

# 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.**

## **Note to Broadcasters and On Demand Service Providers**

### **Broadcast and On Demand Bulletin Research**

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The Broadcast and On Demand Bulletin sets out Ofcom's decisions on all broadcasting and on demand standards complaints and investigations. It is important that this publication is as clear and accessible as possible so that complainants, broadcasters, on demand service providers, programme makers and other readers can find the information they require from it.

Ofcom is conducting some research on how the Bulletin is used by readers, what information they most frequently want from it, and any issues they experience during the process.

If you have comments or suggestions about the Bulletin and its format, a short online survey is currently available for you to complete. This will provide Ofcom with valuable feedback on how it could improve the Bulletin.

If you would like to complete the survey, you can access the link [here](#).

The survey will be open until 30 September 2017.

## Broadcast Standards cases

### In Breach

#### Channel 4 News

#### *Channel 4, 22 March 2017, 19:00*

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##### Introduction

*Channel 4 News* is the evening news programme for Channel 4 ("the Licensee"), broadcast seven days a week. The programme is produced by Independent Television News ("ITN") for Channel 4.

On 22 March 2017, *Channel 4 News* reported on the terror attack in London which had taken place earlier that day. The report included coverage live from Westminster of the aftermath of the events, as well as analysis from the studio and discussions in various formats between journalists and contributors to the programme.

The first half of the programme focused on a man, Abu Izzadeen, who *Channel 4 News* incorrectly identified as the person responsible for the terror attack and who had been shot dead by police. In fact, Abu Izzadeen was in prison. Six complainants subsequently objected to this.

During his introduction to the programme the programme's main presenter who was on location at Westminster ("the Presenter") said the following:

*"A source has told this programme tonight that the attacker is a man called Trevor Brooks, better known as Abu Izzadeen, a well-known member of the now disbanded British Islamist group, Al Muhajiroun<sup>4</sup>. That's news that will raise huge questions for the police and security services".*

There was then the following exchange between the Presenter and the Senior Home Affairs Correspondent (SHAC):

Presenter:       "*[SHAC]'s got more on the identity of the man believed to be the attacker. [SHAC]?"*

SHAC:           "*Yes [Presenter], I've had it confirmed within the last half an hour that the suspect who the police shot dead is Abu Izzadeen, formerly known as Trevor Brooks, aged 41, and who has had a very long history of association with Islamist extremism, a very long one. He was at one stage a right-hand man to a radical preacher you may remember called Abu Hamza, in the nineties, when Hamza ran Finsbury Park Mosque. Then Brooks, or Abu Izzadeen, went on to join Anjem Choudhury's outfit, Al Muhajiroun, and was arrested several times and ultimately was convicted of supporting and funding terrorism, and got four and a half year's prison sentence. The last we heard, or the last he was reported was back in 2015, when he was detained in Hungary,*

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<sup>4</sup> Al Muhajiroun was proscribed on 14 January 2010 under the Terrorism Act 2000.

*supposedly on his way to Romania. So, since then, we have not known what he's been doing or where he's been".*

Presenter: *"Well, there's an awful sense, [SHAC], that the police didn't know what he was doing either. I mean, there is presumably pretty comprehensive monitoring of these sort of people, particularly if they've served sentences?"*

SHAC: *"That's true, there should be an awful lot of monitoring and surveillance. But the security services may well argue, and I haven't spoken to them tonight, but they may well argue you can't monitor everyone all the time. And we will learn over the next few days, and maybe weeks, as to the true extent of how exactly Abu Izzadeen came to drive a car across Westminster Bridge, killing people there and ultimately stabbing a police officer to death".*

A few minutes later, the Presenter interviewed the former Deputy Assistant Commissioner at the Metropolitan Police, Andy Trotter, and asked Mr Trotter the following question:

*"We have, from a very reliable source, that this guy was a guy called Abu Izzadeen, a guy called Trevor Brooks, who was known to police, who had been arrested for extremism, was part of the Al Muhajiroun movement. Now he would have been monitored, wouldn't he?"*

Mr Trotter responded, mentioning the resources of the police and security services. Soon after, the programme returned to the studio where the studio presenter ("Studio Presenter") said:

*"...security sources have told this programme that today's attacker is a convicted extremist, at the very top of the government's watch-list. Abu Izzadeen, born in Hackney and radicalised by radical preachers, Abu Hamza and then Anjem Choudhury, was first charged with terrorism-related offences in 2006, and was last jailed in January of last year. Our Home Affairs Correspondent ... has the story".*

The Home Affairs Correspondent then said:

*"Lying on a stretcher after being shot by police, the man who attacked Westminster is believed to be Trevor Brooks, aka Abu Izzadeen, a radical preacher who was jailed in 2008 for funding terrorism and inciting attacks against the armed forces".*

Footage of Abu Izzadeen disrupting a 2006 meeting was then broadcast along with other pieces of archive footage, whilst the Home Affairs Correspondent said the following:

*"A high-profile preacher in the mid-2000s, who gained notoriety when he heckled the then Home Secretary [John Reid] at a public meeting in London. An electrician by training born to a Jamaican Christian family, he's understood to have first been radicalised at the age of 17, after meeting Omar Bakri Muhammad and Abu Hamza at the Finsbury Park Mosque. Izzadeen visited Pakistan in 2001, before the 9/11 attacks. He later claimed to have given a series of lectures there and attended training camps. A few years later when the now notorious Al Muhajiroun was banned, he became the spokesman for its replacement, Al Ghurabaa. There had long been calls for his arrest. The police were criticised for seemingly being unable to stop his inflammatory preaching. He was finally convicted in 2008 and jailed for four and a half years. Under the terms of his release, he*

*was supposed to have been banned from leaving the UK. But, in 2015 was arrested in Hungary, where he tried to use the Qur'an as his ID. Abu Izzadeen's influence has continued. This programme has found that videos featuring his propaganda have been viewed over 1.3 million times on YouTube. Well known to the security services and often under surveillance, tonight, if he was the attacker, serious questions will be asked of the security services about how this man was able to carry out the attack".*

In a subsequent studio discussion the Studio Presenter ("SP") explored the implications of the attack with Raffaello Pantucci ("RP"), Director of International Security Studies at the Royal United Services Institute, and Nikita Malik ("NM"), Senior Researcher at Quilliam, a counter-extremism think-tank. There were a number of references to Abu Izzadeen, including the following:

SP: *"Abu Izzadeen – I mean, this has been confirmed to us as the suspect in these events today. He was very well-known to the police, he's been involved in terror-related activities since 2006, he was jailed for several years, convicted. I mean, the fact that he was able to do this is an embarrassment, isn't it Raffaello Pantucci?"*

RP: *"I mean, I think clearly when you have any incident like this take place it's a failure, that it's been able to happen. When it turns out that it's someone that you've known and have known for a very long time, it sort of accentuates that problem. But I think that the key issue here is that when you're looking at someone like Abu Izzadeen, who has been involved in this network of Al Muhajiroun almost twenty years now, you're looking at a very long-term substantial problem. The question is, how do you monitor him? What do you do with these people? Sometimes they escalate and conduct activity which leads them to get charged with criminal offences, but otherwise they kind of hover in that odd space in between".*

Later the Studio Presenter addressed Nikita Malik, saying:

SP: *"He was a high-profile suspect, a very high profile target – it doesn't get more high profile than the Houses of Parliament – yet a very low-tech weapon. I mean, weaponising a passenger vehicle – this is really basic frightening stuff, isn't it?"*

NM: *"Yes, and what we're seeing here is a profile that's actually quite common. Even though he was under surveillance, the fact that he had a criminal record, had a network of individual[s], had been jailed and potentially radicalised more in jail, that's quite common. But the method of attack that we're seeing here is very low investment with the hopes that a community will no longer be resilient, will panic essentially. And that's a very common technique that is advocated by Al Qaida, by Islamic State, to use a vehicle, to use a home-made weapon, to wreak as much chaos as possible in the people".*

Later, when exploring whether existing legislation around the monitoring of suspects was sufficient, RP said:

RP: *"...the difficulty of individuals like this, on the legislative front, is that with hate preachers, I mean we saw this with Anjem Choudhary repeatedly, is he would sort of just change his language and sort of moderate himself in certain ways, but continue to very much advocate the ideas and so it becomes very difficult to sort of be able to construct a case around someone who's being very careful about what they say and*



*very aware of where the legislation is moving, whilst still sort of providing that sort of supportive environment in which people are able to radicalise”.*

In summing up this studio discussion, the Studio Presenter said:

SP: *“Just very briefly, Raffaello, did we know that he had been released from jail, Abu Izzadeen?”*

RP: *“I believe he may have been out at the moment, yes”.*

Approximately 35 minutes into the programme, there was the following exchange between the Presenter at Westminster and the SHAC:

Presenter: *“Now of course, information is coming through all the time about more to do with this horrible incident. Our [Senior] Home Affairs Correspondent ... joins us again...What do we know now more on the identity of the attacker?”*

SHAC: *“Yes, I appeared quite certain earlier in the programme, but there appears to be some doubt now. A source was pretty certain that the attacker, who was shot dead by police, was, as I had earlier said, Abu Izzadeen, who has a long history of extremism in this country. It now appears that might not be the case, it might be someone else, owing to the fact that new information has emerged to suggest that Abu Izzadeen is still in prison having served a sentence having been arrested and detained two years ago and then brought back to this country to serve another sentence. So, it may be that we're not as certain as we were about the identity of this attacker, of this so-called 'lone wolf', who's carried out complete carnage on Westminster Bridge this afternoon and has stabbed to death a police officer”.*

Approximately 19 minutes later (at 19:54), at the end of the programme, the Presenter at Westminster said the following:

*“We've got a little bit more on this fast-developing story about today's attack in Westminster. Channel 4 News has been contacted by Abu Izzadeen's brother, who tells this programme that he is in fact still serving a prison sentence. That from Yousef Brooks, brother of Trevor Brooks, also known as Abu Izzadeen”.*

In the edition of *Channel 4 News* broadcast the next day (23 March 2017), the Presenter announced that the name of the killer had been confirmed as Khalid Masood. He then apologised for the error of the previous day and introduced the Senior Home Affairs Correspondent to explain further:

Presenter: *“Now, last night we did make a serious error when we incorrectly named the suspect as being Abu Izzadeen. We were wrong and we apologise for that. Joining us now is our Senior Home Affairs Correspondent ...”*

SHAC: *“Yes [Presenter], well, as you know, I said, as I said last night, [in] last night's programme, I did make a mistake. But tonight, police have named the dead attacker as Khalid Masood, aged 52, as you have heard in the piece ...”.*

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

Rule 5.1 "News, in whatever form, must be reported with due accuracy and presented with due impartiality"; and

Rule 5.2 "Significant mistakes in news should normally be acknowledged and corrected on air quickly ... Corrections should be appropriately scheduled ...".

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

### Response

The Licensee acknowledged that it had incorrectly named Abu Izzadeen as the Westminster attacker in its broadcast on 22 March 2017. It stated that this was a matter both the Licensee and ITN had taken extremely seriously and had discussed in detail how and why this had occurred. The Licensee emphasised that the decision to broadcast the name of the attacker had been "a conscious and considered decision using editorial judgement and not one that was taken lightly or in cavalier fashion". It added that there had been no intention to mislead the audience or "act carelessly". Although the information had turned out to be incorrect, the Licensee argued that it had: not acted irresponsibly; made appropriate corrections while on air; and carried a full correction and apology the following day.

The Licensee acknowledged the requirements of Rule 5.1 of the Code, but it also argued that the Code "recognised the realities and speed of the modern-day news environment" by incorporating Rule 5.2. Specifically, it argued that: "There is recognition that where news broadcasters make mistakes, they can and should remedy any failure. By doing so they may, depending on the circumstances of the case, be able to achieve due accuracy".

The Licensee provided extensive details of the circumstances surrounding the broadcast and said that this context should be taken into account when considering this matter. The Licensee pointed to the significance of the events of the day and stated: "At times like these hard facts can be in short supply...This was a fast-developing story where news (and frequently contradictory information) was continually emerging just before and during the programme's transmission".

The Licensee then set out the events leading up to broadcast:

- at approximately 17:30 a journalist in the newsroom who had been monitoring social media informed the programme editor that there was strong speculation that the suspect may be Abu Izzadeen;
- at approximately 18:30 the programme editor and managing editor asked the SHAC – whom the Licensee described as "an award-winning journalist of huge experience in criminal justice and matters relating to the police and security services" – to check whether the naming of Abu Izzadeen as the suspect was accurate. The Licensee informed Ofcom that at this point in time the SHAC: was unaware that the newsroom had been researching this matter; had no knowledge that Abu Izzadeen was being named as the potential attacker; and was not informed that there were any doubts over the veracity of the story;

- between 18:30 and 18:35 the SHAC undertook checking with two sources, one of whom ("Source A") did not know the identity of the suspect and the other of whom ("Source B") believed it to have been Abu Izzadeen. The Licensee explained why the SHAC believed that Source B was in a position to know the identity of the attacker, adding that the SHAC had had a long-standing relationship with this source, who had previously proved entirely reliable and had already provided *Channel 4 News* with accurate facts about the attack earlier in the day; and
- The Licensee said that Source B confirmed the information three times. In particular, at 18:56 (four minutes before the broadcast began) the source confirmed again that Abu Izzadeen was the suspect. The Licensee said that it did not prove possible to corroborate the information with other sources before *Channel 4 News* went on air.

The Licensee said that while it was exceptional to base a news story on a single anonymous source, it could be justified in certain circumstances. It said that the programme team had considered whether a range of tests had been met in deciding whether to broadcast a story based on a single anonymous source, namely that: the story should be of "significant public interest"; the journalist has a "proven track record in factually accurate and well-sourced stories"; the source should be "credible and reliable"; the source must be "authoritative"; the source had a "track record in providing reliable information"; the source is "'close' enough to the event or story to provide comfort that he or she knows what they are talking about"; and the "appropriate internal referral procedures have been followed". The Licensee stated that the team had believed that the "relevant tests" had been satisfied.

On the issue of the final test ("internal referral procedures") the Licensee explained that prior to broadcast, the decision to name Abu Izzadeen as the suspect on air was referred up to the Editor of *Channel 4 News*. At 18:45 the Editor spoke on the phone to the SHAC. The Licensee stated that as they were speaking on an open phone line the Editor did not ask for the source's name and the SHAC did not give it. The Editor was informed why the source would have been very likely to know the identity of the attacker. The Licensee stated that it was after this conversation that the Editor, convinced by the veracity and reliability of the source (and the track record of the SHAC in "breaking numerous exclusives") decided to run with the story. The Licensee said that "under such circumstances it is standard practice for there to be a referral up to the ITN CEO and the Licensee. However, because of the time pressure, with the absolute final decision taken to run the story literally minutes before going to air (at 18:56), the Editor believed that such a referral would have been simply impracticable". However, the Licensee emphasised to Ofcom that "the decision to name the attacker was taken collectively by the executive team [of the programme]...based on the [SHAC]'s experience and source".

