

# **Ofcom Broadcast Bulletin**

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## Introduction

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

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

- a) [Ofcom’s Broadcasting Code](#) (“the Code”).
- b) the [Code on the Scheduling of Television Advertising](#) (“COSTA”) which contains rules on how much advertising and teleshopping may be scheduled in programmes, how many breaks are allowed and when they may be taken.
- c) certain sections of the [BCAP Code: the UK Code of Broadcast Advertising](#), which relate to those areas of the BCAP Code for which Ofcom retains regulatory responsibility. These include:
  - the prohibition on ‘political’ advertising;
  - sponsorship and product placement on television (see Rules 9.13, 9.16 and 9.17 of the Code) and all commercial communications in radio programming (see Rules 10.6 to 10.8 of the Code);
  - ‘participation TV’ advertising. This includes long-form advertising predicated on premium rate telephone services – most notably chat (including ‘adult’ chat), ‘psychic’ readings and dedicated quiz TV (Call TV quiz services). Ofcom is also responsible for regulating gambling, dating and ‘message board’ material where these are broadcast as advertising<sup>3</sup>.
- d) other licence conditions which broadcasters must comply with, such as requirements to pay fees and submit information which enables Ofcom to carry out its statutory duties. Further information can be found on Ofcom’s website for [television](#) and [radio](#) licences.
- e) rules and guidance for both [editorial content and advertising content on ODPS](#). Ofcom considers sanctions in relation to ODPS on referral by the Authority for Television On-Demand (“ATVOD”) or the Advertising Standards Authority (“ASA”), co-regulators of ODPS for editorial content and advertising respectively, or may do so as a concurrent regulator.

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

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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.

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

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

## Standards cases

### In Breach

#### Syrian Diary

RT, 17 March 2013, 10:30

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#### Introduction

RT (formerly known as Russia Today) is a global news and current affairs channel produced in Russia. In the UK, the channel broadcasts on satellite and digital terrestrial platforms. The licence for RT is held by Autonomous Non-profit Organisation TV Novosti (“TV Novosti” or “the Licensee”). The channel is partly funded by subsidies granted to TV Novosti from the federal budget of Russia and partly by advertising. TV Novosti states however that it is independent in its editorial decisions and is not a part of any government body, nor is it answerable to any government body.

A complainant alerted Ofcom to the programme above stating that it presented a one sided view of the conflict in Syria. The complainant said that the actions of the Syrian Army (supporting the rule of the Syrian leader President Bashar al-Assad) were shown in a positive way and the opposition<sup>1</sup> to the Syrian Government were presented as militant extremists from outside of Syria murdering Syrian civilians.

Ofcom noted that:

- The 30-minute programme opened with the following on-screen text: *“This film is the work of Rossiya 24 journalists. They spent seven months in Syria. The Syrian Diary is an account of their personal experiences and represents their personal view of the conflict in Syria”*. (Rossiya 24 was a Russian language news service owned and controlled by the state-owned All-Russia State Television and Radio Broadcasting Company (VGTRK) based in Russia).
- An on-screen text slate, placed over pictures showing men at a graveside, stated: *“For our friend Amir Abu Jafar. Soldier of the Syrian Armed Forces. And the Syrian people who died at the hands of the terrorists”*.
- The programme included contributions from three members of the Rossiya 24 broadcast team talking to camera in a studio after their time in Syria. At the start of the programme there was a brief introduction to the programme from Rossiya 24 journalist, Anastasia Popova, who stated (in an English translation dubbed over the original Russian) that the journalists had spent seven months in Syria and “right in front of our eyes...it was destroyed” and “our film shows the events in Syria from the point of view of those who are already doomed”. This journalist was also shown filmed on an exercise with the Syrian Army. Other on-screen contributions were made by the cameraman Mikhail Vitkin and Evgeny Lebedev, the Director’s Assistant. These Rossiya 24 contributions included (again in an English translation dubbed over the original Russian):

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<sup>1</sup> Ofcom understands that the opposition, that is those actively opposed to the Syrian Government, consists of diverse groups located across Syria. They include political groups such as the National Co-ordination Committee for Democratic Change, dissidents, the Syrian Islamic Liberation Front, defectors from the Syrian Army known as the Free Syrian Army as well as armed militants, some of whom are reportedly backed by Al-Qaeda.

*“... There were explosions everywhere. They [Syrian opposition forces] were trying to divide the area into a Christian and a Muslim part but the people would say no. So they kept them inside and blew them up.”* (Anastasia Popova, Reporter Rossiya 24);

*“We were filming next to the dead bodies both in the hospital and outside. The pathologist said all the hostages of the militants had been raped – all of them. The kids, the adults, even the elderly. Their brutality knows no limits...”* (Mikhail Vitkin, cameraman Rossiya 24); and

*“How can you fight for the freedom of your own country and kill your children in a truly barbaric way?”* (Evgeny Lebedev, Director’s Assistant, Rossiya 24)

- Other than these contributions, filmed in a studio, and some brief commentary from these same Rossiya 24 journalists over images in the programme, there was no other voiceover or commentary, and no separate presenter linking the interviews either in a studio or in Syria.
- The remainder of the material was presented in a reportage style (that is, without editorial commentary or voiceover to link the material).
- The programme included two contributions from individuals referred to, by on-screen captions, by their first name and the description “Opposition Fighter”:

*“We walked into houses and shot people...then we collected the bodies in one room and started filming them with a cell phone blaming the massacre on the [Syrian] army.”* (Saer, Opposition Fighter)

*“I killed three friends of mine. Cut their throats because I was told they supported the regime...then we wired the houses to make it look like the place had been bombed by the army.”* (Zaher, Opposition Fighter)

- The programme also included clips of interviews with a soldier from the Syrian Army and his wife, a Syrian civilian, a war cameraman with the Syrian Army and a Syrian state television journalist. These comments were all critical of the Syrian opposition. They included:

*“Is it freedom they [the Syrian opposition forces] are after? What kind of freedom? Freedom to butcher people like sheep? What kind of faith would justify manslaughter? How can they stab someone to death and dance around in celebration? What kind of faith is this?”* (Nabil, resident of Homs);

*“What they do is not for the people. They are killing us and our children. They want to destroy our life.”* (Nabil, resident of Homs);

*“They’ve blasted the whole city to bits. Ask anyone what sort of freedom this is? Freedom to massacre people? Is that what they are in it for?”* (Bessam, Syrian Army soldier); and

*“Even in my sleep I fear getting raided, raped and killed in front of my husband.”* (Nadya, wife of Syrian Army soldier Bessam).

