked Attraction	Channel 4	04/08/2017	Generally accepted standards	2
Naked Attraction	Channel 4	05/08/2017	Generally accepted standards	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Naked Attraction	Channel 4	08/08/2017	Generally accepted standards	1
Naked Attraction	Channel 4	08/08/2017	Nudity	1
Naked Attraction	Channel 4	10/08/2017	Nudity	1
Naked Attraction	Channel 4	various	Nudity	1
Programming	Channel 4	15/07/2017	Offensive language	1
Secrets of Your Cruise	Channel 4	03/07/2017	Materially misleading	1
The Great British Bake Off (trailer)	Channel 4	07/08/2017	Sexual material	1
The Handmaid's Tale	Channel 4	16/07/2017	Sexual material	1
The State (trailer)	Channel 4	30/07/2017	Generally accepted standards	1
The State (trailer)	Channel 4	13/08/2017	Violence	1
The State (trailer)	Channel 4	20/08/2017	Crime and disorder	1
The Windsors	Channel 4	26/07/2017	Materially misleading	1
Women's Euro 2017 (trailer)	Channel 4	17/07/2017	Generally accepted standards	1
Women's Euro 2017 (trailer)	Channel 4	18/07/2017	Advertising content	1
20 Moments That Rocked the 00s	Channel 5	11/08/2017	Animal welfare	1
Ace Ventura: Pet Detective	Channel 5	30/07/2017	Scheduling	3
Ben and Hollie's Little Kingdom	Channel 5	12/08/2017	Disability discrimination/offence	1
Big Brother	Channel 5	17/07/2017	Generally accepted standards	6
Big Brother	Channel 5	20/07/2017	Generally accepted standards	2
Big Brother	Channel 5	21/07/2017	Nudity	1
Big Brother	Channel 5	24/07/2017	Generally accepted standards	1
Big Brother	Channel 5	26/07/2017	Generally accepted standards	1
Big Brother	Channel 5	26/07/2017	Race discrimination/offence	1
Big Brother's Bit on the Side	Channel 5	27/07/2017	Race discrimination/offence	1
Big Brother's Bit on the Side	Channel 5	02/08/2017	Generally accepted standards	1
Bull (trailer)	Channel 5	13/08/2017	Scheduling	1
Celebrity Big Brother	Channel 5	04/07/2017	Sexual orientation discrimination/offence	1
Celebrity Big Brother	Channel 5	10/07/2017	Generally accepted standards	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Celebrity Big Brother	Channel 5	03/08/2017	Generally accepted standards	2
Celebrity Big Brother	Channel 5	04/08/2017	Gender discrimination/offence	1
Celebrity Big Brother	Channel 5	05/08/2017	Gender discrimination/offence	1
Celebrity Big Brother	Channel 5	05/08/2017	Race discrimination/offence	2
Celebrity Big Brother	Channel 5	06/08/2017	Animal welfare	3
Celebrity Big Brother	Channel 5	06/08/2017	Generally accepted standards	3
Celebrity Big Brother	Channel 5	06/08/2017	Race discrimination/offence	9
Celebrity Big Brother	Channel 5	07/08/2017	Generally accepted standards	24
Celebrity Big Brother	Channel 5	08/08/2017	Generally accepted standards	3
Celebrity Big Brother	Channel 5	08/08/2017	Race discrimination/offence	1
Celebrity Big Brother	Channel 5	09/08/2017	Generally accepted standards	16