The Licensee explained that at the same time that the SHAC received the confirmatory communication from Source B (i.e. shortly before transmission), the newsroom became aware that "conflicting information had begun to circulate on the internet", some of which suggested Abu Izzadeen was still in prison, while other pieces of information suggested he might have been released in January 2017. The SHAC was not informed by the newsroom that there were doubts about the veracity of the information he had been given by his source before he went on-air for the first time. Nevertheless, he was trying, unsuccessfully, to contact another source (Source C) to corroborate the information. In relying on the 18:56 confirmatory communication from Source B, the *Channel 4 News* team was content to include the information about Abu Izzadeen in the opening of the programme. The Licensee

said that this was then delivered as the programme's second headline and also in an exchange between the Presenter and the SHAC at the start of the programme.

The Licensee said that *Channel 4 News* journalists continued to pursue the story, seek further sources and conduct further research while the programme was on air. It added that between 10 and 20 minutes into the programme "unconfirmed information" was circulating on publicly available sources suggesting that Abu Izzadeen's solicitor had stated that Abu Izzadeen was not, as stated in the programme, the suspected Westminster killer. The Licensee said that, given that there was sufficient doubt over the naming of Abu Izzadeen, the SHAC (who had by then come off air) was asked to check the information again. The SHAC contacted Source B again while the programme was still on air, informing Source B that Abu Izzadeen's lawyer had suggested he was still in prison. Source B was now less certain of the position but the Licensee emphasised that Source B did not retract the original identification of Abu Izzadeen as the attacker. It added that the SHAC also attempted again to contact Source C, but once again failed to make contact.

The Licensee said that: "It was at this point that *Channel 4 News* was convinced that there was sufficient doubt over Abu Izzadeen's involvement that it should make viewers aware". Therefore, at 19:35, the SHAC went back on air and clarified the situation. The Licensee explained that at approximately 19:45 "a journalist in the newsroom spoke to Abu Izzadeen's brother who stated that Mr Izzadeen was still in prison". This information was reported at the end of the programme by the Presenter. The Licensee explained that a full retraction of the claim that Abu Izzadeen was the suspected perpetrator of the attack was not made in the programme itself, since the programme team had not been able to confirm "to its own satisfaction" during the live broadcast that he was still in prison. They stated that "having effectively made one error on air (by not sufficiently caveating its statements), the programme did not want to make another mistake when it was still not absolutely certain of the facts".

The Licensee did, however, outline the steps it had taken post-broadcast to address the inaccurate identification of Abu Izzadeen as the suspected Westminster killer in the broadcast, including removing the programme from the Channel 4+1 time shift service and other platforms as soon as possible, and the Editor, *Channel 4 News'* Head of Communications and the SHAC all tweeted clarifications (by the end of the night, *Channel 4 News* itself had also tweeted apologies). The Licensee added that a correction and apology were also made during the programme broadcast the following night, as an acknowledgement from the SHAC that he had made a "mistake".

In summary, the Licensee accepted that there had been times during the broadcast when the references to the suspect's identity should have been "qualified". It also accepted that some of the wording in the live segments of the programme may have given the impression that the single source for the information had been corroborated or that it was "official" information (particularly during the SHAC's exchange with the Presenter at the start of the broadcast and during the panel discussion in the studio). It stated: "Channel 4 does not deny that Channel 4 News made a significant mistake and, at times its language should have been considerably tighter and much more circumspect, but it was corrected twice on air in the programme. No-one who had watched the programme to the end would have been left in any doubt: Abu Izzadeen was not the attacker. This was also followed up by a number of tweets from the Channel 4 News press office, the Editor and the SHAC himself all explaining that a mistake had been made and the information was based on a source the programme had trusted".

The Licensee argued that taking the programme as a whole, the audience would have considered that: this matter was a “breaking story”; the naming of the suspect was based on one source, although the exchange between the Presenter and the SHAC at the beginning of the programme “may have left viewers with the impression that the name had been corroborated or confirmed”; information was “constantly changing in what was a developing story”; the Licensee had made a mistake but that the mistake had been acknowledged and corrected; and Abu Izzadeen “did not commit the atrocity but was, in fact, in prison”.

The Licensee concluded by stating that:

- “relying on a single source, with what was realistically no real time for corroborative checks, was a substantial risk”;
- “it would have been helpful if the main newsroom had communicated better with the [SHAC] since he was working in some isolation in Westminster” e.g. “when the newsroom first suspected that Abu Izzadeen may have been involved or when doubts started to emerge” about Abu Izzadeen being named as responsible for the Westminster attack;
- “with the benefit of hindsight ... *Channel 4 News* should have dropped the story down the running order: this would have created less pressure and meant that they could have sought out additional corroborative evidence”. This would have also given more time for the Editor to “refer up to the ITN CEO and Channel 4”; and
- “the programme should have used better caveats in the script” and the presenters should have been informed “to pull back from continuing to name” Abu Izzadeen.

Ofcom prepared a Preliminary View finding the Licensee in breach of Rule 5.1 and provided it to the Licensee for its comments. The Licensee replied, confirming it had input from ITN, stating that it did not challenge the overall decision in the Preliminary View and providing comments on factual accuracy and presentation of its case. We have considered these and, where we agreed, have reflected them in our reasoning.

## Decision

Reflecting our duties under the Communications Act 2003<sup>5</sup>, Section Five of the Code requires that the accuracy and impartiality requirements are met.

Rule 5.1 requires that news, in whatever form, must be reported with due accuracy and presented with due impartiality. Rule 5.2 states that “Significant mistakes in news should normally be acknowledged and corrected on air quickly ... Corrections should be appropriately scheduled”.

Ofcom’s published Guidance to Section Five makes clear that “due” means adequate or appropriate to the subject and nature of the programme. The approach may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content, and the extent to which the content and approach is signalled to the audience. For example, where a matter is of particular public interest, the requirement to present that matter with due accuracy will be correspondingly higher. The rule is primarily

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<sup>5</sup> <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

intended to ensure that viewers can trust news broadcasters to report the facts of the news, and the factual background to it, with appropriate accuracy. It goes to the heart of the relationship of trust between a news broadcaster and its audience.

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.

#### Rule 5.1

This edition of *Channel 4 News* was broadcast in the immediate aftermath of a major terror attack in Westminster which led to the deaths of five people and dozens of injuries. It was then the biggest attack on the British mainland since the bombing of the London Underground in July 2005. The item was clearly of significant public interest, given the potential implications regarding public security and the activities of the police and security services, leading up to and during the attack. Ofcom acknowledged the public interest in establishing the facts around this incident and, in particular, the identity of the suspected attacker, as quickly as possible. In this context, we considered there was a clear editorial justification for this programme to include as much information about this attack in the broadcast as rapidly as possible.

We also took account of the fact that, as the Licensee highlighted, "At times like these hard facts can be in short supply... This was a fast-developing story where news (and frequently contradictory information) was continually emerging just before and during the programme's transmission". Ofcom acknowledged that given the significant public interest in all aspects of the story, crucial editorial decisions needed to be made very quickly to keep audiences informed of developments

However, due to the enormous level of public interest in such a high-profile story, the need for due accuracy in broadcast news coverage was further heightened.

The first half of the programme clearly stated that the suspected attacker was Abu Izzadeen, which was incorrect. The following day, it was confirmed that the attacker was in fact Khalid Masood.

The programme began with the Presenter referring to information provided by a source about the identity of the attacker [our emphases underlined]:

*"A source has told this programme tonight that the attacker is a man called Trevor Brooks, better known as Abu Izzadeen, a well-known member of the now disbanded British Islamist group, Al Muhajiroun..."*

Other references to the suspect in the programme were similarly attributed or qualified, including the following [our emphasis underlined]:

*"We have, from a very reliable source, that this guy was a guy called Abu Izzadeen, a guy called Trevor Brooks, who was known to police, who had been arrested for extremism ..."*  
(Presenter to former Deputy Assistant Commissioner at the Metropolitan Police, Andy Trotter).

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*"Lying on a stretcher after being shot by police, the man who attacked Westminster is believed to be Trevor Brooks, aka Abu Izzadeen ... Well known to the security services and often under surveillance, tonight, if he was the attacker, serious questions will be asked of the security services about how this man was able to carry out the attack" (Home Affairs Correspondent).*

However, a number of other statements within the programme where the language used surrounding the identity of the attacker was stronger and more definitive. These included:

*"I've had it confirmed within the last half an hour that the suspect who the police shot dead is Abu Izzadeen, formerly known as Trevor Brooks, aged 41 ..." (SHAC to Presenter).<sup>6</sup>*

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*"...And we will learn over the next few days, and maybe weeks, as to the true extent of how exactly Abu Izzadeen came to drive a car across Westminster Bridge, killing people there and ultimately stabbing a police officer to death" (SHAC to Presenter).*

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*"...security sources have told this programme that today's attacker is a convicted extremist, at the very top of the government's watch-list ..." (Studio Presenter)*

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Studio Presenter: *"Abu Izzadeen – I mean, this has been confirmed to us as the suspect in these events today...the fact that he was able to do this is an embarrassment, isn't it...?"*

RP: *"I mean, I think clearly when you have any incident like this take place it's a failure, that it's been able to happen. When it turns out that it's someone that you've known and have known for a very long time, it sort of accentuates that problem..."*

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Studio Presenter: *"He was a high-profile suspect..."*

NM: *"Yes, and what we're seeing here is a profile that's actually quite common..."*

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Studio Presenter: *"Just very briefly, Raffaello, did we know that he had been released from jail, Abu Izzadeen?"*

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<sup>6</sup> Ofcom was informed that the SHAC was not intending to imply that the single source had now been corroborated, but was reflecting the fact that he had just, minutes before he went on air, had confirmation from his source that Abu Izzadeen was the attacker.

RP: *"I believe he may have been out at the moment, yes".*

In Ofcom's view the stronger and more definitive language used about Abu Izzadeen in the first half of the programme would have led viewers to believe that it was a fact that Abu Izzadeen was responsible for the serious terrorist attack, when that was not the case. We acknowledged the Licensee's recognition that the references to the suspect's identity should have been "qualified" and that some of the wording in the programme may have given the impression that the single source for the information had been corroborated or that it was official information. The Licensee also admitted that it had made "a significant mistake and, at times its language should have been considerably tighter and much more circumspect". The significance of the inaccuracy in this case was also heightened by the fact that during the first 35 minutes of this programme, the main editorial theme discussed was the naming of Abu Izzadeen as the perpetrator of the Westminster attack. The Licensee submitted that the lead story was in fact coverage of the actual events of the day. We disagreed. In our view the programme repeatedly returned to the theme of the identification of the attacker in: its opening headlines; live content from Westminster; a studio discussion; and also a pre-recorded report, analysing in detail the life of Abu Izzadeen.

The Licensee explained that the naming of Abu Izzadeen arose from one anonymous source. Ofcom underlines that the Code does not prevent broadcasters from relying on a single source: decisions regarding source material for stories are an editorial matter for broadcasters.

The Licensee pointed to *Channel 4 News'* assessment of the source as: being "credible and reliable"; being "authoritative"; as having had a "track record in providing reliable information"; and having been "'close' enough to the event to provide comfort that he or she knows what they are talking about". We took into account that the SHAC is well respected and experienced and, as stated by the Licensee, had a track record of "breaking numerous exclusives". These were some of the factors which helped inform *Channel 4 News'* decision to state on air that Abu Izzadeen was the suspected attacker. We also acknowledged that efforts had been made to corroborate the source, although they were ultimately unsuccessful. However, the use of a single source can carry a substantial risk of inaccuracy, which on this occasion was borne out.

We also considered that *Channel 4 News* did not comply with its and the Licensee's internal referral upwards procedures (which the Licensee provided to Ofcom). Both ITN and the Licensee had in place protocols which required allegations based on a single source to be referred first to the *Channel 4 News* Editor and subsequently to senior management figures (within ITN editorial management and the Licensee respectively). Notably, the "Channel 4 News Pre-Broadcast Protocol" states:

*"It is accepted that in very exceptional circumstances such as a breaking news story, that such reference-up may have to be made as the programme goes to air. However this would only arise in very exceptional circumstances.*

...

*Set out below are the main areas where editorial reference-up to Channel 4 is mandatory. The list is not exhaustive and is subject to regular review by Channel 4 and ITN. Staff are reminded that if in doubt they should refer.*

...

*3. Serious allegations which raise significant issues about the sources of the story, especially the use of a single source, anonymous sources or leaked documents."*



These protocols were not followed on this occasion – a referral was made to the Editor but not to ITN editorial management or to the Licensee. The Licensee explained this as follows: “Under such circumstances it is standard practice for there to be a referral up to the ITN CEO and Channel 4. However, because of the time pressure, with the absolute final decision taken to run the story literally minutes before going to air (at 18:56), the Editor believed that such a referral would have been simply impracticable”. However, we note that the “Channel 4 News Pre-Broadcast Protocol” quoted above specifically envisages a situation in which a mandatory referral occurs *during the broadcast*; therefore, according to the protocol, impracticality is not a reason to refrain from a referral.

Ofcom underlines that the Code does not require any particular referral upwards procedure. We considered that it was an editorial decision for the Editor not to follow the internal referral processes. However, we considered that, like the decision to rely on a single source, the decision not to follow the referral procedures carried with it a substantial risk.

We took account of the time pressures in this case and the public interest in presenting information about the incident as soon as possible. However, as the Licensee acknowledged, *Channel 4 News* could have mitigated the substantial risks involved by dropping the story of the suspect's identity further down the programme's running order. This “would have created less pressure” and enabled journalists to seek out “additional corroborative evidence (e.g. Izzadeen's family or solicitor). It would also have given time for the Editor to refer up to the ITN CEO and Channel 4”.

We considered that taking such a step would have enabled programming staff to progress further with vital checks on the veracity of the information, doubts over which were already apparent by the time the programme went to air. It may also have resulted in the use of more qualified language during the broadcast. The Licensee acknowledged that the programme should have used “better caveats in the script” and the presenters should have been informed “to pull back from continuing to name” Abu Izzadeen. Increased communication between journalists in the newsroom and the correspondent in Westminster (on whose advice the Editor's decision to include the name of the suspect appears to have been largely based) may have further mitigated the risks identified above.

We took account of the clarifications that the SHAC made at 19:35 and that the Presenter made at 19:54. The SHAC said at 19:35: *“I appeared quite certain earlier in the programme, but there appears to be some doubt now ... it might be someone else, owing to the fact that new information has emerged to suggest that Abu Izzadeen is still in prison...So it may be that we're not as certain as we were about the identity of the attacker...”*. The Licensee said *Channel 4 News* was “not in a position [at this time] where it could completely retract the story, since conflicting information was still circulating”. At the very end of the programme, at 19:54, the Presenter said: *“Channel 4 News has been contacted by Abu Izzadeen's brother, who tells this programme that he is in fact still serving a prison sentence...”*. The Licensee submitted that “In essence, the programme told its audience that it had incorrectly named Abu Izzadeen as the attacker”.

In our view, *Channel 4 News* correctly made efforts to broadcast these statements in a timely manner. We took account of the fact that both statements were spoken live, and that the Presenter's statement came under considerable time pressure as the programme was about to end. However, we considered that neither of the statements was a complete retraction or correction of the earlier reports. In its representations, the Licensee said that a full retraction

had not been included in the programme because the programme team had not been able to confirm "to its own satisfaction" during the live broadcast that he was still in prison. That was because, according to the Licensee, "having effectively made one error on air (by not sufficiently caveating its statements), the programme did not want to make another mistake when it was still not absolutely certain of the facts". We were not persuaded by this line of argument given that Abu Izzadeen's brother had by that stage contacted the programme team to confirm that his brother, Abu Izzadeen, was in fact in prison.