- All these clips and short interviews were linked together by rolling footage showing executions, devastation, brutality and killings reportedly perpetrated by

the opposition. This included: news footage of the conflict (in particular, a school bus allegedly bombed by the opposition with comments and cries from the injured including children); Rossiya 24 news footage (taken as the crew accompanied the Syrian Army on a military operation against the opposition and including a clip from an interview they conducted with Bessam the Syrian soldier among the rubble of a bombed out neighbourhood); and, extensive clips of mobile phone footage of atrocities allegedly perpetrated by the opposition in Syria, labelled on-screen as “Militant Video”, including alleged executions by firing squads, corpses lying in pools of blood and groups of masked men shouting slogans such as “Allahu Akbar”<sup>2</sup>, widely adopted by jihadists. Some of the images, such as deserted bombed out buildings and Syrian people apparently fleeing their homes, were accompanied by haunting music.

- The programme included three brief clips of unsourced news footage of the political leaders of the United States (US), France and Turkey (countries which have publicly expressed support for the opposition forces in Syria). These clips were placed between critical comments about the actions of the Syrian opposition and the clip of the US President was accompanied by dramatic drum beats. The news clips consisted of:

French President Francois Hollande saying (in dubbed English translation):

*“We continue with this humanitarian duty and to support the Syrian opposition and we are committed to political transition in Syria”;*

US President Barack Obama stating:

*“The Syrian Government must stop shooting protesters and allow these protests to continue”;* and

Turkish Foreign Minister Ahmet Davutoglu stating (in dubbed English translation):

*“We all have interests in the developments in Syria. Our views can diverge but our objectives...converge.”*

As discussed in more detail below, it was Ofcom’s view that this programme was dealing with matters of political controversy and relating to current public policy i.e. the policies, motives and acts of those referred to as the opposition in the ongoing Syrian conflict, and the proper response of the international community to the conflict. To the extent that this programme dealt with these matters, it was subject to Section Five of the Code which requires broadcasters to preserve due impartiality. We therefore considered this content raised issues warranting investigation under the following rule of the Code:

Rule 5.5: “Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved on the part of any person providing a service...This may be achieved within a programme or over a series of programmes taken as a whole”.

As already pointed out the programme also included the following information at the start of the programme:

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<sup>2</sup> “Allahu Akbar” is an Arabic phrase meaning ‘God is Great’ or ‘God is Greater’.



*“This film is the work of Rossiya 24 journalists. They spent seven months in Syria. The Syrian Diary is an account of their personal experiences and represents their personal view of the conflict in Syria.”*

As the content in this programme was signalled by the broadcaster as a personal view programme, Ofcom considered therefore that it also raised issues warranting investigation under the following rule of the Code:

Rule 5.9: “Presenters and reporters (with the exception of news presenters and reporters in news programmes), presenters of ‘personal view’ or ‘authored’ programmes or items, and chairs of discussion programmes may express their own views on matters of political or industrial controversy or matters relating to current public policy. However, alternative viewpoints must be adequately represented either in the programme, or in a series of programmes taken as a whole...”

Ofcom asked TV Novosti to provide comments on how the programme complied with the above rules.

## Response

With regard to Rules 5.5 and 5.9, the Licensee stated it was “very conscious” of its obligations with respect to due impartiality.

TV Novosti made several points which appeared to question whether Section Five was engaged in this case:

- in relation to whether this programme was a matter of current public policy, the Licensee stated that the rule “does not specify *whose* public policy” and “as is abundantly clear to any reasonably informed viewer, there is a wide disagreement on what is justifiable public policy, even at the level of Russian (or Syrian) versus ‘Western’ public policy”. Furthermore, whilst accepting that “the international community is divided about how to respond to the conflict”, TV Novosti said: “we are not sure this is enough to engage the [due impartiality] requirements”;
- the programme was not “commenting on any aspect of UK domestic policy. Nor indeed was it suggesting that Syrian public policy was correct and that UK public policy was wrong”;
- viewers of the programme would not have considered it was an attempt to cover the basis or scope of the Syrian conflict “with its complex internal and external arguments as to right or wrong” and “it did not debate the political policies of the Syrian government nor of the opposition forces”; and
- the Licensee referred to paragraph 1.24<sup>3</sup> of Ofcom’s published Guidance to Section Five, and said that it “may” be the case that the programme would not be within the “personal view” testimony exception referred to in paragraph 1.24. However, TV Novosti suggested that, in the absence of any apparent consideration by Ofcom of the other two exceptions in that paragraph, a decision

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<sup>3</sup> See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section5.pdf>  
Paragraph 1.24 gives examples “where a programme would not necessarily be deemed to be dealing with a matter of political or industrial controversy or a matter relating to current public policy”.

based on the programme not being within the “personal testimony” exception alone was not sustainable. For example, the main editorial premise of the programme was the “appalling human cost of the [Syrian] conflict”, which might be covered by one of the other exceptions described in paragraph 1.24, namely: “references to a political matter or policy is essentially descriptive and incidental to the main editorial premise for a programme, and where the programme does not include views or opinions on the merits of a particular political matter or policy”.

In particular, the Licensee said that this programme was clearly labelled as a “personal view” programme, drawn from the diary of a television news production team who had been reporting from Syria for seven months and it depicted the actions of the conflicting parties. Therefore, according to TV Novosti, “the subject of the documentary was not the Syrian conflict, but rather the impact on the citizens of Syria”. As such, the programme “was clearly signalled as the personal view of the production company and their seven months experience in Syria.” The production company was there in the context of making programmes for Rossiya 24, which is independent of RT, and reflected their views.

TV Novosti said that the editorial content of *Syrian Diary*: “might be characterised as a meditation on the nature of freedom, and the paradox of a peaceful country being destroyed by it”. By way of illustration it said that this theme could be characterised, for example, by: the cameraman in the *Syrian Diary* production team being interviewed during the programme in front of the “pastoral idyll” of a waterfall, but then being shown going “on to pose the problem, as he sees it, of the destruction of the country in the name of freedom”; and a journalist from a television channel “loyal to the Assad government” admitting that the “Syrian media are mendacious”. The Licensee added that: “Although the context largely (but by no means exclusively) focuses on acts of violence committed by groups of rebels, the partisan viewpoint at least arguably fades in comparison with the contrast between peace and war. The main viewpoint is that of the victims, that is to say those caught up in the conflict”.