Celebrity Big Brother	Channel 5	10/08/2017	Generally accepted standards	80
Celebrity Big Brother	Channel 5	11/08/2017	Generally accepted standards	8
Celebrity Big Brother	Channel 5	12/08/2017	Generally accepted standards	1
Celebrity Big Brother	Channel 5	13/08/2017	Race discrimination/offence	1
Celebrity Big Brother	Channel 5	14/08/2017	Generally accepted standards	26
Celebrity Big Brother	Channel 5	15/08/2017	Generally accepted standards	38
Celebrity Big Brother	Channel 5	15/08/2017	Voting	1
Celebrity Big Brother	Channel 5	16/08/2017	Generally accepted standards	15
Celebrity Big Brother	Channel 5	17/08/2017	Generally accepted standards	8
Celebrity Big Brother: Live Launch	Channel 5	01/07/2017	Offensive language	3
Celebrity Big Brother: Live Launch	Channel 5	01/08/2017	Disability discrimination/offence	2
Celebrity Big Brother: Live Launch	Channel 5	01/08/2017	Sexual orientation discrimination/offence	1
Celebrity Big Brother's Bit on the Side	Channel 5	01/08/2017	Race discrimination/offence	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Celebrity Big Brother's Bit on The Side	Channel 5	14/08/2017	Generally accepted standards	1
Channel 5 News	Channel 5	26/07/2017	Due accuracy	1
GPs: Behind Closed Doors	Channel 5	02/08/2017	Harm	1
Legally Blonde	Channel 5	21/06/2017	Sexual orientation discrimination/offence	1
Make or Break	Channel 5	10/08/2017	Offensive language	2
Milkshake Live (trailer)	Channel 5	15/07/2017	Materially misleading	1
Neighbours	Channel 5	17/08/2017	Generally accepted standards	1
The Hotel Inspector	Channel 5	18/07/2017	Offensive language	1
The Wright Stuff	Channel 5	03/08/2017	Race discrimination/offence	1
The Wright Stuff	Channel 5	08/06/2017	Elections/Referendums	1
The Wright Stuff	Channel 5	01/08/2017	Sexual material	1
The Wright Stuff	Channel 5	03/08/2017	Race discrimination/offence	1
The Wright Stuff	Channel 5	08/08/2017	Religious/Beliefs discrimination/offence	2
Grizzly Tales for Gruesome Kids	CITV	01/08/2017	Generally accepted standards	1
Friends	Comedy Central	13/08/2017	Scheduling	1
Lip Sync Battle UK (trailer)	Comedy Central	03/07/2017	Offensive language	1
Curtis McCosh	Cool FM	10/08/2017	Competitions	1
Motoreasy.com's sponsorship of Driving Entertainment on Dave	Dave	02/08/2017	Advertising content	1
Mythbusters	Discovery	01/01/2017	Animal welfare	1
Afternoon Show	Downtown Radio	10/08/2017	Competitions	2
Plumbs Furniture Covers' sponsorship of Timeless Entertainment	Drama	10/08/2017	Sponsorship credits	1
Headlines	Dunya News	26/07/2017	Violence	1
News	Dunya TV	14/07/2017	Generally accepted standards	1
Made in Chelsea: Ibiza	E4	07/08/2017	Generally accepted standards	1
Made In Chelsea: Ibiza	E4	14/08/2017	Gender discrimination/offence	1
Raised by Queers	E4/Channel 4	20/07/2017	Sexual orientation discrimination/offence	1



Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Black-ish	E4+1	01/08/2017	Generally accepted standards	1
A Good Year	Film4	15/08/2017	Offensive language	1
The Fox News Specialists	Fox News	12/07/2017	Due impartiality/bias	1
Special Programme	Geo News	22/07/2017	Promotion of products/services	1
UKTV Play (trailer)	Gold	22/07/2017	Dangerous behaviour	1
Non Stop 80s	Heart 80s	15/07/2017	Gender discrimination/offence	1
Heart Breakfast With Dixie & Emma	Heart Yorkshire	10/08/2017	Competitions	2
Frightfest Season (trailer)	Horror Channel	14/08/2017	Violence	1
Coronation Street	ITV	12/07/2017	Generally accepted standards	1
Coronation Street	ITV	12/07/2017	Scheduling	1
Coronation Street	ITV	24/07/2017	Generally accepted standards	1
Coronation Street	ITV	31/07/2017	Generally accepted standards	2
Coronation Street	ITV	31/07/2017	Harm	132
Coronation Street	ITV	31/07/2017	Materially misleading	1
Coronation Street	ITV	31/07/2017	Sexual material	1
Coronation Street	ITV	04/08/2017	Dangerous behaviour	1
Coronation Street	ITV	04/08/2017	Violence	1
Coronation Street	ITV	07/08/2017	Generally accepted standards	1
Coronation Street	ITV	07/08/2017	Offensive language	1
Coronation Street	ITV	07/08/2017	Scheduling	2
Coronation Street	ITV	07/08/2017	Violence	1
Coronation Street	ITV	09/08/2017	Scheduling	1
Coronation Street	ITV	various	Generally accepted standards	1
Coronation Street	ITV	various	Transgender discrimination/offence	1
Countrywise: Guide to Britain	ITV	31/07/2017	Nudity	1
Dove's sponsorship of Lorraine	ITV	01/08/2017	Sponsorship credits	1
Emmerdale	ITV	13/07/2017	Suicide and self harm	1
Emmerdale	ITV	01/08/2017	Materially misleading	2
Emmerdale	ITV	07/08/2017	Materially misleading	1
Emmerdale	ITV	08/08/2017	Offensive language	1
Emmerdale	ITV	09/08/2017	Violence	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Emmerdale	ITV	15/08/2017	Religious/Beliefs discrimination/offence	1
Good Morning Britain	ITV	10/07/2017	Transgender discrimination/offence	1
Good Morning Britain	ITV	25/07/2017	Due impartiality/bias	1
Good Morning Britain	ITV	26/07/2017	Race discrimination/offence	1
Good Morning Britain	ITV	07/08/2017	Materially misleading	111
Good Morning Britain	ITV	07/08/2017	Sexual orientation discrimination/offence	1
Good Morning Britain	ITV	10/08/2017	Generally accepted standards	1
Good Morning Britain	ITV	11/08/2017	Materially misleading	1
Good Morning Britain	ITV	16/08/2017	Race discrimination/offence	1
ITV News	ITV	15/05/2017	Due impartiality/bias	1
ITV News	ITV	22/06/2017	Dangerous behaviour	1
Joanna Lumley's India	ITV	12/07/2017	Materially misleading	1
Loose Women	ITV	14/08/2017	Generally accepted standards	1
Loose Women	ITV	18/08/2017	Due impartiality/bias	1
Lorraine	ITV	21/07/2017	Materially misleading	1
Lorraine	ITV	03/08/2017	Materially misleading	1
Nice'n Easy's sponsorship of Loose Women	ITV	20/07/2017	Sponsorship credits	1
Secret Life Of Posh Pets	ITV	21/07/2017	Animal welfare	1
The Chase	ITV	various	Generally accepted standards	1
The Jeremy Kyle Show	ITV	17/07/2017	Generally accepted standards	1
The Jeremy Kyle Show	ITV	20/07/2017	Gender discrimination/offence	1
The Jeremy Kyle Show	ITV	26/07/2017	Generally accepted standards	1
The Jeremy Kyle Show	ITV	11/08/2017	Generally accepted standards	1
This Morning	ITV	23/06/2017	Drugs, smoking, solvents or alcohol	1
This Morning	ITV	03/08/2017	Generally accepted standards	1
This Morning	ITV	07/08/2017	Gender discrimination/offence	1
This Morning	ITV	09/08/2017	Scheduling	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
This Morning	ITV	17/08/2017	Materially misleading	2
Tipping Point	ITV	27/07/2017	Materially misleading	1
Untenable	ITV	11/08/2017	Materially misleading	1