We took into account the Licensee's statement that the decision to broadcast the name of the attacker had been "a conscious and considered decision using editorial judgement and not one that was taken lightly or in cavalier fashion". We acknowledged the seriousness with which *Channel 4 News* had considered this issue, both before, during and after the broadcast.

However, we considered that by incorrectly stating that Abu Izzadeen was responsible for multiple killings, murdering a police officer and carrying out the attack, and reprising that theme throughout the first 35 minutes of the programme, the Licensee had broadcast a significant inaccuracy. Given the particularly high audience expectations that there would have been for this programme, in our view, this inaccuracy was of such magnitude and given such prominence that it was not fully mitigated by the later steps taken in the programme to correct the error. Therefore, when considering the programme as a whole, Ofcom considered that it was not duly accurate.

Ofcom recognises that decisions to broadcast material of this nature, when a news story is evolving, are often made at times of intense pressure and involve fine editorial judgements. It is important that broadcasters are able fully to inform the audience of developments in an event of significant public interest. However, in doing so it is also important to ensure that viewers are not misled and that such events are reported with due accuracy. In our view, the course of events followed by *Channel 4 News* led to a significant inaccuracy being broadcast. Therefore, for the reasons set out above, there was a breach of Rule 5.1.

#### Rule 5.2

We acknowledged the swift action taken by the programme team once doubts around the identity of the suspect arose. *Channel 4 News* took various steps to acknowledge and clarify the inaccurate statements about Abu Izzadeen that it had broadcast. For example, the SHAC had gone back on air to inform the audience of these doubts as quickly as possible, and the team had prioritised including a statement at the end of the programme to update the audience as to the named suspect's incarceration in prison. While these statements were acknowledgements of conflicting information, they stopped short of a complete retraction or correction.

Nevertheless, we also took account of the steps taken after the programme came off air to tweet clarifications, remove the programme from the Licensee's time-shifted channel and other platforms and broadcast a full and frank apology and clarification in the *Channel 4 News* programme at the same time the following day. Therefore, we considered that the Licensee had complied with Rule 5.2.

## Conclusion

We acknowledge that breaking news requires editorial teams to make decisions rapidly while under intense pressure. However, *Channel 4 News*' rush to get this story to air resulted in it broadcasting a significant error on a major news story.

We agreed with the Licensee's conclusions that:

- relying on a single source, "with what was realistically no real time for corroborative checks, was a substantial risk";
- it would have been helpful "if the main newsroom had communicated better with the" [SHAC];
- with the benefit of hindsight, *Channel 4 News* should have "dropped the story down the running order to create less pressure and give the newsroom more time to seek out additional corroborative evidence"; and
- the programme should have used "better caveats in the script" and the presenters should have been informed "to pull back from continuing to name" Abu Izzadeen.

However, Ofcom was particularly concerned, having put in place referral procedures which required a "mandatory" referral upwards to ITN's CEO and to the Licensee when relying on a single anonymous source, that they were not followed. Such a move, in our view, may have led to the Licensee not broadcasting such a serious mistake.

This is the fourth case in three years in which Ofcom has found the Licensee in breach of the requirement to report news with due accuracy, under Rule 5.1 of the Code<sup>7</sup>. After the third case in August 2015, we asked the Licensee to attend a meeting to discuss its compliance in this area. At this meeting, the Licensee gave a number of assurances about improvements it was making to its compliance processes – in particular, its referral upwards procedures. Ofcom is therefore particularly concerned that a further serious breach of Rule 5.1 has occurred, in circumstances where the Licensee has admitted *Channel 4 News* did not follow its and the Licensee's own referral procedures, which the Licensee had specifically emphasised to Ofcom as being fit for purpose following the previous breach.

## **Sanction**

We took into account that the Licensee had taken a number of steps to ensure that its audience was aware of the error and to correct it. However, given the serious breach in this case, **Ofcom directs the Licensee to broadcast a summary of Ofcom's Decision in a form and manner to be decided by Ofcom.**

### **Breach of Rule 5.1**

### **Not in breach of Rule 5.2**

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<sup>7</sup> See [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0026/46835/issue273.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0026/46835/issue273.pdf), [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0023/45950/issue277.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0023/45950/issue277.pdf) and [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0016/50290/issue\\_295.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0016/50290/issue_295.pdf)

## In Breach

### Big Brother

**Channel 5, 5 June 2017, 20:30**

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#### Introduction

*Big Brother* is a well-known reality show, broadcast by Channel 5 (or "the Licensee"). Over the course of nine weeks, a number of housemates live together in the *Big Brother* House where they compete to win a cash prize. On entering the house, contestants agree to live in a controlled environment, isolated from the outside world. All the conversations and actions of the housemates are recorded and edited into a one hour programme shown on Channel 5 every night during the series. The programme was presented by Emma Willis and Rylan Clark-Neal.

This episode was the live launch of the latest series. It included interviews with the new housemates and Emma Willis before they entered the house, and showed brief footage of them meeting their fellow housemates for the first time.

Ofcom received a complaint that on entering the house, at 20:42, one of the housemates, Arthur, said "*fucking hell*". At 20:54, Emma Willis made the following apology:

*"Now, we have to apologise for any offence caused by Arthur's language when he went into the house".*

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

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

We therefore asked Channel 5 how the content complied with this rule.

#### Response

Channel 5 said that *Big Brother* was a well-known and high profile reality show and that offensive content, including offensive language, was "generally expected" by the audience. This expectation was reflected in the fact that "less than 3% of the total audience for the live launch were children".

Channel 5 said that as the live launch was scheduled to start at 20:30, Channel 5 and the production company were "conscious" of Rule 1.14. Therefore, "full consideration" was given to these issues when planning the launch night coverage, to ensure risks were identified. This included:

- carefully reviewing all pre-filmed clips of the contestants to ensure they were pre-watershed compliant;
- briefing all 15 new housemates, and the four "candidates" vying to be the "People's Housemate", not to use offensive language until the programme finished at 22:30;

- having a plan in place should offensive language arise, given that the contributors might be nervous. This included: briefing the presenters to “apologise promptly and sincerely” in the event of offensive language being used;
- including clear verbal and visual warnings at the start and during the first and second advertising breaks to prepare the audience for “offensive language and adult and sexual themes”; and
- ensuring the Duty Lawyer in the gallery was informed “immediately” of any instances of the most offensive language so the presenters could be instructed to apologise if necessary.

Channel 5 said that despite the briefings and precautions set out above, there was, regrettably, one instance of offensive language before the watershed. Arthur’s comment “*fuckin hell*” at 20:42 was not heard by the Duty Lawyer or by the rest of the team due to the noise in the gallery. They became aware of the possibility that Arthur had used offensive language after checking in the first commercial break and on the return from the commercial break the presenter apologised to viewers for any offence caused.

Channel 5 added that in this case, “significant measures and precautions” had been taken to prevent the broadcast of offensive language before and immediately after the watershed.

## 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.

Rule 1.14 states that the most offensive language must not be broadcast before the watershed. Ofcom’s 2016 research<sup>2</sup> on offensive language clearly indicates that the word “fuck” and variations of it, are considered by audiences to be amongst the most offensive language.

Arthur’s comment “*fuckin hell*” at 20:42 was, in Ofcom’s view, a clear example of the most offensive language being broadcast before the watershed. We took account of the fact that at 20:54, the presenter apologised for Arthur’s offensive language and the measures Channel 5 said it had in place to prevent an incident of this nature. Nonetheless, we considered that these steps were not adequate to mitigate the broadcast of the most offensive language and the apology was not made until approximately twelve minutes after the offensive language was broadcast.

Ofcom appreciates that it is not possible for broadcasters to prevent every instance of offensive language in live broadcasts. However, on occasion, it is possible to resolve Rule 1.14 cases when Ofcom is satisfied that the broadcaster has made every effort to consider any potential offensive language issues, and as a result, implements a robust process to mitigate the risk. In previous resolved cases involving offensive language before the watershed, we have considered whether the broadcaster had put adequate measures to

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

<sup>2</sup> On 30 September 2016, Ofcom published updated research in this area – *Attitudes to potentially offensive language and gestures on television and on radio* – which 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)

prevent instances of offensive language in place and whether these measures were sufficient, considering the likelihood of offensive language occurring.

In most resolved cases, the offensive language was unexpected within the context of the programmes and picked up by the Licensee and an apology made relatively quickly afterwards.

While there were similarities between these cases and the present case, we considered that it was reasonable for Channel 5 to have predicted the likelihood of the use of offensive language, even if just once, given that the programme has precedent incidences of containing offensive language by the housemates. We considered this to be particularly likely in this programme, given that the housemates were in a heightened emotional and apprehensive state on entering the *Big Brother* house.

Ofcom recognised that the Licensee did consider the potential risks and had measures in place to mitigate this risk, but considered that the processes in place were not sufficient enough to ensure that the use of the most offensive language before the watershed was not picked up by the presenter or the production team for approximately 12 minutes after which an apology was made.

Taking all these factors into account, in this particular case, we found that the broadcast of this material was in breach of Rule 1.14.

#### **Breach of Rule 1.14**

## In Breach

**Ian Payne**

**LBC 97.3 FM, 3 June 2017, 15:00**

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### Introduction

Ian Payne presents a Saturday show between 15:00 and 18:00 on the speech based radio station LBC 97.3 FM. The format is a news phone-in programme. The Licensee for this service is LBC Radio Limited ("LBC Radio" or "the Licensee").

Ofcom received one complaint about a comment made by a caller to the show, who was discussing an earlier reference to an interview with Diane Abbott in which the politician had appeared to forget some of the figures relating to the Labour election manifesto.

The programme discussed whether both the Conservative and Labour parties were confused about tax, the errors made by Diane Abbott in her interview, and her reference to a comment made by Jeremy Corbyn that the Prime Minister was singling her out for criticism because of her race. The conversation between Ian Payne ("IP") and the caller ("C") started as follows:

IP: *"[caller name] is in [area]. What do you think about this? Is it slightly undercut racism here?"*

C: *"Hello there. You know, I think...a lot of people have been brought up with a pre-assumption about certain people who have got a certain colour or who have a certain race; a lot of people have, ok, that just goes with the territory and is just a way of life. But at the same time she doesn't help herself when she's going to make a fool of herself live on air, when she can't get her figures. And it's not even about getting her figures. A lot of people, you know, if you ask me how much my rent is, or how much my mortgage is, or how much I pay for my water I may not have those figures at hand but I'm not going to sound like a retard and literally start slurring my speech..."*

IP: *"So what should she have done? Say I don't know the figures off hand?"*

C: *"I don't hate her, I don't like her, I honestly have no personal opinion about her but I have just listened to her and I just think oh God not only does she not have the figures and that's fine just say you don't have them, but at the same time, why would you sound like a retard? I mean she actually sounds, and no disrespect to her on a personal level, but she really sounded thick. She sounded like someone who was completely incapable of putting a sentence together".*

IP: *"I just think she sounded like someone who'd done ten interviews that morning and it was only ten o' clock".*

We considered that the content raised potential 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 the Licensee's comments on how the item complied with this rule.

## Response

LBC Radio stated that at approximately 17:57 a caller came to air "to discuss whether the Conservative Party were as confused about tax as Jeremy Corbyn said they were".

LBC Radio confirmed that to emphasise her point that Diane Abbott had 'made a fool of herself', the caller "used the term referred to by the complainant". LBC Radio said that "the presenter then challenged the caller's comments, claiming 'she (Diane) just sounded like someone who'd done ten interviews this morning' and 'we've got to give them (politicians) a bit of slack'".

LBC Radio referenced Ofcom's Offensive Language Research<sup>1</sup>, which states that the word "retard" requires significant contextual justification. LBC Radio stated that "on this occasion we believe the caller had used it in a very general fashion, without any intention to cause offence, and clearly did not refer to a person with disabilities". LBC Radio continued that "it was also broadcast during a live show...where listeners do have some expectation of challenging content and language, and alongside balancing comments from the presenter". The Licensee considered that "[a]ny offence would therefore have been mitigated by the context to some extent".

LBC Radio concluded that "regardless of context, or intention to cause offence, as a general policy at LBC we prefer to discourage callers from using such language. We will ask that presenters challenge the use more robustly in future and offer apologies where appropriate".

## Decision

Reflecting our duties under the Communications Act 2003<sup>2</sup> ("the Act"), Section Two of the Code requires that generally accepted standards are applied to the content of radio services to provide adequate protection for members of the public from the inclusion of 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 broadcasters' freedom to discuss any controversial subject or point of view in their programming, and compliance with Section Two.

Under Rule 2.3, broadcasters must ensure that potentially offensive material is justified by context. Context is assessed by reference to a range of factors including the editorial content of the programme, the service in which the material is broadcast, the time of broadcast and the likely expectation of the audience. Appropriate information should also be broadcast where it would assist in avoiding or minimising offence.

Ofcom's 2016 research on offensive language clearly indicates that the word is considered by audiences to be among the most offensive language. Participants of the research suggested

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<sup>1</sup> [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)

<sup>2</sup> <http://www.legislation.gov.uk/ukpga/2003/21/section/319> and <http://www.legislation.gov.uk/ukpga/2003/21/section/320>



that it should only be used if there is a good reason for doing so and that any potential harm and offence is appropriately mitigated. This demonstrates a shift in the public's perception of the word as highly unacceptable at all times unless strong contextualisation is provided.

We therefore considered whether the potential offence resulting from the inclusion of the word in the programme was justified by the context. We took into account that: the offensive language was used by a caller during a news based live call-in show; it was not intended as an offensive comment towards a person with disabilities, and; listeners of the programme would have a level of expectation that it would include challenging content and language. However, we did not consider that these factors were sufficient to justify the use of the word.

LBC Radio submitted that the presenter challenged the caller's comments. Mitigation to the offence could have been achieved to some degree by the presenter picking up on the use of the word and condemning this immediately. However, in this case the presenter did not appear to recognise the potential for offence caused by this language. The caller used the word on two separate occasions and the challenge made by the presenter related only to the criticism of Diane Abbott; there was no specific challenge relating to the offensive language. We were concerned that the failure to explicitly acknowledge the offensive nature of the word could have had the effect of normalising it. This was a particular concern given the time of broadcast as, although we accepted that the programme was not directed at children, some may have overheard it.

Our Decision is therefore that the material was in breach of Rule 2.3.

### **Breach of Rule 2.3**

## In Breach

### Sa Ra Ga Ma Pa Li'l Champs *Zee TV, 16 April 2017, 20:30*

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#### Introduction

Zee TV is an entertainment channel providing programming for the South Asian community. The licence for the service is held by Asia TV Limited ("Asia TV" or "the Licensee").

*Sa Ra Ga Ma Pa Li'l Champs* is an Indian Hindi language talent show in which child contestants sing in front of a panel of adult judges, who then give their performance a score and determine whether the singer will progress to the next round of the contest.

Ofcom received a complaint from a viewer who was concerned that a young boy who appeared on the programme was "humiliated for being overweight".

Ofcom translated the relevant section of the programme from the original Hindi. As part of our investigation, Asia TV was given an opportunity to comment on the accuracy of these translations. The Licensee did not raise any concerns and these translations were used for the purposes of this investigation.