TV Novosti said that it had “not found it easy to understand” the reasons given by Ofcom in its Preliminary View why Section Five would be engaged in this case. In its representations, the Licensee laid out a number of reasons for why this programme had complied with the due impartiality rules of the Code.

TV Novosti maintained that the preservation of due impartiality is: “a much broader test than simply including alternative viewpoints”. Citing the definition of “due impartiality” in Section Five of the Code, the Licensee said that the preservation of due impartiality depended on taking account of all the relevant circumstances, and in particular the context of a programme. The Licensee pointed for example to:

- The nature of the programme:
  - “the programme included considerable material derived from Syrian opposition forces. There was very little commentary – the material was allowed to speak for itself”;
  - “the programme included clips from French, Turkish and US political leaders, expressing their views and policies”;
  - “the thrust of the documentary, as evidenced by the above, together with the statements from representatives of the official forces and Syrian nationals, was to emphasise the horror and sadness of the civil conflict and its impact

on ordinary people, who until the present conflict arose, were co-existing peacefully”; and

- “the documentary raised issues that while some of the opposition forces are indeed Syrian nationals, many are not, and it questioned just what “freedom” was being sought by the opposition forces, to the bewilderment of uninvolved Syrian men, women and children whose lives were being destroyed in inhuman ways”.
- The nature of the service: TV Novosti argued that Ofcom should take account of the nature of RT, and the channel’s publicly stated aim which is that it: “provides an alternative perspective on major global events, and acquaints international audience[s] with the Russian viewpoint”. On a related matter, the Licensee added, that because of Ofcom’s statutory duty to “further the interest of citizens in communication matters”<sup>4</sup>, the regulator should: “welcome [RT] as a contribution to the range of media voices available and to safeguarding the vibrancy of democratic debate”.

TV Novosti made several points about what would constitute alternative viewpoints in the context of the Syrian conflict. In particular, the Licensee:

- suggested that Ofcom was: “adopt[ing] the viewpoint of what one might call the Western consensus or ‘our side’”; and “appears to be seeking in particular the inclusion of one [viewpoint] supporting the western political view of the civil war”. Furthermore, TV Novosti suggested that: “Ofcom’s rules themselves are to some extent tilted in favour of the transmission of orthodox views”;
- cited paragraph 1.33 of Ofcom’s published Guidance to Section Five of the Code, which states: “It will not always be necessary to present an opposing view which is at odds with the established view of the majority or inconsistent with established fact in order to preserve due impartiality”. The Licensee also said that paragraph 1.33 appeared to “provide a charter” for broadcasters presenting “the point of view of the big battalions without regard to alternative viewpoints” at the risk of undermining the “democratic process”; and
- made reference to a House of Lords<sup>5</sup> legal judgment (“the *Brind* case”) that held that: “due impartiality did not extend to presenting the viewpoint of terrorists as an alternative viewpoint to that of the UK government”<sup>6</sup>.

TV Novosti pointed to examples of linked programming to *Syrian Diary* for the purposes of complying with Section Five of the Code. Firstly, TV Novosti provided a recording of the 25-minute second half of *Syrian Diary*, which was broadcast approximately 30 minutes after the programme in this case. Second, the Licensee said that ten minutes before the programme was broadcast in this case, within the preceding news bulletin, a segment called *The Cost of War*<sup>7</sup> was shown. This segment focused on: “the human impact of the [Syrian] conflict and the effects of intervention by other states”. TV Novosti said that this segment featured a political

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<sup>4</sup> See section 3(1)(a) of the Communications Act 2003 (“the Act”).

<sup>5</sup> See *R v Secretary of State for the Home Department ex parte Brind*, [1991] 1 AC 696.

<sup>6</sup> See the Decision for the details of TV Novosti’s representations concerning the *Brind* case.

<sup>7</sup> The Licensee said that *The Cost of War* was broadcast in subsequent news bulletins as well.

analyst, Robert Harneis, who was reported as believing that: “*the EU will eventually find a way to allow more arms to reach the war-torn country [i.e. Syria]*”. The Licensee said that *The Cost of War* segment should be considered as a relevant contextual<sup>8</sup> factor for the purposes of judging whether *Syrian Diary* was duly impartial. TV Novosti added that *The Cost of War* segment also met the Code’s definition of “series of programmes taken as a whole”. For example, *The Cost of War* segment and *Syrian Diary* were editorially linked by being: “linked by content (similarity of subject and theme) and timing (there was only ten minutes between them)”.

Third, the Licensee also explained that the service RT broadcasts many programmes presenting alternative views on the Syrian conflict, such as the *Crosstalk* series. Previous episodes had regularly addressed aspects of the Syrian crisis such as the episodes broadcast on 6 February 2013 (titled ‘Syria Exploited’) and on 14 November 2012 (titled ‘Syrian Reshuffle’). Therefore the Licensee was of the view that *Crosstalk* as well as “several other regular commentary and analysis programmes, plus the continual rolling news coverage of the channel, taken together provide the balance required in Rule 5.5.”

Finally, the Licensee argued that “given the arguable ambiguity with respect to the application of regulation of international channels broadcasting in the UK with respect to public policy”, the programme did not breach the rules on due impartiality.

## **Decision**

### Introduction

Under the standards objectives of the Act, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that the special impartiality requirements set out in section 320 of the Act are complied with. This objective is reflected in Section Five of the Code.

Broadcasters are required to comply with the rules in Section Five to ensure that the impartiality requirements of the Act are complied with, including that due impartiality is preserved on matters of political or industrial controversy and matters relating to current public policy.

When applying the requirement to preserve due impartiality, Ofcom must take into account Article 10 of the European Convention on Human Rights. This provides for the broadcaster’s and audience’s right to freedom of expression, which encompasses the right to hold opinions and to receive and impart information and ideas without undue interference by public authority. The broadcaster’s right to freedom of expression is not absolute. In carrying out its duties, Ofcom must balance the right to freedom of expression on one hand, with the requirement in the Code to preserve “due impartiality” on matters relating to political or industrial controversy or matters relating to current public policy.