Love Island	ITV2	04/07/2017	Drugs, smoking, solvents or alcohol	1
Love Island	ITV2	20/07/2017	Generally accepted standards	1
The Ellen DeGeneres Show	ITV2	03/08/2017	Sexual material	1
You've Been Framed!	ITV2	02/08/2017	Generally accepted standards	1
Specsavers Audiologists' sponsorship of ITV3 Mornings	ITV3	06/08/2017	Sponsorship	1
Specsavers Audiologists' sponsorship of ITV3 Mornings	ITV3	09/08/2017	Sponsorship credits	1
Specsavers Audiologists' sponsorship of ITV3 Mornings	ITV3	12/08/2017	Sponsorship credits	1
Specsavers Audiologists' sponsorship of ITV3 Mornings	ITV3	various	Sponsorship credits	1
Trustatrader.com's sponsorship of afternoons on ITV3	ITV3	03/08/2017	Sponsorship credits	1
British Touring Car Championship	ITV4	13/08/2017	Offensive language	3
Diet Coke's sponsorship of Buying and Selling	ITVBe	22/07/2017	Sponsorship credits	1
The Real Housewives of Orange County	ITVBe	13/08/2017	Generally accepted standards	1
Yummy Mummies	ITVBe	09/08/2017	Generally accepted standards	1
Yummy Mummies	ITVBe	16/08/2017	Generally accepted standards	5
Botched	Kanal 11	17/07/2017	Under 18s in programmes	1
Botched	Kanal 11	18/07/2017	Gender discrimination/offence	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Botched	Kanal 11	31/07/2017	Gender discrimination/offence	1
Botched	Kanal 11	01/08/2017	Gender discrimination/offence	1
Botched	Kanal 11	02/08/2017	Gender discrimination/offence	1
Ett Pärön Till Farsa (National Lampoon's Vacation)	Kanal 9	18/07/2017	Gender discrimination/offence	1
Kiss Breakfast	Kiss FM	17/07/2017	Offensive language	1
Ian Collins	LBC 97.3 FM	30/07/2017	Offensive language	1
James O'Brien	LBC 97.3 FM	04/08/2017	Due impartiality/bias	1
Majid Nawaz	LBC 97.3 FM	30/07/2017	Race discrimination/offence	2
Nick Abbot	LBC 97.3 FM	28/07/2017	Due impartiality/bias	1
Nick Ferrari	LBC 97.3 FM	24/07/2017	Due accuracy	1
Steve Allen	LBC 97.3 FM	28/07/2017	Generally accepted standards	1
London Live News	London Live	10/07/2017	Scheduling	1
A-Z Breakfast show	LRB Digital	13/06/2017	Due accuracy	1
News and Dip Raja	Lyca Dil Se 1035	02/06/2017	Elections/Referendums	1
Outlander	More4	20/07/2017	Advertising placement	1
News	n/a	04/08/2017	Generally accepted standards	1
Programming	n/a	various	Scheduling	1
Specsavers Audiologists' sponsorship of ITV3 Mornings	n/a	various	Sponsorship credits	1
NDTV News	NDTV 24X7	05/07/2017	Due impartiality/bias	1
Game Shakers	Nickelodeon	10/08/2017	Disability discrimination/offence	1
The 50 Biggest Sellers of the 80s	Now 80s	12/08/2017	Sexual material	1
Wes Stakes	Rathergood Radio	02/08/2017	Race discrimination/offence	1
RT News	RT	21/07/2017	Due accuracy	1
All Out Politics	Sky News	28/07/2017	Due impartiality/bias	1
Sky News	Sky News	25/07/2017	Due impartiality/bias	1
Sky News	Sky News	01/08/2017	Nudity	1
Sky News Tonight	Sky News	02/08/2017	Due impartiality/bias	1
Sunrise	Sky News	21/07/2017	Race discrimination/offence	1
Tin Star (trailer)	Sky News	09/08/2017	Scheduling	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Live: Test Cricket	Sky Sports Cricket	29/07/2017	Generally accepted standards	1
The A Team	Spike	02/08/2017	Advertising placement	1
Alan Brazil	Talksport	31/07/2017	Generally accepted standards	1
Drivetime	Talksport	01/08/2017	Religious/Beliefs discrimination/offence	1
Jim White	Talksport	07/08/2017	Gender discrimination/offence	1
Talksport News	Talksport	22/05/2017	Due accuracy	1
Peter Lee	TMCR FM	08/08/2017	Charity appeals	2
Programming	TMCR FM	various	Appeals for funds	1
Advertisement	Various	05/08/2017	Advertising minutage	1
Advertisement	Various	various	Advertising placement	1
Freeview promotions	various	01/08/2017	Materially misleading	1
Programming	Various	24/07/2017	Generally accepted standards	1