The child performer was introduced by the programme's presenter:

*"In the old movie of 1980, 'Dostana', Zeenat Aman asked Amitabh Bachan, 'What is the problem in my clothes?' Bachan said, 'They are too short' [laughter]. Our next contestant asked the weighing machine, 'What is in the problem in my weight?' The weighing machine said, 'It is too much'" [laughter from the judges and audience].*

As the child walked on stage, the presenter said:

*"Please welcome and give a big round of applause for the heaviest singer of India: [child's name]"*.

After performing his song, the presenter announced that the child's score was 99.3% and invited comments from the judges. The following exchange then took place between the young boy and one of the judges:

Judge: *"What did you promise? What are you doing?"*

Child: *"To diet".*

Judge: *"Did you diet?"*

Child: *"Yes, I did".*

Judge: *"How much weight did you lose?"*

Child: *"First, it was 2 metres! Ha! Ha! No, no I lost 2 millimetres first. Now it is 3 millimetres".*

[Laughter]

Judge: *"Have you put on 4 kilograms?"*

Child: *"No, no".*

Judge: *"You are a big player. You are so sweet and innocent. You never say no, you always say 'Yes sir, I will do it'. As soon as I go out, you eat four chocolates, three ice creams and pizzas".*

Child: *"Yes, sir".*

Judge: *"What? Don't be so proud of it. Son, you sing so sweetly and nicely, it really doesn't matter how much you eat. You are superb".*

The judges praised the child's vocal performance and then asked him to take part in a physical challenge. A large inflatable exercise ball and a plate of grapes were brought onto the stage. The judge who had already spoken to the boy then explained what the challenge involved:

*"[Child's name], your healthy food, grapes, have come. What you have to do is roll once on the ball on your abs and then eat one grape".*

The boy then attempted the challenge set for him, which involved him: lying on his stomach on the exercise ball; rolling backwards and forwards whilst trying to balance on the exercise ball; and whilst trying to reach the plate of grapes positioned in front of the ball. Throughout this sequence, comedic sound effects were added. In addition, there was raucous laughter and applause from the audience and several close-up images of the judges laughing as they watched the boy on stage.

Following this, the judge said:

*"Son, we told you to do three ab rolls and eat three grapes, but you ate five grapes. No problem son, outstanding! Fantastic! You keep eating nicely and singing nicely".*

The presenter then ended this part of the show by saying, *"A big round of applause for [child's name] – 99.3%"*.

Ofcom considered that this content raised potential issues under the following rule<sup>1</sup> 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*

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<sup>1</sup> Ofcom also assessed this content under Rule 1.28 which states: "Due care must be taken over the physical and emotional welfare and the dignity of people under eighteen who take part or are otherwise involved in programmes. This is irrespective of any consent given by the participant or by a parent, guardian or other person over the age of eighteen in loco parentis". However, on the basis of the information provided by the Licensee, we did not consider the programme raised issues under this rule.

information should also be broadcast where it would assist in avoiding or minimising offence”.

We therefore sought comments from the Licensee on how the programme complied with this rule.

### **Response**

Asia TV said it did not intend to cause any offence. During the initial pre-broadcast auditions for the programme, the child demonstrated a great talent for music. When he came on the show, the production team, along with the child and his parents, decided to create “a unique, yet endearing character of a young pudgy boy who enjoys his food as a means of providing comic relief and entertaining viewers”. It added that: there was no intention to cause anxiety or discomfort to the child; the scripted portions of the programme were rehearsed in advance; and the team constantly reassured him during the production process.

With specific regard to the comments about the child's weight, these were all “playful in nature and discussed before and after the production”.

Referring specifically to the physical challenge involving the exercise ball, described above, the Licensee explained this “was an antic to foster comic relief” which was “very common” in Indian reality shows. In fact, the comedy aspect of the challenge was “based on the difficulty of lying on the ball, irrespective of his weight”. It added that the child had “a few repartees of his own, displaying his comfort with the comments being made”. For example, the child's light hearted exchange with the judge, as outlined above, regarding how much weight he had lost.

Asia TV also stated that aside from the jokes about weight and food, which were “in the mutually decided spirit of fun”, the boy had been immensely praised for his singing talents and likened to Kishore Kumar, a singing legend in India. He was described as “very popular with his fellow contestants, judges and viewers” and has been put through to the next round of the contest every week “due to his singing talent”.

Asia TV concluded that in India it was often the case that jokes were made about weight “in a very playful manner within families and friends with nicknames often given based on one's weight and this is mostly taken in good humour”. It added that in certain families, “being a bit overweight” often signified prosperity “as being well-fed implies one is financially secure and happy”.

The Licensee also made representations in response to Ofcom's Preliminary View, which was that the programme was in breach of Rule 2.3 the Code. It argued that the audience and other programme contributors in the studio “were all laughing because of the comedic aspect of the physical challenge and not because of any ridicule being faced by the contestant. [The child]'s challenge of trying to eat a grape while balanced on a giant ball would have been comedic no matter what size he was”. Asia TV added that: “Whilst we acknowledge there were a few minutes of the show featuring a presenter making references about [the child]'s physical appearance, there was a larger chunk devoted to positive comments about his talent and background”.

The Licensee also said that “the child's association with food and the jokes made around it were part of a creative track to promote better eating habits among children...the idea was

to make children aware of health risks around excessive eating and junk food but in a playful and fun manner. The team felt that if the comedy was exaggerated and over the top this would lend to the comic element of the show”.

Asia TV also stated “we have taken note of the sensitivities and concerns expressed and will take greater care not to cause offence in future comedy sequences”. It added that it would provide “detailed Ofcom training to our technical team in India to ensure that we at all times comply with and stay true to the sentiments of the audience here in the UK”.

## Decision

Reflecting our duties under the Communications Act 2003<sup>2</sup>, 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.

Ofcom took careful account of the broadcaster’s and audience’s right to freedom of expression. This is set out in Article 10 of the European Convention on Human Rights. Article 10 provides for the right to freedom of expression, which encompasses the right to hold opinions and to receive and impart information and ideas without interference by public authority.

The Code does not prohibit the broadcast of potentially offensive material in any circumstances. What is essential for compliance with the Code is the way in which such material is transmitted by the broadcaster. As set out in the Code, material that is potentially offensive may be broadcast, as long as its inclusion is justified by the context, so as to provide adequate protection to members of the public. Broadcasters must ensure that any potentially offensive content is justified by contextual factors, such as: the editorial content of the programme; the time of broadcast; the degree of offence likely to be caused by the material; the likely expectation of the audience; and any warning given to the audience. We assessed first whether the material in question was capable of causing offence.

In our view, the focus on the child’s physical appearance, with negative and potentially humiliating comments made about his weight, had the clear potential to cause offence.

We considered that the likely level of offence would have been increased by the fact that he was the only contestant asked to complete a physical challenge while: the programme’s judges; fellow contestants; and the studio audience, including the child’s parents, were shown laughing at him. We noted the Licensee’s acknowledgement that “there were a few minutes of the show featuring a presenter making references about [the child]’s physical appearance”. But, it added that “there was a larger chunk devoted to positive comments about his talent and background”. In our view, we considered the manner in which the child was treated had the potential of causing offence to the audience. This was because, even though the child was ostensibly taking part in this talent show as a singer and there were some more positive comments made about his musical ability, his appearance on the programme was undercut by constant and direct references to his physical appearance.

Ofcom next examined whether this offence was justified by the context.

We recognised that talent shows are a familiar television format. We also acknowledge that programmes in which children appear as contestants and have their performances judged by

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

adults can be critical of a child's performance. However, in Ofcom's view, the audience would not necessarily expect that a child contestant's physical appearance would be referred to, criticised, or that he would be made the object of what could be perceived as ridicule in this way.

Rule 2.3 envisages that offence may be avoided or minimised, if appropriate information is broadcast. Ofcom considered that while Asia TV had taken some steps to protect the physical and emotional welfare and dignity of the child (i.e. agreeing the characterisation of him based on his physical appearance with him and his parents, and discussing and rehearsing the physical challenge with him in advance), these were not made clear to the audience in this case.

Ofcom has also taken into account the likely expectations of the audience for the Licensee's Zee TV channel when assessing the potential impact of the broadcast. Ofcom acknowledged that the target audience for this programme consisted of Indian Hindi-speakers who may be more likely to agree with the Licensee's assertion that in India, "jokes about weight may be considered playful". While we acknowledge that the composition of the audience may be one relevant factor in assessing compliance with Rule 2.3 in a particular case, it is not the only one. Other potentially relevant factors are the nature of the editorial content itself and the nature of the service. Further, the likely expectations of the audience for a UK-licensed service are that the broadcaster applies generally accepted standards in a UK context. In this context, we took into account the Licensee's argument that the treatment of the child was as "part of a creative track to promote better eating habits among children". We disagreed with this argument as nowhere in the programme was this made clear to viewers. Further, negative comments about diet and appearance were directed solely at this particular child, with no reference to any particular general health campaign.

Similarly, Asia TV argued that the audience and other programme contributors in the studio "were all laughing because of the comedic aspect of the physical challenge and not because of any ridicule being faced by the contestant. [The child]'s challenge of trying to eat a grape while balanced on a giant ball would have been comedic no matter what size he was". We disagreed. Although intended to be comedic, this direct and unrelenting focus on the child's physical attributes, would have been likely to be seen by viewers as humiliating to this particular child, and a potential violation of his dignity, and therefore potentially greatly offensive to a UK audience.

In reaching our Decision, we took into account that the Licensee would be providing training to its technical team in India to ensure that "we at all times comply with and stay true to the sentiments of the audience here in the UK". However, we considered that the content did not comply with generally accepted standards for a broadcast service in the UK. Therefore, taking all the above into consideration, Ofcom's decision is that Asia TV did not apply generally accepted standards and that this content was in breach of Rule 2.3.

### **Breach of Rule 2.3.**

## In Breach

### DW News

**My Channel, 8 June 2017, 21:00**

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#### Introduction

My Channel is a general entertainment channel broadcast on satellite platforms. The Licence for My Channel is held by Enteraction TV Learning Limited ("Enteraction TV" or "the Licensee").

DW News is a daily news programme broadcast on My Channel.

We received a complaint about a news item criticising Theresa May while polls were open on the day of the June 2017 General Election.

At 21:00 on the day of the General Election, My Channel broadcast a news item lasting approximately 11 minutes which included several statements made by journalists, on various policy matters relating to the General Election:

*"Decision day in Britain. This is an election which will have far reaching consequences. It was called three years ahead of schedule in a surprise move by the Prime Minister Theresa May. Her goal, to win a strong mandate for the negotiations with the European Union and the country's exit from the block. Initial polls suggested she would get that but over the campaign, the leader of the opposition, Labour Party Jeremy Corbyn has closed the gap. His fresh down to earth style has particularly struck a chord with younger Britons. The strength of Jeremy Corbyn's challenge could hinge on how many young voters turn out".*

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*"Sunderland is the Brexit heartland...Now it's also a Labour heartland, and that is why voters here, I have the impression, are particularly torn".*

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*"It is something that is definitely dominating the debate here in London and also has dominated the election campaign definitely since the attack in London. I mean it's really security where the politicians were asked the hard questions and where from my point of view Theresa May came out as the strongest of the two opponents".*

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*"However, with security being such a strong issue and also Brexit negotiations being very much on the agenda also you know from tomorrow from the next week is gonna be the main issue again. I think this is where people do trust her [Theresa May] more in the end and she is still leading on the polls".*

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*“The worst possible outcome of this election really is a hung parliament because then there’s gonna be all sorts of jostling about who will be Prime Minister, there will be a hiatus in leadership just when the European side is ready to start the talks and wants a really clear position from the British side”.*

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*“Labour has accepted that high levels of immigration from the EU have caused a lot of disquiets and really caused the British people to vote to leave the EU. Beyond that though, a soft Brexit could like a much closer relationship in terms of perhaps staying in the European Customs Union which will enable a much smoother flow of goods and services between the two sides in the event of a deal later. Because the Conservative position...is a degree of hard Brexit and what could be the case, interestingly is that if Theresa May gets a very very large majority, she will feel that she has complete free range to compromise and not have such a difficult break with Europe and perhaps allow some jurisdictions from the European Court of Justice which she says she doesn’t want at the moment”.*

We considered this raised issues under the following Code rule:

Rule 6.4           “Discussion and analysis of election and referendum issues must finish when the poll opens...”.

Ofcom requested the Licensee’s comments on how the item complied with this rule.

## **Response**

Enteraction TV acknowledged that “the programme was broadcast after the polls had opened”. However, it said that “the UK election segment which appeared in the programme...was not the leading news story that day” but “a segment of eleven minutes in what was a one hour programme”.

The Licensee also said that much of the segment in question offered “news coverage of the voting process rather than any form of analysis”, including the “increased security at the polling stations following the terror attack prior to the elections” and “interviews with some of the voters on what issues were important to them”. Enteraction TV added that “[t]here was some focus on Brexit as an issue for voters as the outcome of the UK elections on the Brexit negotiations is of great interest to the European viewers of *DW News* living outside the UK”.

The Licensee also said that the following two statements were “observations rather than analyses of the election process”:

*“Sunderland is the Brexit heartland...Now it’s also a Labour heartland, and that is why voters here, I have the impression, are particularly torn”.*

*“The worst possible outcome of this election really is a hung parliament because then there’s gonna be all sorts of jostling about who will be Prime Minister, there will be a hiatus in leadership just when the European side is ready to start the talks and wants a really clear position from the British side”.*



Enteraction TV felt that there was “nothing in either statement that would influence the way a viewer would cast his or her vote as neither comment is encouraging viewers to favour one party over another”.

The Licensee also argued that because the programme was broadcast one hour prior to the closure of polling stations, it was “questionable” whether the content would have “unduly influenced those viewers yet to go to the polls” and neither would it have “influenced the outcome of the elections in general”.

It further said that “the programme was broadcast live” and that it “had no prior knowledge of the format that that election coverage would take...nor whether this would include any element of analysis”.

The Licensee argued that “as a news programme produced in Germany, *DW News* is not as bound by the Ofcom regulations in the way that a UK broadcaster would be covering these elections”. Nevertheless, Enteraction TV said that “the complaint has led to a review of its live news coverage”. It also acknowledged that “live news content produced by a third Party should be checked prior to transmission to ensure compliance with the UK broadcast regulations”. The Licensee said that it had therefore “implemented a one hour time delay which will allow the news content to be assessed, and any compliance edits made, prior to broadcast”.

In conclusion, Enteraction TV informed Ofcom that “shortly after receiving the viewer complaint from Ofcom”, it had implemented a one hour delay for the broadcast of *DW News* on its service.

## Decision

Reflecting our duties under the Communications Act 2003<sup>1</sup>, Section Six of the Code requires that the special impartiality requirements are met, in particular during elections.

Rule 6.4 requires that discussion and analysis of election issues must finish when the polls open. The purpose of this rule is to ensure that broadcast coverage on the day of an election does not directly influence voters' decisions.

This programme was broadcast one hour before polling stations closed for the General Election on 8 June 2017. It included several statements about policy issues that were dominating the General Election campaign including:

- the Brexit negotiations;
- immigration;
- security following the terrorist attacks in London and in Manchester which took place in the weeks preceding the General Election;
- the relative performance of the Conservative Party and Labour Party and their leaders during the election campaign; and

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

- the electoral prospects for these two parties in different parts of Great Britain.