Section Five of the Code acts to limit, to some extent, freedom of expression because its application necessarily requires broadcasters to ensure that neither side of a debate relating to matters of political or industrial controversy and matters

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<sup>8</sup> One of the contextual factors listed in Section Two (and applicable to Section Five) of the Code is: “what other programmes are scheduled before and after the programme or programmes concerned”.

relating to current public policy is unduly favoured. Therefore, while any Ofcom licensee has the freedom to discuss any controversial subject or include particular points of view in its programming, broadcasters must always comply with the Code.

Rule 5.5 of the Code requires that: “Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved on the part of any person providing a service...This may be achieved within a programme or over a series of programmes taken as a whole”.

In addition, Rule 5.9 of the Code requires that: “Presenters and reporters (with the exception of news presenters and reporters in news programmes), presenters of ‘personal view’ or ‘authored’ programmes or items, and chairs of discussion programmes may express their own views on matters of political or industrial controversy or matters relating to current public policy. However, alternative viewpoints must be adequately represented either in the programme, or in a series of programmes taken as a whole...”.

Depending on the specific circumstances of any particular case, it may be necessary to reflect alternative viewpoints in an appropriate way to ensure that Rules 5.5 and 5.9 are complied with.

In addition, in judging whether due impartiality has been preserved in any particular case, the Code makes clear that the term “due” means adequate or appropriate to the subject matter. Therefore “due impartiality” does not mean an equal division of time has to be given to every view, or that every argument and every facet of the argument has to be represented. Due impartiality may be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures due impartiality is maintained. The definition of “due impartiality” laid out in the Code also states: “The approach to due impartiality 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. Context, as defined in Section Two: Harm and Offence of the Code, is important”.

The broadcasting of critical comments concerning the policies and actions of any government, multi-national institution or nation state is not, in itself, a breach of due impartiality. Importantly, the Code does not prohibit broadcasters from, for example, criticising one side in a particular conflict such as currently in Syria. Furthermore, Ofcom licensees always have the editorial freedom, more generally, to challenge any ‘orthodox’ viewpoint on any controversial issue (including a view perceived to be that of “the West”), as long as due impartiality is preserved. It is essential that news and current affairs programmes are able to explore and examine controversial issues, and contributors are able to take a robust and highly critical position. However, depending on the specific circumstances of any particular case, it may be necessary to reflect alternative viewpoints in an appropriate way in order to ensure due impartiality is preserved.

#### Application of Section Five

Ofcom first considered whether the requirements of Section Five of the Code should be applied: that is, whether the subject of the documentary concerned matters of political or industrial controversy or matters relating to current public policy.

As detailed in the Introduction, we noted that the programme included a range of statements highly critical of the actions and motives of the Syrian opposition, and a

series of images which allegedly showed the Syrian opposition indiscriminately firing weapons, executing plain clothed civilians at close range and loading weapons such as rocket launchers, bazookas and machine guns. The statements included:

*“What they [the opposition] do is not for the people. They are killing us and our children. They want to destroy our life.”* (Nabil, resident of Homs);

*“They’ve [the opposition] blasted the whole city to bits. Ask anyone what sort of freedom this is? Freedom to massacre people? Is that what they are in it for?”* (Bessam, Syrian Army soldier);

*“We’ve heard many stories from people who have started to buy grenades so in case they are stopped by the Free Syrian Army<sup>9</sup> they will blow themselves up. No one wants to deal with these monsters. They prefer to die a quick death instead, it’s much easier than being caught and slaughtered in the street.”* (Mikhail Vitkin, cameraman Rossiya 24); and

*“How can you fight for the freedom of your own country and kill your children in a truly barbaric way?”* (Evgeny Lebedev, Director’s Assistant, Rossiya 24).

It is Ofcom’s opinion that this programme dealt with a matter of political controversy and a matter relating to current public policy, insofar as it presented a view on the policies, motives and acts of the opposition in the ongoing Syrian conflict and, to a lesser extent, the international community’s response to the conflict.

There are various reasons why Ofcom reached this view. The policies, actions and motives of the opposition in challenging the Syrian Government are inextricably linked to, and inform, any potential response from the international community. In turn, the international community’s response to the Syrian conflict is deeply divided. For example, Russia has provided longstanding military and economic support to the Syrian Government. China and Iran are also supporters of President Bashar al-Assad. There has also been a division amongst nations, on the issue of the Syrian conflict, within various international institutions, such as the UN Security Council. The divisions and ongoing debates in the international community about the extent to which they should respond to the alleged military action by the Syrian Government are very much related to each individual country’s own assessment of the policies, motives and acts of the opposition in the ongoing Syrian conflict.

In reaching our Decision as to the applicability of Section Five, Ofcom took into account the Licensee’s various arguments as to why this programme did not deal with a matter of political controversy and current public policy. Firstly, TV Novosti said the definition of “matters of current public policy” within the Code “does not specify whose public policy” is applicable in any case. We disagreed. The Code defines matters of current public policy as follows: “Matters relating to current public policy need not be the subject of debate but relate to a policy under discussion or already decided by a local, regional or national government...”. Matters of public policy are therefore given a broad meaning to encompass potentially matters relating to policies under discussion or decided by any local, regional or national government. In this case the programme clearly *related* to the policies adopted and pursued by the current Syrian Government, headed by President Bashar al-Assad.

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<sup>9</sup> The Free Syrian Army is an opposition group formed from defected members of the Syrian Army and other volunteers.

We also noted the Licensee's argument that there is "wide disagreement on what is justifiable public policy in Syria". However, just because there is disagreement on an issue of current policy does not obviate the need for a broadcaster to comply with Section Five of the Code as appropriate. Indeed, the existence of a range of views on matters relating to current public policy, and therefore the need to reflect them as appropriate in broadcasts, is a major rationale for the existence of the due impartiality provisions in the Act and the Code.

On a related point, we noted that TV Novosti, whilst accepting that "the international community is divided about how to respond to the [Syrian] conflict", suggested that this fact was not enough to engage the due impartiality rules. We disagreed. Although the programme dealt principally with the policies, motives and acts of the opposition in the ongoing Syrian conflict, it also dealt with (albeit to a lesser extent) the related issue of the international community's response to the Syrian conflict. We therefore considered that the controversy within the international community as to how to respond to the Syrian conflict was part of the programme's subject matter, which engaged the rules in Section Five of the Code.