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

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

### Complaints assessed under the Procedures for investigating breaches of content standards on BBC broadcasting services and BBC ODPS.

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
BBC News	BBC 1	02/06/2017	Due accuracy	1
BBC News at Ten	BBC 1	25/04/2017	Due impartiality/bias	1
Dateline London, What The Papers Say, Outside Source	BBC 1	various	Due impartiality/bias	1
Daily Politics	BBC 2	05/06/2017	Due impartiality/bias	1
Horizon: Why Did I Go Mad?	BBC 2	02/05/2017	Materially misleading	1

For more information about how Ofcom assesses complaints about content standards on BBC broadcasting services and BBC ODPS, go to:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0002/100100/Procedures-for-investigating-breaches-of-content-standards-on-BBC-broadcasting-services-and-BBC-on-demand-programme-services.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0002/100100/Procedures-for-investigating-breaches-of-content-standards-on-BBC-broadcasting-services-and-BBC-on-demand-programme-services.pdf)

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

<b>Service provider</b>	<b>Categories</b>	<b>Number of complaints</b>
ITV Hub	Access Services	1

For more information about how Ofcom assesses complaints about on demand services, go to: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0033/74499/procedures-investigating-breaches.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0033/74499/procedures-investigating-breaches.pdf)

## Complaints outside of remit

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

For more information about what Ofcom's rules cover, go to: <https://www.ofcom.org.uk/tv-radio-and-on-demand/how-to-report-a-complaint/what-does-ofcom-cover>

### Complaints about television or radio programmes

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

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

Programme	Service	Transmission Date	Categories	Number of complaints
Advertisement	Capital Radio	16/08/2017	Advertising content	1
Catchphrase	Challenge	02/08/2017	Advertising content	1
Advertisement	Channel 4	07/08/2017	Advertising content	1
Advertisement	Channel 4	16/08/2017	Advertising content	1
Diana: In Her Own Words (pre-tx)	Channel 4	06/08/2017	Outside of remit	4
The State	Channel 4	20/08/2017	Outside of remit	4
Advertisement	Channel 5	02/08/2017	Advertising content	1
Advertisement	Classic FM	04/08/2017	Other	1
Create and Craft	Craft Extra	14/08/2017	Teleshopping	1
Advertisement	Drama	01/08/2017	Advertising content	1
Advertisement	E4	14/08/2017	Advertising content	1
Advertisement	Free Radio	11/08/2017	Advertising content	1
Advertisement	ITV	31/07/2017	Advertising content	1
Advertisement	ITV	02/08/2017	Advertising content	1
Advertisement	ITV	07/08/2017	Race discrimination/offence	1
Advertisement	ITV	17/08/2017	Advertising content	1
Cash Trapped	ITV	11/08/2017	Other	1
Good Morning Britain	ITV	02/08/2017	Outside of remit	1
Advertisement	More 4	31/07/2017	Advertising content	1
Advertisement	n/a	03/08/2017	Advertising content	1
Advertisement	n/a	15/08/2017	Advertising content	1
Advertisement	Nation Radio	04/08/2017	Advertising content	1
R Mornings	Revelation TV	28/07/2017	Outside of remit	1
Game of Thrones (trailer)	Sky Atlantic	08/08/2017	Outside of remit	1
Advertisement	Sky Sports Action	17/08/2017	Advertising content	1
Advertisement	Various	07/08/2017	Dangerous behaviour	1

<b>Programme</b>	<b>Service</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Advertisement	Various	10/08/2017	Advertising content	1
Advertisement	Various	various	Advertising content	1



## BBC First

A new BBC Royal Charter and Agreement was published in December 2016, which made Ofcom the new independent regulator of the BBC.

Under the BBC Agreement, Ofcom can normally only consider complaints about BBC programmes where the complainant has already complained to the BBC and the BBC has reached its final decision (the 'BBC First' approach).

The complaints in this table had been made to Ofcom before completing the BBC's complaints process.