We considered these statements constituted discussion and analysis of the General Election while the polls were still open. The Licensee argued that two statements in the Introduction were “observations rather than analyses of the election process”. It added that “nothing in either statement that would influence the way a viewer would cast his or her vote as neither comment is encouraging viewers to favour one party over another”. We disagreed. One of these statements<sup>2</sup> commented on likely voting intentions in one part of England. The second statement<sup>3</sup> dealt with the effects of a possible hung Parliament on the UK's Brexit negotiations with the EU. We considered that both these statements, whilst not mentioning particular political parties, still materially dealt with aspects of the General Election and as such had the potential to influence viewers yet to cast their votes.

We considered the various other points the Licensee put forward. For example, the Licensee argued that, being a news programme produced in Germany *DW News* “is not as bound by the Ofcom regulations in the way that a UK broadcaster would be covering these elections”. However, as an Ofcom-licensed service, My Channel must comply with all relevant requirements of the Code, including Rule 6.4, regardless of where its content is produced. The Licensee also said that “[t]here was some focus on Brexit as an issue for voters as the outcome of the UK elections on the Brexit negotiations is of great interest to the European viewers of *DW News* living outside the UK”. However, irrespective of the possible interest of a broadcaster's audience to certain matters being covered in news, the purpose of Rule 6.4 is to ensure that broadcast coverage on the day of an election does not directly affect voters' decisions.

Enteraction TV further argued that because the programme was broadcast one hour prior to the closure of polling stations, it was “questionable” whether the content would have “unduly influenced those viewers yet to go to the polls” and “neither would it have influenced the outcome of the elections in general”. We disagreed. Ofcom recognises the importance of the electoral process and the potential effect of broadcast content on viewers and listeners during elections. Therefore, the requirement under Rule 6.4 that discussion and analysis of election issues must finish when the polls open is an absolute one to ensure that broadcast coverage on the day of an election does not directly affect voters' decision at the most crucial point in the electoral process. Therefore, we considered there was a material chance that some voters may have, in fact, been influenced by the discussions broadcast by the Licensee before the closure of the polls.

We took into account that shortly after receiving the complaint in this case, the Licensee implemented a one hour delay for the broadcast of *DM News* on its service. However, for the reasons above, our Decision is that the broadcast of this material was a breach of Rule 6.4.

#### **Breach of Rule 6.4**

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<sup>2</sup> “*Sunderland is the Brexit heartland...Now it's also a Labour heartland, and that is why voters here, I have the impression, are particularly torn*”.

<sup>3</sup> “*The worst possible outcome of this election really is a hung parliament because then there's gonna be all sorts of jostling about who will be Prime Minister, there will be a hiatus in leadership just when the European side is ready to start the talks and wants a really clear position from the British side*”.

## In Breach/Not in Breach

### Late Nights with Iain Lee

***Talk Radio, 28 March 2017, 22:00***

### 7 Days of Talk Radio with Katherine Boyle

***Talk Radio, 2 April 2017, 15:00***

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#### Introduction

Talk Radio is a national digital speech radio station, the licence for which is held by Talksport Limited ("Talksport" or "the Licensee"). *Late Nights with Iain Lee* is a daily late-night talk show, broadcast on weekday evenings. *7 Days of Talk Radio with Katherine Boyle* is a weekly highlights show, broadcast on Sunday afternoons.

Ofcom received a complaint about an edition of *7 Days of Talk Radio with Katherine Boyle* which was broadcast on 2 April 2017. The complainant objected to the inclusion in this programme of a clip of a conversation which had first previously featured in an edition of *Late Nights with Iain Lee* broadcast six days earlier on 28 March 2017. The complainant believed the clip included content which was inappropriate for broadcast at a time when their children were listening. In order to properly investigate this complaint, we also investigated whether the full version of the programme as originally broadcast complied with the Code.

In the edition of *Late Nights with Iain Lee* broadcast on 28 March 2017, there was an on-air phone conversation, which lasted approximately 18 minutes between Iain Lee ("the presenter") and a caller, "Thomas" ("the Original Interview").

In the edition of *7 Days of Talk Radio with Katherine Boyle* broadcast on 2 April 2017, a clip ("the 7 Days Clip") of the Original Interview was included. This lasted approximately nine minutes and 50 seconds and consisted of the first section of the Original Interview, unedited until the point where the clip ended.

In his conversation with the presenter, "Thomas" made clear that he was not using his real name but said he was calling the presenter for advice. "Thomas" claimed to have previously been a stalker. The conversation between the presenter ("IL") and "Thomas" ("T") started as follows:

IL: "Alright, we're going to go to, well, Caller! Why don't you want to give your name?"

T: "Er, 'coz I want to talk about an experience what I've had".

IL: "Oh, okay! Away you go Sir!"

T: "Well, he's called me, er, 'Thomas'".

IL: "Okay Thomas".

T: "Erm, I used to be, er, a stalker. And I want, I used to be obsessed with this girl [pause]".

- IL: *"Right".*
- T: *"Erm, and I lost contact because of my condition".*
- IL: *"What's your condition?"*
- T: *"Muscular Dystrophy Duchenne".*
- IL: *"Okay, I know a bit about muscular dystrophy... Okay. What do you mean you were a stalker?"*
- T: *"Well, recently I tried to get in touch with that individual and she didn't want to know because apparently they've moved on".*
- IL: *"Right".*
- T: *"Er, what do you think the future could be? What do you think about people who do that sort of thing?"*
- IL: *"Well, I don't know, um. Right. Hang on a second. Um, you came on and said you were a stalker. Okay. And that brings up all kinds of connotations".*
- T: *"Er, I used to be".*
- IL: *"Well, what do you, how did you, how did you used to stalk? [pause] What did you do that you would classify as stalking?"*
- T: *"Well, I was harassing her".*
- IL: *"Right, did the police get involved?"*
- T: *"Um, yeah, yeah, they went, were involved".*
- IL: *"Did you, did you get charged with it?"*
- T: *"Well, I hired a private investigator and [sobbing sound] I put a tracker on her car and shit. Sorry for the language".*
- IL: *"No, that's alright, it's a yellow card. But, so, did the police, did the police, did she get the police involved to stop you doing that?"*
- T: *"Yeah, because, because I was at her house and [pause] it was a few years ago".*

After some further discussion, during which it was confirmed that "Thomas" was not in prison and had met the target of his attention when they were children, the following exchange took place:

- T: *"But when I went into secondary school, erm, because of my condition, er, it affected me because I couldn't walk".*

- IL: *"Yeah".*
- T: *"And I ended up getting a bit obsessive with her".*
- IL: *"Yeah".*
- T: *"And it affected me. It affected it in the future because I did bad things to her and [unintelligible]. Erm, when I got older, I started contacting her and then she got the police".*
- IL: *"Right. Did the police charge you with, with stalking? Or charge you with anything?"*
- T: *"It was a caution".*
- IL: *"Right. Got a caution. Okay. So, so, that, that, that means that they think you did something bad. You said you did bad things to her. What does that mean?"*
- T: *"Well, on the computer, er, I, erm, I had, erm, I broke into her account, and, er, started harassing her".*
- IL: *"What, now what do you mean by harassing her? What were you, what were you saying to her on the computer?"*
- T: *"Er, I was trying to get her attention and, but she kept ignoring me".*
- IL: *"But what were you saying? I wanna know specifically what you said. How did you try and get her attention?"*
- T: *"I say, why won't you talk to me? If you don't talk to me I'll do stuff, things like that".*
- IL: *"Okay, we're getting somewhere now. When you said if you don't talk to me I'll do stuff were you saying you would do stuff to her or you would do stuff to yourself?"*
- T: *"To her".*
- IL: *"Like, hurt her?"*
- T: *"Er, some things like that, yeah".*
- IL: *"Oh, man".*
- T: *"But I reg...[sobbing].*
- IL: *"Go on, go on".*
- T: *"Well, I think the reason why she doesn't want to speak to me is because [sobbing], 'coz she has kids now".*

After the presenter told "Thomas" to "get help" and "Thomas" said that he daydreamed about the woman and wanted to help other people in this situation, the following exchange took place:

- IL: *"Did you ever physically, hang on a second, did you ever physically hurt her?"*
- T: *"Never".*
- IL: *"Right".*
- T: *"Just, just on the computer".*
- IL: *"Okay. But that's, but that is still, you know, er, er, it, it, that is still vicious, that's still a vicious attack to, to threaten people".*
- T: *"I threatened to rape her".*
- IL: *"Jesus. Thomas. Man. Why, why, why did you think that that was, why did you think that that was a good idea?"*
- T: *"Because she was ignoring me and I wanted to – [pause]".*
- IL: *"Yeah?"*
- T: *"Frighten her a bit to get her attention".*
- IL: *"Thomas, you're not well, dude. You're not well, man".*
- T: [sobbing]

Shortly afterwards, "Thomas", clearly in distress, was heard to say:

- T: *"[sobbing] And I went to her address [sobbing] and her boyfriend went out and he confronted me and he wanted to kick, kick, kick the crap out of me".*

The presenter then started to challenge "Thomas" on his behaviour, as follows:

- IL: *"... people fall out and, and the way to get people to fall back in ain't to threaten them with rape. 'Coz that's the, that's a terrible thing to do, Thomas. That is an awful thing to do".*
- T: *"[sobbing] Yeah, it was a, I regret it now, but I want to, I want to stop other people from doing this sort of stuff".*
- IL: *"No you don't. That's not why, that's not why you phoned up, is it? You phoned up because you want me to tell you that it'll be alright and maybe one day, maybe one day she'll be interested in you! That's what you wanna hear, isn't it?"*
- T: *"She would just keep calling the police".*

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- IL: *"...Very rarely am I at a loss for words or, with, with, with how to deal with a situation. Mate, you have got to stop! You have got to stop! That poor woman doesn't deserve any of this! At all!"*
- T: [silence]
- IL: *"And the muscular dystrophy, that's a, that's a McGuffin<sup>1</sup>, that's a red herring, that's nothing to do with this at all".*
- T: *"[sobbing] She won't talk to me any more –"*
- IL: *"[interrupting, shouting] No! Thomas! Thomas! Thomas! She doesn't wanna know you! You threatened sexual assault! You stalked her! She had to get the police involved! She doesn't want to know you Thomas! [banging desk]"*
- T: [silence]
- IL: *"And I'm shouting, but I know that you're not hearing this!"*
- T: *"[silence then sobbing] The police really frightened me and – and I've learned".*
- IL: *"[shouting] Good! Good! I'm glad they frightened you! Because she's terrified of you, Thomas!"*
- T: [silence]
- IL: *"I, I, Listen, I, I, I hate to have a go at a poor soul, but, the, the muscular dystrophy is, is irrelevant to this [shouting] She's got kids, dude! She's a woman, and she's got kids! [banging desk] You have got to stop, man!"*

It was at around this point in the edition of *7 Days of Talk Radio with Katherine Boyle* broadcast on 2 April 2017 that the *7 Days* Clip ended. The rest of the interview described below was only broadcast in the edition of *Late Nights with Iain Lee* broadcast on 28 March 2017.

The presenter repeated his advice that the caller needed to seek help from a medical professional and then said:

- IL: *"Thomas, you're wrong. You are wrong on this. You are 125 percent absolutely wrong on this. You are in a position of power. As an older man, you are in a position of power over somebody who is frightened of you and has got kids to look after. What you are saying to me now, and I'm sorry if this sounds harsh. No, I'm not sorry if it sounds harsh! What you are saying to me now is not normal behaviour".*
- T: *"[silence then sobbing] Er, er, er, I feel humiliated now".*
- IL: *"I'd, I, you know, that's not my intention. My intention is to try and swerve you away from a poor soul that has done nothing to deserve, um, the threat of sexual violence against her".*

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<sup>1</sup> McGuffin: An object or device in a film or a book which serves merely as a trigger for the plot.

T: *"I can't pretend I, she was terrified".*

IL: *"Yes mate! Right, if you love someone, do you think it is normal to terrify them?"*

T: *"Er, I daydream about saving her life when I listen to music".*

IL: *"Thomas, mate, you're not well, dude! You are not well! And you are beyond the, um, the, the normal illness that we talk about and deal with on this show. Right?"*

The presenter continued to advise "Thomas" as to the likely outcomes going forward, which he said included being sent to prison, physically hurting the woman or a third option as follows:

IL: *"Three, and this is still an option: you go and get help and you try and re-programme your brain. Because you have got no right over this poor woman. You have got no right to make her feel scared. You have got no right to make her, her, um, her feel overly protective of her children. You have got no right to be meddling with this woman's life. At all. You've got no right. We don't have any right over other people. I've got no right over my wife. I've got some rights over my kids, but I've got no right over my wife. And Thomas, you have got no right to make this woman scared. [banging on desk] Imagine that's your mum! Imagine someone's doing that to your mum!"*

T: *"I would want to kick the crap out of them".*

IL: *"Exactly, dude! [bangs on desk]"*

T: [silence and then heavy breathing]

IL: *"Why are you calling me? What do you wanna get out of this call?"*

T: *"Well, I want to share my story when I was a stalker".*

IL: *"You still are Thomas. You still are".*

After establishing that the caller did not have plans to contact the woman again ("*not at the current minute*"), the presenter said "*Jesus, Jesus Christ*". He then explained that he found himself with a moral dilemma, since he now felt obliged to pass the caller's phone number to the police. The caller stated he had learned from his past experience (which the presenter disputed) and said, through tears, that he just wanted "*other weirdos like me to stop doing it*". The presenter was clearly in some doubt as to how to proceed ("*This is awful! I don't know what to do!*"). Having established that "Thomas" last contacted the woman three months previously, the exchange ended as follows:

IL: *"Thomas, I tell you what, I, I--"*

T: *"[speaking over IL] They told me, they said, if I contact her again I'll go down to prison. They said they would arrest me".*

IL: *"This is awful".*



- T: "[sobbing] *Yeah, it's disgusting*".
- IL: *"Do you know what? Now I'm, now I'm being selfish. I'm, I'm not worried about you, I'm worried about the position this puts me in! This puts me in an awful awful position! Thomas! Um—"*
- T: *"Wait, please, please! I don't have words for what I did"*.
- IL: *"Ah, Jesus, Jesus"*.
- T: *"Listen, I just want—"*.
- IL: *"[speaking over T] Thomas, Thomas, I'm gonna let you go because I am, I am out of my depth with this. This is what I'm, this, I'm gonna tell you what I am gonna do"*.
- T: *"Wait! Wait! Wait!"*
- IL: *"No! No! No, no, no, no, no, no, no. I am out of my depth with this. I am out of my depth with that. This is an awful situation. I am putting my hand up and saying I'm gonna get in touch with the police and I'm gonna give that tape to the police in, in that area, [name of producer]<sup>2</sup>. I have to. I have to. Oh god, I feel terrible! [pause – caller had apparently been cut off]"*.