Second, the Licensee said that the programme was not "commenting on any aspect of UK domestic policy", and "suggesting that Syrian 'public policy' was correct and that UK 'public policy' was wrong". Nor, the Licensee said, would this programme have been regarded by viewers as an attempt to cover the basis or scope of the Syrian conflict and it did not debate the political policies of the Syrian Government nor of the opposition forces. In response, Ofcom points out that Section Five does not just apply to issues of UK "domestic policy": it can also (depending on the circumstances) cover controversial issues both at the international level and relating to individual foreign countries. Further, the application of Section Five does not turn on whether or not a programme includes statements indicating a particular state's policies are 'right' or 'wrong'. Rather, the relevant test is whether a programme includes viewpoints on matters of political controversy or relating to current public policy.

Third, TV Novosti discussed paragraph 1.24<sup>10</sup> of Ofcom's published Guidance to Section Five. This paragraph lays out a non-exhaustive list of instances where Section Five might not be engaged. It said that one of the instances under paragraph 1.24 ("where references to a political matter or policy is essentially descriptive and incidental to the main editorial premise for a programme, and where the programme does not include views or opinions on the merits of a particular political matter or policy") might be applicable in this case. We did not agree with this argument. We considered that the programme included a number of statements about the Syrian conflict, as outlined in the Introduction, which went beyond mere description of that conflict. Rather these statements could be characterised as being highly critical about one side in the Syrian conflict.

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<sup>10</sup> Paragraph 1.24 states: "There may be a range of instances where a programme would not necessarily be deemed to be dealing with a matter of political or industrial controversy or a matter relating to current public policy, including:

- where references to a political matter or policy is essentially descriptive and incidental to the main editorial premise for a programme, and where the programme does not include views or opinions on the merits of a particular political matter or policy;
- where references to political disputes and conflicts are used as descriptive backdrop to a historical drama; and
- 'personal view' testimony on particular matters included within factual programming".

Fourth, the Licensee said that this was a “personal view” programme drawn from the diary of a television news production team who had been reporting from Syria: the subject of the programme was not the Syrian conflict but rather its impact on the ordinary citizens of Syria. The Licensee added that the likely expectation of the audience to this programme would have been shaped by the fact that the introductory on-screen text to the programme would have informed the audience that the programme had been made by journalists: “embedded with the Syrian military”. However, it is not the case that the due impartiality rules do not apply to all programming which includes some personal testimony on particular matters.

To assess whether Section Five is applicable at all to a programme containing ‘personal view’ testimony, Ofcom takes account of all the circumstances. But the focus of Ofcom’s assessment is normally on whether the ‘personal view’ testimony discusses the merits of a particular political matter or policy. The fact that a programme contains some ‘personal view’ testimony does not mean that it is a ‘personal view’ or ‘authored’ programme as referred to in Rule 5.9 of the Code. Indeed, the existence of Rule 5.9 of the Code confirms that there will be ‘personal view’ programmes where the due impartiality rules apply.

On reviewing the material, Ofcom noted that the programme included two separate contributors who might be described as representing the impact of the conflict on the “ordinary citizens” of Syria. These individuals were described by means of on-screen captions as “*Nabil, resident of Homs*” and “*Nadya, Bessam’s wife*” (Bessam was a Syrian Army soldier who was also featured in the programme). However, the majority of other contributors to the programme did not appear to Ofcom to be “ordinary citizens” of Syria but representatives, or those sympathetic to, the Syrian state who, at times, commented on their view of the impact of the conflict on “ordinary citizens” as well as their own experiences. These contributors included the Rossiya 24 film crew, a Syrian state television journalist, a Syrian Army war cameraman and a soldier of the Syrian Army. For example:

*“We were filming next to the dead bodies in the hospital and outside. The pathologist said all the hostages of the militants had been raped – all of them. The kids, the adults, even the elderly. Their [i.e. the Syrian opposition’s] brutality knows no limits...”* (Mikhail Vitkin, cameraman Rossiya 24);

*“Wherever they go the insurgents make a show of executing civilians – they will kill a person, record video on a smart phone and share it online for everyone to see...two passersby were caught and slaughtered on the street in broad daylight. The fear is deeply ingrained in the people. As they see the militants cut someone’s throat they picture they might suffer a similar fate so they flee.”* (Iyad, Syrian Army war cameraman);

*“How can you fight for the freedom of your own country and kill your children in a truly barbaric way?”* (Evgeny Lebedev, Director’s Assistant, Rossiya 24); and

*“They said: ‘look at him, you are going to be punished like him if you lied’...it was 60 bullets in his body...two Kalashnikovs.”* (Yarah, Syrian State television journalist recounting her kidnapping by the opposition).

We considered the above statements were examples of ‘personal view’ testimony. But they were also personal commentary on the policies, motives and acts of the opposition in the current Syrian conflict, and they were all critical of the opposition. They were all representative of just one viewpoint of the current Syrian conflict. In this context, we noted the Licensee said that it “may” be the case that one of the



other instances where Section Five might not be engaged, listed in paragraph 1.24 of Ofcom's published Guidance to Section Five ("personal view' testimony on particular matters included within factual programming"), did not apply in this case.

Fifth, TV Novosti said that: "it would have been apparent [to the audience] that [the programme] had been acquired by the licensee from a third party and that no claim of impartiality was made for the film itself". However, the fact that a programme is acquired from a third party, or any claims are made in a programme as to whether it is impartial or not, does not, depending on the facts of the case, obviate the need for licensees to maintain due impartiality.

Sixth, the Licensee argued that the programme: "might be characterised as a meditation on the nature of freedom, and the paradox of a peaceful country being destroyed by it". TV Novosti added that: "Although the context largely (but by no means exclusively) focuses on acts of violence committed by groups of rebels, the partisan viewpoint at least arguably fades in comparison with the contrast between peace and war. The main viewpoint is that of the victims, that is to say those caught up in the conflict". We disagreed with these arguments. Whatever the editorial intention of the programme, we considered that the audience would have been likely to have viewed *Syrian Diary* as a programme about the Syrian conflict, which was overwhelmingly critical of one side in that conflict. As mentioned above, the Code does not prohibit programmes which take such an editorial approach, provided due impartiality is preserved by, for example, presenting appropriately alternative viewpoints either within the programme, or in a series of programmes taken as a whole.