### Complaints about BBC television, radio or on demand programmes

Programme	Service	Transmission or Accessed Date	Categories	Number of Complaints
Programming	BBC	various	Outside of remit	1
BBC News	BBC 1	14/11/2016	Due impartiality/bias	1
BBC News	BBC 1	05/05/2017	Elections/Referendums	1
BBC News	BBC 1	27/07/2017	Animal welfare	1
BBC News	BBC 1	04/08/2017	Due impartiality/bias	1
Casualty	BBC 1	22/07/2017	Race discrimination/offence	1
Doctor Who	BBC 1	16/07/2017	Generally accepted standards	1
EastEnders	BBC 1	10/08/2017	Violence	1
Eastenders	BBC 1	17/08/2017	Generally accepted standards	1
Mock the Week	BBC 1	06/07/2017	Transgender discrimination/offence	2
One Love Manchester Concert	BBC 1	09/06/2017	Sexual material	1
Panorama: A Prescription for Murder?	BBC 1	26/07/2017	Materially misleading	6
Pitch Battle	BBC 1	22/07/2017	Other	1
Programming	BBC 1	various	Other	1
World Athletics Championships	BBC 1	06/08/2017	Generally accepted standards	1
World Athletics Championships	BBC 1	08/08/2017	Generally accepted standards	2
World Athletics Championships	BBC 1	12/08/2017	Generally accepted standards	1
The Twelfth	BBC 1 Ulster	12/07/2017	Generally accepted standards	1
Horizon: 10 Things You Need to Know about the Future	BBC 2	27/06/2017	Materially misleading	1
Imagine - Mapplethorpe	BBC 2	29/07/2017	Sexual material	1
Newsnight	BBC 2	28/07/2017	Due impartiality/bias	1

<b>Programme</b>	<b>Service</b>	<b>Transmission or Accessed Date</b>	<b>Categories</b>	<b>Number of Complaints</b>
Newsnight	BBC 2	09/08/2017	Race discrimination/offence	2
Ten Puppies and Us	BBC 2	03/08/2017	Animal welfare	1
The Mash Report	BBC 2	20/07/2017	Generally accepted standards	1
World Athletics Championships	BBC 2	08/08/2017	Due impartiality/bias	1
World Athletics Championships	BBC 2	08/08/2017	Generally accepted standards	6
Glastonbury 2017	BBC 4	25/06/2017	Due impartiality/bias	1
BBC News	BBC News Channel	09/08/2017	Due impartiality/bias	1
Gay Britannia (trailers)	BBC Radio 2	31/07/2017	Scheduling	1
Jeremy Vine hosted by Vanessa Feltz	BBC Radio 2	03/08/2017	Sexual material	1
Steve Wright in the Afternoon	BBC Radio 2	07/08/2017	Due impartiality/bias	1
BBC News	BBC Radio 4	26/04/2016	Materially misleading	1
Out of the Ordinary	BBC Radio 4	04/07/2017	Due impartiality/bias	1
Programming	BBC Radio 4	19/07/2017	Due impartiality/bias	1
The Today Programme	BBC Radio 4	10/08/2017	Due accuracy	1
Today	BBC Radio 4	16/07/2017	Due impartiality/bias	1
Today	BBC Radio 4	10/08/2017	Due impartiality/bias	1
5 Live Drive	BBC Radio 5 Live	31/07/2017	Race discrimination/offence	1
The John Beattie Show	BBC Radio Scotland	07/07/2015	Other	1
BBC News	Various	various	Due impartiality/bias	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 1 and 20 August 2017.

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

Programme	Service	Transmission date
Advice Bureau	Akaal Channel	15 May 2017
Advice Bureau	Akaal Channel	22 May 2017
Chorabali	Bangla TV	31 May 2017
AAA Wrestling	FrontRunner	05 July 2017
Geo Khelo Pakistan	Geo TV	31 May 2017
Nigel Farage	LBC 97.3 FM	20 July 2017
Programming	New Style Radio	29 July 2017
Morning Program	Polish Radio London (PRL)	05 June 2017
#iamwani	PrimeTV	06 July 2017
Broadcast competition	Radio Plymouth	20 July 2017
Wes Stakes	Rathergood Radio	02 August 2017
LIVE Herbal Medicine	Sikh Channel	07 June 2017
Misused Trust	Sikh Channel	20 May 2017
F1 London Live	Sky Sports F1	13 July 2017
Beverly Hills Cop 3	Universal Channel	30 July 2017

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

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

### Investigations launched under the Procedures for the consideration and adjudication of Fairness and Privacy complaints

<b>Programme</b>	<b>Service</b>	<b>Transmission date</b>
The Care Fee Trap	BBC Radio 4	15 April 2017
Jirga with Saleem Safi	Geo TV	15 April 2017

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](https://www.ofcom.org.uk/_data/assets/pdf_file/0031/57388/fairness-privacy-complaints.pdf)