The presenter continued to talk about the call and his feelings and thoughts on it throughout the rest of the programme, which lasted for another 13 minutes. He explained the effect it had had on him ("*I feel sick*"; "*I feel very uncomfortable*"; "*I'm shaking*"; "*I'm totally out of my depth*"; "*I have never felt so upset*"; "*I have never been so bewildered as to what to do after a call*"; "*Flippin' 'eck*"). Three minutes after the call ended, and after a commercial break, the presenter gave the following apology:

*"And I feel I should apologise. I should have stopped that, I feel I should have stopped that call, um, I should have stopped that call a lot earlier on. And I would like to apologise if anyone was, was upset by that. I would like to apologise, um, if, er, if anyone found that, the content of that call particularly disturbing. Um, and I, erm, profoundly apologise 'cos I, I made a bad judgement. And I should have, I should have stopped that call. A minute into it. I should have done that. And, um, [pause] [sigh], I made the, I made the, I made the wrong decision. I made the wrong decision. I did, I did [name of producer], I did. I made the wrong decision allowing that call to go on. I got distracted with the muscular dystrophy and I wasn't listening to that. I was, I got distracted by that. And I wasn't listening. I made a, I made a wrong decision and I'm genuinely really sorry"*.

The last four minutes of the show consisted of: the presenter trying to find appropriate subjects for discussion ("*What are we gonna do?*"; "*I do not know how to end the show*"; "*I don't know what to do for the next three minutes*"); further detail on his reaction to the call ("*that call has really upset me*"; "*I've never had a call that's had such a profound effect on me*"; "*I am shaking, I am speechless, I am, I feel sick. This knot in my stomach*"); references to him not cutting the call sooner ("*I made the wrong decision, totally the wrong decision. I shouldn't have, I shouldn't have, I shouldn't have done it. Oh, Jeez. Aagh!*"); many long pauses and silences; and finally, detail of topics which were coming up for discussion in other

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<sup>2</sup> This was a reference to the programme's producer who was in the studio. The presenter appeared to make a number of other references to the producer in the remainder of the broadcast.

programmes during the week (*"We've got some good stuff coming up in the week! There we go. That's what we can talk about"*).

As mentioned above, in the edition of *7 Days of Talk Radio with Katherine Boyle* the *7 Days* Clip featured the first section of the discussion between the presenter and "Thomas", from the beginning of the call until just before the point where the presenter said the caller was *"125% absolutely wrong"*. This section was unedited in the *7 Days* Clip, except that the word *"shit"* was bleeped. It was preceded by the following warning given by the presenter of that programme, Katherine Boyle:

*"Right, before this next clip let me give you a warning. What you are about to hear is the most shocking call we've ever taken on Late Nights with Iain Lee. It contains references to stalking and sexual violence, so if that's going to distress you I suggest you go and do something else for ten minutes and I'll see you when you get back. With that in mind, have a listen to this"*.

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

#### *7 Days of Talk Radio with Katherine Boyle*

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

#### Both programmes

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 programmes had complied with these rules.

### **Response**

#### The Licensee's representations

##### *Late Nights with Iain Lee* (The Original Interview)

Talksport argued that "a number of contextual factors ... mitigated the likelihood of harm or offence being caused in the 28 March edition [i.e. the Original Interview] of the programme".

The Licensee began by setting out background information regarding this programme, including that it had "a loyal audience and specific editorial approach" and that in terms of audience expectations, the programme "prepare[s] listeners to expect the unexpected". Despite its late-night scheduling, Talksport highlighted that the programme did not seek to be gratuitous or to broadcast harmful or offensive content. It added that the programme was supported by an experienced producer and a dedicated technical operator in the control room.

The Licensee set out the editorial considerations which had been taken into account prior, during and following the interview with "Thomas" in the Original Interview: the caller had contacted the station shortly before a scheduled pre-recorded interview with a well-known

comedian which was intended to be broadcast in the latter half of the programme. The caller had briefly spoken to the producer, explaining he had a personal story about having been historically accused of stalking which he wanted to convey to the presenter and listeners. Talksport said the producer had understood from this that the caller would be discussing a historic incident. Having agreed not to use his real name, and in consultation with the presenter, the producer had put the call through to the studio "on the basis that the caller's experience is seldom heard and had the potential to be illuminative to the listener".

The Licensee outlined the subsequent events as follows: "As the call continued, both the producer and the presenter grew concerned that "Thomas" might continue to present a danger to the woman he claimed to have previously targeted. It also became apparent that "Thomas" was not fully receptive to Lee's line of concerned questioning and that the discussion was raising issues that would be difficult to address appropriately within a live programme. Accordingly a decision was made to end the call". Talksport added that once the call had been ended, "it was agreed that the call should be reported to police", which then took place, with a recording of the call being supplied to the relevant police force. The Licensee said that "Station management were consulted throughout this process".

The Licensee explained that a decision was taken to add further context to the Original Interview in the following day's programme, when a representative of the organisation SAFE<sup>3</sup> was interviewed. Talksport said that "this guest provided insight from the perspective of both perpetrators and victims in such situations and emphasised the importance of reporting suspicions of stalking to the police. The existence of the National Stalking Helpline was also highlighted".

The Licensee set out the role of the producer in this incident, which included being involved in: the decision to put the caller on-air; the decision to end the call; and the arrangement of the follow-up interview the next day. Talksport said that these decisions were all made on the basis of consultation between the producer and the presenter. It added that the producer was also responsible for liaising with station management once the call had ended and was "particularly involved in the decision to refer the incident to the police".

The Licensee believed that some key contextual factors had mitigated the impact of the call in the Original Interview, including: the late-night scheduling; the established format and resulting audience expectations for the station in general and this programme in particular; the response of the presenter during the interview with "Thomas"; and the arrangement of the follow-up interview the next day.

The Licensee said that, in addition to its ongoing programme of production and compliance briefings, it intended to "incorporate learnings" from this incident into its pre-arranged refresher training, which it was rolling out to staff in future weeks to coincide with the first anniversary of the radio station.

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<sup>3</sup> Stop Abuse For Everyone (SAFE) (<https://www.safe-services.org.uk/>) is a charity which works to end domestic violence and abuse by supporting victims of domestic violence and raising awareness to prevent its occurrence. SAFE defines abuse as incorporating harassment or stalking, as well as psychological and physical harm. In its representations, the Licensee provided an email sent to them by SAFE following the broadcast. This email set out how SAFE believed the broadcast had been "an excellent opportunity to raise awareness" of stalking and an example of the use of a call in a "positive, informing, educational way". It also contained praise for the presenter and producer for "ma[king] sure their show and listeners were as safe as possible by safeguarding".

Talksport also referred to the representations made by the presenter to Ofcom in relation to the Original Interview in this case (see below), which the Licensee said “serv[ed] to underline that his overwhelming motivation throughout was to present a responsible, moral, ethical, compliant and important broadcast that would be a force for good in tackling the subject of stalking”.

#### 7 Days of Talk Radio with Katherine Boyle (The 7 Days Clip)

The Licensee began by acknowledging that the decision to broadcast the 7 Days Clip in the weekly highlights show on a Sunday afternoon “should not have been made” and was therefore in breach of Rule 1.3 of the Code.

However, Talksport maintained that there had been no breach of Rule 2.3, arguing that: relevant production staff had believed that the item “was tackling an issue which affects a number of people living in the United Kingdom in a way that would be of relevance and interest to the audience”; there had been a strong warning which preceded the 7 Days Clip had been broadcast in light of the subject matter; and there was evidence to suggest that the total weekly audience for this timeslot on a Sunday did not typically include children. In conclusion, the Licensee said that production staff had been spoken to about the need to ensure this type of material was not capable of being broadcast at times when children are particularly likely to be listening.

#### The presenter's representations

The presenter, Iain Lee, who had conducted the Original Interview re-iterated the Licensee's view that the Original Interview had complied with Rule 2.3 of the Code, citing various arguments including the following:

- *Late Nights with Iain Lee* was “an adult show with adult themes” and “a safe place where [people] can come on and talk honestly and openly about their own struggles with mental health”;
- the presenter said that the apparent historical nature of “Thomas” behaviour was “why [the producer had] put him through”;
- Iain Lee also drew attention to his strong chastisement of “Thomas” for his apparent threat of extreme sexual violence and said that his strong challenges at various points in the interview were “totally justified”;
- whilst he agreed that he could have taken action to end the call earlier, the presenter said “I felt I did what was needed to be done to get the message across to Thomas that what he was doing was wrong”. Iain Lee added that: he felt a sense of “duty” to the audience to ascertain if the caller was a danger; wanted to be seen to take the issue of stalking seriously; and wanted to encourage “Thomas” out of his situation;
- the Presenter also highlighted that “Thomas” had chosen to call the radio show and had been able to end the call himself at any point, but had chosen not to; and
- Iain Lee acknowledged that “Thomas” had begged him not to contact the police following the call, but stated this was merely due to fear of the consequences, rather

than evidence of his vulnerability. He also said “*Thomas*” had appeared to him to be “completely ‘with it’ [and] could not understand that what he was doing was wrong”.

The presenter said he had received feedback from “dozens of women”, including a female pop star who had herself been stalked, praising him for giving so much time to hearing “*Thomas*” story and thanking him for broadcasting the phone call. In conclusion, Iain Lee also provided examples of other challenging topics previously covered by the programme and said that “it is this bravery about discussing darker issues that affect so many of us that has made my late-night show something unique and very special”.

## Decision

Reflecting our duties under the Communications Act 2003<sup>4</sup>, Section One of the Code requires that people under eighteen are protected from unsuitable material in programmes. 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.

As we make clear in our Guidance on offensive language on radio<sup>5</sup>, Ofcom recognises that there is a rich and welcome tradition of live, hard-hitting, speech-based current affairs content, featuring presenters (e.g. ‘shock jocks’) or other contributors, which may present challenging listening to some audience members. Consistent with the right to freedom of expression, Ofcom recognises the importance of broadcast content of this type, provided that, for example, any potential offence is justified by the context.

Therefore, under the Code, in principle, any topic can be discussed and explored in programming. There is no prohibition on discussion about potentially illegal acts. However, in such cases, broadcasters must ensure that children are protected from unsuitable material and any potential offence is justified by the context.

### *Late Nights with Iain Lee* (Original Interview)

Ofcom first assessed the Original Interview to determine whether its content complied with Rule 2.3 of the Code.

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

Ofcom considered whether the Original Interview contained material which could be potentially offensive. This section of the edition of the *Late Nights with Iain Lee* programme included a discussion on the subject of stalking and contained a number of references to harassment and sexual violence. These included the caller stating that: he “*used to be*

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<sup>4</sup> <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

<sup>5</sup> See [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)

*obsessed with this girl*"; he had been *"harassing"* his victim; he had *"put a tracker on her car"*; he had *"ended up getting a bit obsessive with her"*; he was *"at her house"*; he *"did bad things to her [on the computer]"*; he had *"threatened to rape her"*: he had visited her address and been confronted by her partner; and that *"she was terrified"*. We considered that the detailed personal testimony of *"Thomas"* recounting his actions as a stalker and the apparent negative effects he had had on the life of a particular woman could have had potential to be offensive.

Ofcom went on to consider whether the context of the Original Interview justified the inclusion of this material.

We took into account the Licensee's and presenter's general arguments about the programme's late-night scheduling – the full programme began at 22:00 and the presenter described it as *"an adult show with adult themes"* (notwithstanding the possibility for timeshifting). We were mindful of the fact that the programme also had an established format and resulting audience expectations for both the station in general and this programme in particular. Ofcom acknowledged that listeners to late-night talk radio programming in general, and to this station and programme, are likely to expect to hear more challenging material, which might include issues such as those relating to potentially illegal behaviour.

The Licensee had also pointed to the presenter's response (regarding the Original Interview) concerning the conversation with *Thomas*, which had included: cutting the call; a subsequent apology for any upset caused by the call; and the arrangement of the follow-up interview the next day with a representative of the organisation SAFE. We also recognised the additional evidence supplied by the Licensee that the programme had been beneficial. However, we considered that the follow-up interview with a representative of the organisation SAFE would have provided limited context given that not all listeners who had heard the Original Interview would have subsequently heard the following day's interview with a representative of the organisation SAFE. Nevertheless, we considered that these factors taken together would have provided substantial context to the inclusion of the potentially offensive material in the Original Interview.

We went on to consider a number of other issues regarding the Original Interview. Firstly, we considered the manner in which *"Thomas"* referred to his history of stalking. At the start of the call, *"Thomas"* explained that the episode he wanted to discuss was historical (*"I used to be ... a stalker"*). Both the Licensee and the presenter of the Original Interview told Ofcom that the programme producer who initially spoke to *"Thomas"* had specifically understood this to be the case. However, as the conversation progressed, it became apparent that the events which the caller described were in fact, in some cases, quite recent (*"This was three months ago, okay?"* and *"two months ago"* in response to a question about when the police had last spoken to him). Although he claimed to have learned from the police caution (which the presenter disputed), the caller was also equivocal when asked if he intended to contact the woman again (*"Er, not at the current minute"*). In this regard, Talksport said that *"As the call continued, both the producer and the presenter grew concerned that "Thomas" might continue to present a danger to the woman he claimed to have previously targeted"*. In this context, we considered the fact that the caller appeared to still be harbouring a possible intention to commit the criminal acts of stalking and/or harassment had the potential to cause offence.

However, we noted: the action subsequently taken by the presenter and producer to report the call to the police; the fact that this action had specifically been praised by the SAFE organisation as a "safeguarding" measure which they considered few other presenters or producers would have known to implement; and the fact that Iain Lee challenged "Thomas" directly to stress in unequivocal terms<sup>6</sup> that "Thomas" had been engaged in the act of stalking and the negative consequences of "Thomas"'s actions on his victim. We considered the repeated references to the intention to report the call to the police (four in the last fifteen minutes of the Original Broadcast) would have been likely to have reassured listeners regarding "Thomas"' possible future actions and served to mitigate any offence in this regard.

Second, the call included a specific reference to extreme sexual violence in the context of a campaign of harassment (*"I threatened to rape her"*). In our view, this comment had the potential to be extremely offensive to listeners. However, we took into account that the presenter reacted to the statement by promptly and strongly challenging "Thomas" (*"Jesus. Thomas. Man. Why, why, why did you think that was...a good idea?"*). We considered this would be likely to have left listeners in no doubt as to the serious nature of the comment. and would have been likely to have further mitigated the level of any offence.

Third, we deliberated on the prolonged nature of the call when considering the overall context of the Original Interview. It was approximately 18 minutes long which, in Ofcom's view, was an extensive period of time for a call on this subject matter. However, we again had regard to the programme's established format, late-night scheduling and likely audience expectations. As acknowledged by the presenter, the caller could have been cut off earlier (*"I should have stopped that call a lot earlier on"*) to lessen the potential for offence to arise but we were mindful of the presenter's argument that he wanted "to get the message across to Thomas that what he was doing was wrong".

We took account of the explanation provided by the presenter of his reasons for continuing with the call, including: his sense of "duty" to the audience to ascertain if the caller was a danger; wanting to be seen to take the issue of stalking seriously; wanting to encourage "Thomas" out of his situation; as well as the fact that "Thomas" had not chosen to end the call himself. We also recognised that there was a strong public interest in broadcasting material such as "Thomas"' testimony, which constituted a viewpoint not often covered in discussions on stalking. In this regard, we acknowledged the evidence provided by SAFE (via the Licensee), which included a thank you to the programming team for "breaking the silence".