#### Preservation of due impartiality: Rules 5.5 and 5.9

Ofcom went on to assess whether the programme preserved due impartiality by, for example, presenting sufficiently alternative viewpoints. In this respect, we noted the Licensee said that the preservation of due impartiality is: "a much broader test than simply including alternative viewpoints" and contextual factors are also important. Ofcom agreed with this point. As mentioned above, context is important in determining the approach to due impartiality in any particular case. Therefore, we firstly considered the programme itself overall. The programme in Ofcom's opinion presented a relentlessly negative picture of the Syrian opposition. In effect it was a documentary critical of the opposition forces: their aims, motives, policies and actions. This was because the programme did not question the policies, motives and actions of the Syrian Government but only the opposition's disagreement with those policies. The programme also did not provide any information pointing out that the Syrian opposition is composed of disparate groups with, to varying extents, different aims and activities.

We noted TV Novosti's argument that the programme "included considerable material derived from Syrian opposition forces", including footage allegedly originating from the opposition labelled as "*Militant Video*", and "clips from French, Turkish and US political leaders, expressing their views and policies". We therefore assessed whether these alternative viewpoints were sufficient to ensure due impartiality was preserved in this case.

With regard to including the views of the opposition, Ofcom noted that two men, described on-screen as "*Opposition Fighters*" (Saer and Zaher) spoke to camera and made the following two comments:

*“I killed three friends of mine. Cut their throats because I was told they supported the regime. They were traitors to the people. Then we wired the houses to make it look like the place had been bombed by the army” (Zaher, Opposition Fighter); and*

*“We moved in to kill the locals early in the morning. We walked into houses and shot people even those who were still in bed. Then we collected the bodies in one room and started filming them with a cell phone blaming the massacre on the army. Then we heard the military was closing in on us. Part of our group fled at once while others opened fire on the troops.” (Saer, Opposition Fighter)*

Ofcom is aware that there is evidence that militant rebels have been responsible for atrocities in some parts of Syria (just as there are allegations and evidence that Syrian Government forces or their supporters have also been responsible for atrocities)<sup>11</sup>. Nevertheless, while these two individuals were described on-screen as “*Opposition Fighters*”, in Ofcom’s view the inclusion of these brief clips did not of themselves sufficiently represent an alternative viewpoint i.e. the views of the Syrian opposition on the policies and actions of the opposition overall. Indeed, the contributions from the two “*Opposition Fighters*” represented on-screen did not offer the audience an understanding of the views of the opposition movement as a whole in Syria but, in Ofcom’s opinion, served principally to reinforce and corroborate the programme narrative represented by the views of the various pro-Assad contributors. For example, lyad (war cameraman), Nabil (resident of Homs), Bessam (Syrian soldier) and Mikhail Vitkin (cameraman Rossiya 24) stated:

*“Wherever they go the insurgents make a show of executing civilians – they will kill a person, record video on a smart phone and share it online for everyone to see” (lyad, war cameraman);*

*“What kind of faith would justify manslaughter? How can they stab someone to death and then dance around celebrating? What kind of faith is this?” (Nabil, resident of Homs);*

*“They’ve blasted the whole city to bits. Ask anyone what sort of freedom this is? Freedom to massacre people? Is that what they are in it for?” (Bessam, Syrian soldier);*

*“We were filming next to the dead bodies in the hospital and outside. The pathologist said all the hostages of the militants had been raped – all of them. The kids, the adults, even the elderly. Their brutality knows no limits...” (Mikhail Vitkin, cameraman Rossiya 24).*

Ofcom noted that, other than the two “*Opposition Fighters*” featured, there were no other contributions in this programme from any individual representing any of the other more moderate opposition groups in Syria, i.e. those groups who consist of Syrian nationals who are not seeking regime change through inflicting the type of

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<sup>11</sup> See the various reports of the independent international commission of inquiry on the Syrian Arab Republic (set up by the United Nations Office of Human Rights) for example: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13003&LangID>.

atrocities highlighted in this programme but rather seeking long-term democratic change<sup>12</sup>.

Ofcom also assessed the numerous clips labelled as “*Militant Video*” to assess whether, as TV Novosti has argued, provided the viewpoint of the Syrian opposition. These video clips consisted of footage taken on mobile telephones, which allegedly showed: numerous bloodied corpses (often masked to avoid detail and identification); executions by firing squad; fighters arming themselves with heavy artillery, firing indiscriminately and chanting “*Allahu Akbar*” (a term widely adopted by radical Muslims engaged in Jihad); and, masked fighters counting American dollars. In our view, these images did not present an alternative perspective or opinion but again served to reinforce the editorial viewpoint of the programme i.e. that all (or at least the vast majority) of opposition fighters in Syria are extremists, from outside of Syria, who are committing atrocities against Syrian civilians.

The programme also included footage of the leaders of France and the United States and Turkey giving broadly supportive statements about the opposition movement in Syria. We noted that an important feature of this matter of political controversy and matter relating to current public policy, as dealt with by the programme, was the debate amongst the international community concerning the policies, motives and actions of the Syrian opposition. In summary, there exists clear disagreement and ongoing debate at an international level about who is responsible for the Syrian conflict, the alleged atrocities that have been perpetrated in Syria, how to resolve the conflict, and how the international community should respond.

The French President, Francois Hollande, was shown saying (with the following translation dubbed over the original soundtrack): “*We continue with this humanitarian duty and to support the Syrian opposition and we are committed to political transition in Syria*”. US President Barack Obama was featured stating: “*The Syrian Government must stop shooting protesters and allow these protests to continue*”.

However, we noted these statements were intercut with and juxtaposed against other footage and statements as follows:

- a sequence that began with footage of a bombed out school bus with the twisted wreck of the bus and the child passengers’ belongings strewn around the site with commentary from Evgeny Lebedev of Rossiya 24 over the top of these images: “*The kids were on their way to school with their parents. The school bus was burnt to ashes and many kids died. How can you fight for the freedom of your own country and kill your children in a truly barbaric way?*” This was followed by shots of a child at the bomb site and a young boy injured in hospital showing their distress and anger at the incident. A clip of a masked opposition fighter holding a bazooka to camera followed;
- a clip of French President Francois Hollande was played with the following translation: “*We continue with this humanitarian duty and to support the Syrian opposition and we are committed to political transition in Syria*”;
- Nabil (resident of Homs) was then shown stating: “*How can they stab someone to death and dance around in celebration? What kind of faith is this? We have no idea where all these men come from.*” This was followed by “*Militant Video*”

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<sup>12</sup> For example, the Syrian Opposition’s National Co-ordination Committee for Democratic Change, regarded as a moderate member of the Syrian opposition, is committed to resolve the Syrian conflict through dialogue with the Government and democratic elections.

footage of opposition fighters shooting a man, who was lying down, in the back at close range, and of burning and bombed out buildings with two dead bodies lying on steps outside; and

- a clip of Barack Obama at a press conference saying: *“The Syrian Government must stop shooting protesters and allow these protests to continue.”*

Ofcom considered that these clips of the two foreign leaders provided an alternative voice, to some extent. However, the juxtaposition of these short uncontextualised clips of international leaders voicing support for the Syrian opposition and other protesters, inserted between the specific comments about, and images of, atrocities allegedly perpetrated by the Syrian opposition, in Ofcom’s view served to undermine any value they had in representing the alternative viewpoint of the Syrian opposition.

For these reasons we did not agree with the Licensee’s arguments that, through the inclusion of “considerable material derived from Syrian opposition forces” and statements from various international leaders, it had adequately reflected the viewpoint supportive of the Syrian opposition for the purposes of maintaining due impartiality. In addition, there were no other statements included in the programme, which could be characterised as articulating the viewpoint of the Syrian opposition on their policies, motives and actions.

We also considered the Licensee’s various arguments about the nature of its service, such as that it: “provides an alternative perspective on major global events, and acquaints international audience[s] with the Russian viewpoint”. TV Novosti added that because of Ofcom’s statutory duty to “further the interest of citizens in communication matters”, the regulator should: “welcome [RT] as a contribution to the range of media voices available and to safeguarding the vibrancy of democratic debate”. In reaching our decision, Ofcom took account of the nature of this service, and the likely audience expectations to RT. We also had careful regard to the broadcaster’s right to freedom of expression and the audience’s right to receive information and ideas.

On a related point, Ofcom also took account of the Licensee’s argument that “given the arguable ambiguity with respect to the application of regulation of international channels broadcasting in the UK with respect to public policy”, the programme did not breach the rules on due impartiality. We disagreed. All Ofcom licensees, including TV Novosti, must comply with the Code, including the rules on due impartiality. In addition, Ofcom has made clear through its published decisions and guidance, and not least published decisions that have concerned the Licensee<sup>13</sup>, that Section Five of the Code applies to “international channels broadcasting in the UK”. As appropriate, however, Ofcom does take account of all the circumstances of a television channel, broadcasting internationally from the UK under an Ofcom licence, in deciding on the proper application of the due impartiality rules. This happened in this case.

We noted that, in its representations, the Licensee made several points about what would constitute sufficient alternative viewpoints in the context of the Syrian conflict. Firstly, TV Novosti suggested that Ofcom was “adopt[ing] the viewpoint of what one might call the Western consensus or ‘our side’”; and “appears to be seeking in

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<sup>13</sup> See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb213/obb213.pdf> and <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb217/obb217.pdf>.

particular the inclusion of one [viewpoint] supporting the western political view of the civil war". Furthermore, the Licensee suggested that: "Ofcom's rules themselves are to some extent tilted in favour of the transmission of orthodox views". We strongly refuted these points. As an independent regulator, Ofcom has no views on, nor seeks to advance, any political or policy viewpoint that might be included in the output of one of its Licensees. Furthermore, we would emphasise the point mentioned above that Ofcom licensees have the editorial freedom, more generally, to challenge what are regarded as 'orthodox' views, as long as due impartiality is preserved. Ofcom's duty is not to ensure that viewpoints supportive of the policy positions of particular nation-states, governments or international organisations are included in programming. Rather, it is to ensure that, when matters of political controversy and matters relating to current public policy are discussed, due impartiality is preserved.

Second, TV Novosti cited paragraph 1.33<sup>14</sup> of Ofcom's published Guidance to Section Five of the Code, saying that this paragraph appeared to "provide a charter" for broadcasters to present "the point of view of the big battalions without regard to alternative viewpoints" at the risk of undermining the "democratic process". We disagreed. The point of this piece of Guidance is to make clear that it will not always be possible, or necessary, to reflect an alternative view to a majority viewpoint, because no alternative viewpoint to counter the majority view exists or is sufficiently credible. However, this was not the case *Syrian Diary*, where there are established and well-known viewpoints of the Government of President Bashar al-Assad, and of the Syrian opposition.

A further point made by the Licensee concerned a House of Lords<sup>15</sup> legal judgment, the *Brind* case. According to TV Novosti: "The conflict in Syria is one in which the Syrian government characterises the opposition as terrorists. This description is reflected in *Syrian Diary*". It added that the *Brind* case held that due impartiality does not extend to: "presenting the viewpoint of terrorists as an alternative viewpoint to that of the UK government". In the Licensee's view, the effect of the *Brind* case: "appears to be that due impartiality does not extend to presenting the viewpoint of the Syrian opposition, who are treated as terrorists by the Syrian government and no doubt by Syrian law, as an alternative viewpoint to that of the legitimate Syrian government". We disagreed with this argument. In our view, the *Brind* case concerned a particular set of facts under a previous statutory and regulatory regime in the UK. That case centred on the then UK Government's requirement on the BBC and certain other broadcasters to refrain from directly broadcasting statements of certain Northern Irish terrorist groups that were proscribed in the UK. In Ofcom's view, this case did not establish any general principles applicable to the current case about the preservation of due impartiality under Section Five of the Code. In any case, we are not aware of any organisations currently on the UK Government's list of Proscribed Terrorist Organisations<sup>16</sup> which, to our knowledge, form part of the opposition in the Syrian conflict.

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<sup>14</sup> Paragraph 1.33 states: "It will not always be necessary to present an opposing view which is at odds with the established view of the majority or inconsistent with established fact in order to preserve due impartiality".

<sup>15</sup> See *R v Secretary of State for the Home Department ex parte Brind*, [1991] 1 AC 696. The House of Lords considered an appeal from several journalists that, by imposing obligations on broadcasters in relation to the reporting of proscribed Irish terrorist groups, the then Home Secretary had imposed restrictions on freedom of expression.