Fourth, the caller appeared, in our view, to be a vulnerable person. He had explained how his disabilities had left him feeling isolated (*"when I went into secondary school, erm, because of my condition, er, it affected me because I couldn't walk"*). There were many sections of the call in which he appeared to be crying or remained silent as he struggled with the conversation. Some of these sections appeared to be in response to the presenter specifically raising his voice and, at some points, banging on a desk for emphasis. The caller

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<sup>6</sup> For example, Iain Lee said: *"No! Thomas! Thomas! Thomas! She doesn't wanna know you! You threatened sexual assault! You stalked her! She had to get the police involved! She doesn't want to know you Thomas!"* He also said: *"Thomas, you're wrong. You are wrong on this. You are 125% absolutely wrong on this. You are in a position of power. As an older man, you are in a position of power over somebody who is frightened of you and has got kids to look after. What you are saying to me now, and I'm sorry if this sounds harsh. No, I'm not sorry if it sounds harsh! What you are saying to me now is not normal behaviour"*.

expressed remorse in a variety of ways for his actions (“*I regret it now*”; “*I just want...other weirdos like me to stop doing it*”; “*yeah, it’s disgusting*”; “*I don’t have words for what I did*”). He also said he felt “*humiliated*” by the presenter’s response. When the presenter informed listeners he was considering passing the call to the police, the caller pleaded with him to wait (“*Wait, please, please!*” and “*Wait! Wait! Wait!*”).

We considered whether the presenter’s handling of what appeared to be a potentially vulnerable caller may have caused offence. We took account of the presenter’s representations that the caller’s reaction to involving the police merely constituted “the fear of someone being reported” and also his other views on the potential vulnerability of “*Thomas*”. We recognised that a physical disability does not automatically imply mental impairment. We did not agree that the caller appeared as robust as the presenter claimed and considered that the vulnerable and distressed state of the caller was evident. However, we acknowledged that *Thomas* could have ended the conversation at any time and chose himself to continue with it, even after being challenged strongly by the presenter. We also took account of the fact that Iain Lee did at times appear to show genuine concern<sup>7</sup> for “*Thomas*” and stated his intention was not “*to have a go at a poor soul*”. On balance, we considered that listeners would have been likely to conclude that “*Thomas*” was able to participate fully in the call and was unlikely to have suffered significant distress by it. Therefore, we considered that this would have been likely to have lessened the potential for offence in this case.

In reaching our Decision, we took into account Talksport’s statement that it intended to “incorporate learnings” from this incident into its pre-arranged refresher training, which it was rolling out to staff shortly. For all of the reasons outlined above, Ofcom considered that the potentially offensive material in the Original Interview was justified by the context. The content was therefore not in breach of Rule 2.3 of the Code.

Ofcom recognises that when dealing with potentially distressing and offensive themes, important and timely editorial judgement is required. This is especially the case in the context of a live ‘phone-in’ programme. In this context, we remind broadcasters producing this type of programming of the particular care that needs to be taken in screening callers before putting them on air, and the manner in which such contributors are dealt with whilst on air in order to mitigate any potential offence.

#### *7 Days of Talk Radio with Katherine Boyle (The 7 Days Clip)*

##### Rule 1.3

Rule 1.3 states that children must be protected by appropriate scheduling from material that is unsuitable for them. Appropriate scheduling is judged by a number of factors including: the nature of the content; the time of broadcast; and likely audience expectations.

Ofcom first considered whether this broadcast material was unsuitable for children. We noted that the *7 Days Clip* did not consist of the whole of the Original Interview but only of the first nine minutes. In our view, however, the references to stalking and sexual violence during the course of the interview were potentially distressing. The nature of the conversation between the presenter and the caller as outlined above was, as the Licensee admitted, “adult subject matter” and therefore unsuitable for children.

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<sup>7</sup> For example, Iain Lee said: “Thomas, mate, you’re not well, dude! You are not well! And you are beyond the, um, the, the normal illness that we talk about and deal with on this show. Right?”



We then considered whether this material was appropriately scheduled. This programme was broadcast at 15:00 on a Sunday afternoon. We took into account the very clear and explicit warning given before the broadcast:

*“Right, before this next clip let me give you a warning. What you are about to hear is the most shocking call we’ve ever taken on Late Nights with Iain Lee. It contains references to stalking and sexual violence, so if that’s going to distress you I suggest you go and do something else for ten minutes and I’ll see you when you get back. With that in mind, have a listen to this”.*

We also took account of the Licensee’s position that the total weekly audience for this timeslot on a Sunday did not typically include children. Nevertheless, it appeared that, despite this, the complainant’s children had been listening. In this context, Ofcom’s Guidance<sup>8</sup> indicates that between 06:00 and 19:00 at weekends are times when children are particularly likely to be listening. We also took into account that the Licensee said that the decision to broadcast the *7 Days* Clip in the weekly highlights show in a Sunday afternoon radio programme “should not have been made”.

The Licensee gave us assurances it had taken steps to ensure this situation would not be repeated. However, we considered that this content was not appropriately scheduled. For all the reasons above, Rule 1.3 was breached.

### Rule 2.3

Ofcom also considered whether the *7 Days* Clip was potentially offensive. For all the reasons set out above on the Original Interview, we considered that it was.

We next considered whether the potential offence could be justified by the context.

We took into account various of the contextual factors discussed above in relation to the Original Interview. We also took into account the very clear and explicit warning (see above) and the fact that the *7 Days* Clip did not consist of the whole of the Original Interview. We therefore considered that there was sufficient context provided in the material which was broadcast and that it was not in breach of Rule 2.3.

### ***7 Days of Talk Radio with Katherine Boyle: Breach of Rule 1.3***

### ***Late Nights with Iain Lee and 7 Days of Talk Radio with Katherine Boyle: Not in breach of Rule 2.3***

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<sup>8</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0014/40541/offensive-language.pdf?lang=en](https://www.ofcom.org.uk/_data/assets/pdf_file/0014/40541/offensive-language.pdf?lang=en)

## Fairness and Privacy cases

### Upheld

#### **Complaint by Mr Fayaz Ghafoor made on his behalf by Gresham Legal Limited**

***Naya Pakistan with Talat Hussain, Geo News and Geo Tez, 3 February  
2017***

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#### **Summary**

Ofcom has upheld Mr Fayaz Ghafoor's complaint, made on his behalf by Gresham Legal Limited ("Gresham Legal"), of unjust or unfair treatment in the programme as broadcast.

The programme, broadcast live, included an interview with Mr Murtaza Ali Shah, Chief Correspondent and Associate Resident Editor of the Daily Jang, and Chief Correspondent of Geo News. During the interview, Mr Shah made allegations about the conduct of Mr Fayaz Ghafoor following High Court libel proceedings to which he was party.

Ofcom considered that the comments made in the programme about Mr Ghafoor amounted to significant allegations that were likely to materially and adversely affect viewers' perceptions of him in an unfair way. Consequently, we took the view that the broadcaster did not take reasonable care to satisfy itself that material facts were not presented in the programme in a way that was unfair to Mr Ghafoor.

Given the significant allegations made in the programme about Mr Ghafoor, the broadcaster was required to provide him with an appropriate and timely opportunity to respond to the allegations in order to avoid unfairness. Its failure to do so resulted in unfairness to Mr Ghafoor.

#### **Programme summary**

Geo News and Geo Tez are Urdu language channels which are broadcast under Ofcom licences held by Geo TV Limited ("Geo TV"). As the programme was broadcast in Urdu, an English translation was prepared by Ofcom and provided to the complainant and the broadcaster for comment. Both parties' comments on the translation were considered carefully by Ofcom's translator and a final version of the translation was then provided to the parties who were informed that Ofcom intended to use it for the purpose of its investigation. Both parties agreed with the final translation.

On 3 February 2017, Geo News and Geo Tez broadcast *Naya Pakistan with Talat Hussain* a live programme which referred to recent High Court libel proceedings (concluded in December 2016) against ARY Network Limited ("ARY") and Mr Ghafoor in which the claimant (Mr Shakil-ur-Rahman, the CEO of the Jang Group of companies and Chairman of Geo TV Limited) was successful. The report included an interview with Mr Murtaza Ali Shah, Chief Correspondent and Associate Resident Editor of the Daily Jang, and UK Chief Correspondent of Geo News. The programme's presenter, Mr Talat Hussain, asked Mr Shah about the options open to ARY now that its channels had ceased broadcasting in the UK. Mr Shah gave the following response:

Mr Shah: *“Well, ARY has the option to make a late application to Ofcom for a licence, but before they do that, Talat Sahib [the presenter]. And Ofcom is itself a form of court and the reason that they took away their licences there is in fact a reason for this. You see when ARY filed for bankruptcy, let me give you some context for this. ARY had said that they would pay all the costs and would comply with any court orders, but what happened was that ARY's Chief Operating Officer Fayaz Ghafoor, he filed for bankruptcy. At this point in time he has left the UK as he has filed for bankruptcy. As a result of that, the bailiffs would have called at his house and the police would arrest and place him in jail, and he has therefore left here [the UK].*

*In addition, the ARY company has gone into liquidation and it has filed for bankruptcy. Because of all this, Geo returned to the courts and its lawyers said to the courts that this is all a fraud. At this point, Ofcom, the media regulator, investigated the matter after three weeks and it found that ARY's owner was not here [in the UK] and therefore Ofcom revoked ARY's licences. Now ARY can apply for its licences, but it will be an uphill task to find a way to get its licences back”.*

The programme continued with further discussion about the High Court judgment and ARY. No further reference was made to Mr Ghafoor in the programme.

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

Gresham Legal complained on behalf of Mr Ghafoor that he was treated unjustly or unfairly in the programme as broadcast because:

- a) The programme suggested that Mr Ghafoor had fled the UK because he was at risk of arrest and imprisonment, and that bailiffs would be attending his home to seize goods. However, Gresham Legal said that none of these allegations were true and that the allegation that Mr Ghafoor had fled the UK carried the clear, albeit false, meaning that he was guilty of criminal offences.

Geo TV responded that the report had included a discussion on ARY's liquidation and the closure of its operations as a result. The broadcaster said that it was an undisputed fact that Mr Ghafoor had filed for bankruptcy within two weeks of a court order for costs and damages given as a result of the libel proceedings against Mr Ghafoor and ARY, and that Mr Ghafoor had left for Dubai shortly afterwards.

Geo TV rejected the suggestion that comments made by Mr Shah were made maliciously, or were intended to cause Mr Ghafoor harm or embarrassment. The broadcaster submitted that any embarrassment caused had been because of Mr Ghafoor's own actions, rather than the discussion of them in the report. It said that as a “media figure”, Mr Ghafoor should have expected the fact that he had filed for bankruptcy would be a topic for discussion.

Geo TV said that Mr Shah's comments about Mr Ghafoor were not unjust or unfair. It said that Mr Ghafoor had lost a major and high-profile libel case and, rather than paying the damages and legal costs, he had instead declared himself bankrupt and left the country. The broadcaster said any reasonable Pakistani viewer would have assumed that

Mr Ghafoor had left the country rather than face his creditors, and that Mr Shah's comments therefore "simply reflected what the ordinary Pakistani viewer was thinking".

The broadcaster said that the comment about "Mr Ghafoor's arrest" was made in the spur of the moment, and most Pakistani viewers would have assumed that somebody that had been made bankrupt would be arrested. Geo TV said therefore that it was "far-fetched" to suggest that Mr Ghafoor was treated unfairly or unjustly.

- b) Mr Ghafoor was not given notice of the allegations about him in the programme in advance, therefore denying him an opportunity to comment or respond to them.

Geo TV rejected the suggestion that Mr Ghafoor was not contacted previously. It said that its editorial team had attempted to contact him, but had been unable to do so because his mobile number was "unreachable". The broadcaster said that an email dated 20 December 2016 to the complainant (provided to Ofcom) demonstrated that Mr Ghafoor had been contacted by the programme's producer and asked to take part in the programme, however, no response was received. The broadcaster said that it continued to offer Mr Ghafoor the opportunity to respond to the allegations.

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

Ofcom prepared a Preliminary View on this case that the complaint should be upheld. Both the complainant and the broadcaster were given the opportunity to make representations on the Preliminary View. The complainant did not submit any representations. Geo TV made representations which are summarised below:

Geo TV reiterated that it had invited Mr Ghafoor to be interviewed on GEO News, but that he had "ignored" the invitation, and that further attempts were made to contact him prior to the broadcast of the programme on 3 February 2017. The broadcaster also said that once it was aware of Mr Ghafoor's complaint to Ofcom, it had again offered him an interview "in order to give him an opportunity to clarify his position on the matter", but the offer was declined. Geo TV said that it wished to make clear that these attempts to engage with Mr Ghafoor, both before and after broadcast, were made with "the principles of fairness and just treatment and its responsibilities as a responsible broadcaster very much in mind".

Geo TV said that it took very seriously its responsibilities and obligations as a broadcaster and said that it therefore accepted that in this instance, the allegation that Mr Ghafoor had left the UK because bailiffs would have called at his house and police would arrest him and place him in jail did not meet its usual high standard of journalism. It said that it had, therefore, included the following on-air clarification, in the form of scrolling text, during an edition of *Naya Pakistan* broadcast on 5 August 2017 on Geo News and Geo Tez:

*"On the Naya Pakistan show on 3 February 2017 we broadcast live, and later repeated on GEO TEZ, a segment in the show about ARY Network and Fayaz Ghafoor's libel case defeat in the UK. Murtaza Ali Shah appeared as a guest on that programme and stated that following Mr Ghafoor filing for personal bankruptcy, the bailiffs would have called at his house and the police would arrest and place him in jail, and he has therefore left the country.*

*While it is correct that Mr Ghafoor filed for personal bankruptcy, it was plainly incorrect to state that Mr Ghafoor's decision to leave the country following it was in order to avoid*

*the bailiffs, or to evade the police and arrest and jail. We accept that such an allegation should not have been broadcast and wish to set the record straight. We wish to apologise to Mr Ghafoor for broadcasting such an allegation”.*

## 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, we carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and a translated transcript of it and both parties' written submissions. We also took into account the broadcaster's representations on Ofcom's Preliminary View, however, we concluded that its representations did not materially affect the outcome of Ofcom's Decision to uphold the complaint.

When considering complaints of unjust or 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 of Rule 7.1 and failure to follow these practices will only constitute a breach where it results in unfairness to an individual or organisation in the programme.

- a) We first considered the complaint by Mr Fayaz Ghafoor, made on his behalf by Gresham Legal, that he was treated unjustly or unfairly in the programme as broadcast because the allegation that Mr Ghafoor had fled the UK and was at risk of arrest and imprisonment carried the clear, albeit false, meaning that he was guilty of criminal offences.

Practice 7.9 states:

“Before broadcasting a factual programme, including programmes examining past events, 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 in relation to the allegations made about Mr Ghafoor 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 Ghafoor.

The Code recognises the importance of freedom of expression and the public interest in allowing 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. 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 cases 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' opinions of Mr Ghafoor in a way that was unfair. We then went on to consider whether, if the allegations did have this potential, the manner in which they were presented in the programme resulted in unfairness.

Ofcom viewed the programme and examined the translated transcript of it, in particular the comments made by Mr Shah that Mr Ghafoor had filed for bankruptcy and left the UK and that, as a result of Mr Ghafoor's actions, police officers would be looking to "*arrest him and place him in jail*". We considered that these comments amounted to serious allegations of wrongdoing by Mr Ghafoor, and that viewers may have reasonably perceived him to have fled the country to avoid imprisonment. In our view, these comments had the potential to materially and adversely affect viewers' opinions of Mr Ghafoor negatively and in a way that was unfair.

Ofcom then considered whether the presentation of these comments in the programme as broadcast resulted in unfairness to the complainant.

We recognised that the programme was broadcast live, and that broadcasters need to take particular care with such programmes. We understand that participants can sometimes make unexpected comments which have the potential to cause unfairness to people or organisations. In such circumstances, Ofcom considers that when including material that has the potential to amount to an allegation of wrongdoing, or any other significant allegation, reasonable care must be taken by the broadcaster that the broadcast material is consistent with the requirements of the Code and does not mislead viewers or portray people or organisations in a way that is unfair, without sufficient basis to do so. This might include ensuring that any allegations made during the programme are properly tested and challenged. This could be, for example, by pointing out any contradictory argument or evidence, or by representing the viewpoint of the person or organisation that is the subject of the allegation.

In this case, we considered that during the programme Mr Shah had been provided with a platform to make serious allegations of criminality about Mr Ghafoor which were presented as fact, and the allegations remained unchallenged throughout the programme. There was no attempt by the presenter to place the allegations into context by explaining that they were, for instance, unverified and simply a reflection of Mr Shah's interpretation of events. Additionally, at no point in the programme was an alternative viewpoint put forward to balance the allegations made by Mr Shah against the complainant.

Taking into account all the factors above, we considered the comments made against Mr Ghafoor amounted to significant allegations about his conduct which had the clear potential to materially and adversely affect viewers' opinions of him. For these reasons, Ofcom considered that, in the particular circumstances of this case, the broadcaster did not take reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in the programme, and this resulted in unfairness to Mr Ghafoor.

- b) We next considered the complaint that Mr Ghafoor was not given notice of the allegations about him in the programme in advance, and was therefore denied an opportunity to comment or respond to them.

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".

For the reasons given in head a) above, we considered that the comments made in the programme amounted to significant allegations against Mr Ghafoor. 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.

Geo TV said in its response that programme makers had attempted to contact Mr Ghafoor via his mobile phone, but that his number was "unreachable". Additionally, the broadcaster said programme makers had contacted Mr Ghafoor by email on 20 December 2016 inviting him to take part in that week's edition of the programme *Aaj Shahzeb Khanzada Kay Saath*, which, the email stated, "planned to cover the matter of the recently concluded libel case against Mr Ghafoor and ARY Network". However, Ofcom considered that the email related to an invitation to a different programme to the one subject to Mr Ghafoor's complaint and that it was broadcast over a month before the allegations against Mr Ghafoor, about which he complained, were made. We therefore took the view that this email did not provide for Mr Ghafoor's response specifically to the serious allegations made against him in the programme by Mr Shah.

Ofcom also had regard to the broadcaster's representations on the Preliminary View in which it said it had taken steps following the broadcast of the programme to attempt to redress the matter with Mr Ghafoor by offering him the opportunity to respond to the allegations, and by broadcasting a statement of clarification. However, given the serious nature of the allegations made about Mr Ghafoor in the programme broadcast on 3 February 2017, and the fact that the clarification was broadcast just over six months after the date of the programme as broadcast, we did not consider this to be sufficient in avoiding, or mitigating against, the unfairness caused to Mr Ghafoor.

Given the serious nature of the allegations made in the programme about Mr Ghafoor, we considered that the broadcaster was required to provide him with an appropriate and timely opportunity to respond. We considered that its failure to do so resulted in unfairness to Mr Ghafoor.

**Ofcom has upheld this complaint made by Gresham Legal on behalf of Mr Ghafoor of unjust or unfair treatment in the programme as broadcast.**



## Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed between 21 August and 3 September 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

Programme	Broadcaster	Transmission date	Categories
CSI: NY	5USA	18/06/2017	Generally accepted standards
The Jeremy Kyle Show	ITV	27/06/2017	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)

## Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 21 August and 3 September 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	23/08/2017	Nudity	1
Naked Attraction	4Seven	24/08/2017	Nudity	1
Advertisement	5Star	12/08/2017	Advertising minutage	1
Sex Pod (trailer)	5Star	23/08/2017	Scheduling	1
Champions League (trailer)	BT Sport	22/08/2017	Materially misleading	1
Drag Me To Hell (trailer)	CBS Action	29/08/2017	Violence	1
Snapped: Killer Couples (trailer)	CBS Reality	22/08/2017	Scheduling	1
8 Out of 10 Cats Does Countdown	Channel 4	18/08/2017	Gender discrimination/offence	1
Britain's Benefits Tenants	Channel 4	24/08/2017	Animal welfare	1
Celebrity Island with Bear Grylls	Channel 4	29/08/2017	Gender discrimination/offence	1
Celebrity Island with Bear Grylls	Channel 4	29/08/2017	Offensive language	7
Channel 4 News	Channel 4	18/08/2017	Crime and disorder	1
Channel 4 News	Channel 4	21/08/2017	Due impartiality/bias	1
Channel 4 News	Channel 4	22/08/2017	Race discrimination/offence	2
Cheap Cheap Cheap	Channel 4	16/08/2017	Generally accepted standards	1
Child Genius	Channel 4	09/08/2017	Materially misleading	1
Come Dine With Me	Channel 4	24/08/2017	Sexual material	1
Diana: In Her Own Words	Channel 4	06/08/2017	Generally accepted standards	6
How to Get a Council House	Channel 4	15/08/2017	Offensive language	1
Lego Masters	Channel 4	24/08/2017	Gender discrimination/offence	1
Lego Masters	Channel 4	24/08/2017	Promotion of products/services	1
Location, Location, Location	Channel 4	30/08/2017	Materially misleading	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
My Son the Jihadi	Channel 4	22/08/2017	Generally accepted standards	1
Naked Attraction	Channel 4	18/08/2017	Generally accepted standards	2
Naked Attraction	Channel 4	20/08/2017	Generally accepted standards	1
Naked Attraction	Channel 4	21/08/2017	Nudity	1
Naked Attraction	Channel 4	25/08/2017	Nudity	2
Naked Attraction	Channel 4	28/08/2017	Generally accepted standards	1
Rude Tube 200% Cats	Channel 4	18/08/2017	Animal welfare	2
Can't Pay? We'll Take it Away!	Channel 5	26/08/2017	Offensive language	1
Celeb Trolls: We're Coming to Get You	Channel 5	24/08/2017	Generally accepted standards	1
Celebrity Big Brother	Channel 5	14/08/2017	Generally accepted standards	1
Celebrity Big Brother	Channel 5	17/08/2017	Generally accepted standards	2
Celebrity Big Brother	Channel 5	20/08/2017	Sexual material	7
Celebrity Big Brother	Channel 5	21/08/2017	Disability discrimination/offence	6
Celebrity Big Brother	Channel 5	21/08/2017	Generally accepted standards	2
Celebrity Big Brother	Channel 5	21/08/2017	Offensive language	1
Celebrity Big Brother	Channel 5	22/08/2017	Voting	1
Celebrity Big Brother	Channel 5	23/08/2017	Disability discrimination/offence	1
Celebrity Big Brother	Channel 5	23/08/2017	Generally accepted standards	1
Celebrity Big Brother	Channel 5	25/08/2017	Voting	9
Celebrity Big Brother's Bit on the Side	Channel 5	21/08/2017	Disability discrimination/offence	1
Test Cricket	Channel 5	28/08/2017	Generally accepted standards	1
The Nazi Jesus	Channel 5	26/08/2017	Religious/Beliefs discrimination/offence	1
The Wright Stuff	Channel 5	10/08/2017	Scheduling	1
The Wright Stuff	Channel 5	15/08/2017	Generally accepted standards	1
Fosters Lager's sponsorship of Original Comedy on Dave	Dave	18/08/2017	Race discrimination/offence	1
Storage Hunters UK	Dave	01/09/2017	Offensive language	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Would I Lie To You	Dave	26/08/2017	Sexual orientation discrimination/offence	1
Walk The Prank	Disney XD	12/08/2017	Exorcism, the occult and the paranormal	1
Hollyoaks	E4	23/08/2017	Gender discrimination/offence	1
Made in Chelsea: Ibiza	E4	21/08/2017	Race discrimination/offence	1
Breakfast Show with Karl Davis	Hot Radio 102.8 FM	06/07/2017	Commercial communications on radio	1
Cash Trap	ITV	23/08/2017	Offensive language	1
Coronation Street	ITV	14/08/2017	Generally accepted standards	5
Countrywise: Guide to Britain	ITV	14/08/2017	Animal welfare	2
Emmerdale	ITV	28/08/2017	Violence	1
GMB Today	ITV	23/08/2017	Scheduling	1
Good Morning Britain	ITV	24/07/2017	Generally accepted standards	1
Good Morning Britain	ITV	11/08/2017	Materially misleading	1
Good Morning Britain	ITV	24/08/2017	Generally accepted standards	1
Good Morning Britain	ITV	28/08/2017	Undue prominence	2
ITV News	ITV	13/08/2017	Race discrimination/offence	1
ITV News	ITV	25/08/2017	Due impartiality/bias	1
ITV News at Ten	ITV	23/08/2017	Due impartiality/bias	1
ITV News at Ten	ITV	30/08/2017	Outside of remit	1
ITV News Bulletins	ITV	14/08/2017	Generally accepted standards	1
Judge Rinder	ITV	20/08/2017	Scheduling	1
Loose Women	ITV	28/08/2017	Generally accepted standards	1
Loose Women	ITV	28/08/2017	Sexual material	1
Superman	ITV	27/08/2017	Under 18s in programmes	1
This Morning	ITV	21/08/2017	Disability discrimination/offence	1
Tipping Point	ITV	31/08/2017	Materially misleading	1
Victoria	ITV	27/08/2017	Advertising minutage	1
You've Been Framed	ITV2	14/08/2017	Generally accepted standards	1
You've Been Framed	ITV2	19/08/2017	Scheduling	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Botched	Kanal 11	14/08/2017	Gender discrimination/offence	1
Botched by Nature	Kanal 11	16/08/2017	Gender discrimination/offence	1
Clive Bull	LBC 97.3 FM	29/08/2017	Offensive language	1
James O'Brien	LBC 97.3 FM	08/08/2017	Materially misleading	1
Maajid Nawaz	LBC 97.3 FM	17/08/2017	Race discrimination/offence	1
News	LBC 97.3 FM	29/08/2017	Race discrimination/offence	1
Nigel Farage	LBC 97.3 FM	10/08/2017	Race discrimination/offence	1
The Sex & Relationship Show	LBC 97.3 FM	26/08/2017	Generally accepted standards	1
Father Ted	More4	27/08/2017	Race discrimination/offence	1
Megafactories: Illy Coffee	National Geographic	04/06/2017	Promotion of products/services	1
Freaks & Creeps: Devil Island	National Geographic Wild	22/08/2017	Scheduling	1
Breakfast Show	Panjab Radio	08/06/2017	Hatred and abuse	1
Chris Moyles Breakfast Show	Radio X	08/08/2017	Gender discrimination/offence	1
Ghost Adventures	Really	11/08/2017	Generally accepted standards	1
Richard E Grant's Hotel Secrets	Sky Atlantic	14/08/2017	Offensive language	1
Sky News	Sky News	18/08/2017	Generally accepted standards	1
Sky News	Sky News	20/08/2017	Due accuracy	1
Sky News	Sky News	29/08/2017	Race discrimination/offence	1
Middlesbrough v Sheffield United	Sky Sports Main Event	12/08/2017	Materially misleading	1
Super Sunday	Sky Sports Main Event	27/08/2017	Offensive language	1
Sky Sports News	Sky Sports News	21/08/2017	Gender discrimination/offence	1
Advertisement	Sky Sports PL	20/08/2017	Advertising content	1
A League of Their Own	Sky1	14/08/2017	Gender discrimination/offence	1
Against All Flags	Spike	29/08/2017	Gender discrimination/offence	1
STV News	STV	15/08/2017	Due accuracy	3
Blood Drive (trailer)	Syfy	12/08/2017	Scheduling	1
Blood Drive (trailer)	Syfy	17/08/2017	Offensive language	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Iain Lee	Talk Radio	19/08/2017	Generally accepted standards	1
The Late Night Alternative with Iain Lee	Talk Radio	07/08/2017	Generally accepted standards	1
Yeti Tales	Tiny Pop	29/08/2017	Offensive language	1
America's Got Talent	TruTV	08/08/2017	Disability discrimination/offence	1
Porridge	Yesterday	17/08/2017	Nudity	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
Bedknobs and Broomsticks	BBC 2	26/08/2017	Animal welfare	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 General Procedures for investigating breaches of broadcast licences

Licensee	Licensed service	Categories
Moorlands Radio Ltd	Moorlands Radio	Key Commitments
Sci-Fi Channel Europe LLC	SyFy	Television Access Services

For more information about how Ofcom assesses complaints about broadcast licences, go to:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0019/31942/general-procedures.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0019/31942/general-procedures.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
Doctor Who	BBC 1	16/07/2017	Outside of remit	1
Programming	CBS Reality and True Entertainment	01/01/2017	Outside of remit	1
Advertisement	Channel 4	13/08/2017	Advertising content	1
Advertisement	Channel 4	20/08/2017	Advertising content	1
Advertisement	Channel 4	27/08/2017	Advertising content	1
Advertisement	Channel 4	29/08/2017	Advertising content	1
Advertisement	Channel 4	29/08/2017	Advertising content	1
Celebrity Island with Bear Grylls	Channel 4	01/09/2017	Outside of remit	1
Advertisement	Comedy Central	31/08/2017	Advertising content	1
Advertisement	Dave	31/08/2017	Advertising content	1
Advertisement	ITV	08/08/2017	Advertising content	1
Advertisement	ITV	18/08/2017	Advertising content	1
Advertisement	ITV	21/08/2017	Advertising content	1
Advertisement	ITV	27/08/2017	Advertising content	1
ITV West Country News	ITV	22/08/2017	Outside of remit	1
This Morning	ITV	22/08/2017	Outside of remit	1
ITV News West Country	ITV West Country	18/08/2017	Outside of remit	1
Advertisement	ITV3	26/08/2017	Advertising content	1
Advertisement	STV2	01/08/2017	Sponsorship credits	1
Programming	Talksport, Talksport 2, TalkRadio	20/08/2017	Outside of remit	1
Advertisement	Various	22/08/2017	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
BBC News	All BBC services	23/08/2017	Due impartiality/bias	1
Countryfile	BBC 1	27/08/2017	Animal welfare	1
Question Time	BBC 1	22/06/2017	Due impartiality/bias	1
Saturday Kitchen Live	BBC 1	19/08/2017	Drugs, smoking, solvents or alcohol	1
Sunday Morning Live	BBC 1	20/08/2017	Due impartiality/bias	1
The Andrew Marr Show	BBC 1	18/06/2017	Generally accepted standards	1
Trailers	BBC 1	18/08/2017	Other	1
World Athletics Championships	BBC 1	08/08/2017	Generally accepted standards	1
News	BBC Radio 4	10/08/2017	Due accuracy	1
BBC Sport	BBC Sport	21/08/2017	Other	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 21 August and 3 September 2017.

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

Programme	Service	Transmission date
Medical Detectives	CBS Reality	31/07/2017
News from Westminster	Channel 44	08/06/2017
UK Election	Channel 44	08/06/2017

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)