<sup>16</sup> See [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/254860/List\\_of\\_proscribed\\_organisations\\_Nov\\_2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/254860/List_of_proscribed_organisations_Nov_2013.pdf)

In reaching our Decision, we also considered whether the Licensee had adequately reflected alternative viewpoints as required by Rule 5.9 in the context of this being a “personal view” programme (as argued by TV Novosti). The Code states that: “‘personal view’ programmes are programmes presenting a particular view or perspective. Personal view programmes can range from the outright expression of highly partial views, for example by a person who is a member of a lobby group and is campaigning on the subject, to the considered ‘authored’ opinion of a journalist, commentator or academic, with professional expertise or a specialism in an area which enables her or him to express opinions which are not necessarily mainstream”. When assessing clearly signalled ‘personal view’ programmes of the type outlined in that definition, Ofcom takes account of the fact that many in the audience are comfortable with adjusting their expectations for due impartiality for such broadcasts. As a result in deciding whether due impartiality has been preserved in a ‘personal view’ programme, to some extent and in a proportionate way Ofcom allows broadcasters greater latitude. However, importantly, Rule 5.9 still requires that alternative viewpoints must always be “adequately represented”.

This programme was not in Ofcom’s view clearly a ‘personal view’ programme of the type envisaged by the definition in the Code. This is because a ‘personal view’ or ‘authored’ programme will normally be one which is presented by one identifiable individual who might represent a lobby group or who, for example, has professional expertise or specialism in an area. This is opposed to the circumstances of this case where several individuals put forward their personal views consistent with just one viewpoint on a matter of political controversy and a matter relating to current public policy without a clearly signalled overarching editorial voice. Therefore, merely because a broadcaster labels a broadcast as a ‘personal view’ programme it does not necessarily mean it is one within the terms of the definition contained in Rule 5.9.

However, even on the assumption that it was such a programme, Ofcom considers that alternative viewpoints were not adequately represented within the programme for all the reasons set out above.

Ofcom went on to consider the Licensee’s arguments that due impartiality had been preserved by the broadcast of material in other linked programming. Firstly, TV Novosti provided a recording to Ofcom of the 25-minute second half of *Syrian Diary*, which was broadcast approximately 30 minutes after the programme in this case. We noted this content largely replicated the editorial approach of the first half of *Syrian Diary*, and contained a range of statements highly critical of the actions and motives of the Syrian opposition including, by way of example, the following:

*“Wherever these militants go, they leave disaster behind. They have destroyed everything. They make people leave their homes in order to loot whatever they can. They destroy things and make videos of the whole disaster, in order to explain to the world that it’s all the doing of the Syrian army. All the bad things come from Government forces; all the good things come from the FSA [Free Syrian Army]. The militants claim that the people stand behind them, but that’s a lie”* (Nabil, resident of Homs);

We also noted that, as with the first half of *Syrian Diary*, the second half of the programme included a statement from Arqan, who was described on-screen as an “*Opposition Fighter*”, who said the following:

*“We set up a checkpoint on the road to Hama, and stopped a passing car. The people inside were an Alawite family, so we seized the father and raped his six year old daughter. Then I got a call from our coordinator. He gave me an address*

*and a rifle smuggled from Turkey. My mission was to blow up the Secret Police headquarters. I killed seven soldiers that day, and I took an axe and started hacking at one of them”.*

As with statements made in the first half of *Syrian Diary*, we considered that this statement would not have provided the audience an understanding of the views of the opposition movement as a whole in Syria but, in Ofcom’s opinion, served principally to reinforce and corroborate the programme narrative represented by the views of the various pro-Assad contributors.

At one point in the second half of *Syrian Diary*, there was the following statement by Hillary Clinton (United States Secretary of State 2008-2013):

*“The transition to democracy in Syria has begun, and it’s time for Assad to get out of the way”.*

We considered that this clip provided an alternative voice, to some extent. However, this short uncontextualised clip of an international politician voicing support for the Syrian opposition was immediately preceded by a sequence describing how Amir, one of the Syrian Government soldiers featured during the *Syrian Diary* programmes, had been killed by the Syrian opposition. This sequence finished with Amir’s wife saying:

*“The FSA [Free Syrian Army] has come and destroyed our peaceful life. May God punish them for what they done”.*

We also noted that the clip of Hillary Clinton was immediately followed by images of several of the Syrian Army soldiers, and Rossiya 24 journalists featured in the programme, standing in silence beside Amir’s grave. We considered that juxtaposition of Hillary Clinton’s statement with the sequences relating to the killing of the Syrian Army soldier, Amir, would have served to undermine any value Hillary Clinton’s statement had in representing the alternative viewpoint of the Syrian opposition. We therefore considered that the second half of *Syrian Diary* did not provide alternative viewpoints to balance those included in the first half of *Syrian Diary*.

Second, we noted the Licensee said that ten minutes before the programme was broadcast in this case, within the preceding news bulletin, a segment called *The Cost of War* was broadcast. According to TV Novosti, this segment: focused on “the human impact of the [Syrian] conflict and the effects of intervention by other states”; and included a political analyst, Robert Harneis, who was reported as believing that: “the EU will eventually find a way to allow more arms to reach the war-torn country [i.e. Syria]”. The Licensee said *The Cost of War* segment: should be considered as a relevant contextual<sup>17</sup> factor for the purposes of judging whether *Syrian Diary* was duly impartial; and met the Code’s definition of a “series of programmes taken as a whole”. For example, TV Novosti said *The Cost of War* segment and *Syrian Diary* were editorially linked by being: “linked by content (similarity of subject and theme) and timing (there was only ten minutes between them)”.

We reviewed *The Cost of War* segment. We noted that this was a news item that lasted just under five minutes and included: a report that focused on the effect of the

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<sup>17</sup> One of the contextual factors listed in Section Two (and applicable to Section Five) of the Code is: “what other programmes are scheduled before and after the programme or programmes concerned”.

Syrian conflict on Syria's ethnic diversity; and a related report about France and the UK's attempts to lift an embargo on supplying weapons to the Syrian opposition. We considered that this news item did not contain any statements that could be reasonably said to be providing balance to the viewpoints being expressed in *Syrian Diary*. In summary, we considered that *The Cost of War* segment did not contain statements supportive of the policies, motives and acts of the opposition in the ongoing Syrian conflict. Rather we noted the following statements which could be characterised as being critical of the Syrian opposition. For example, we noted the following:

*"Those wanting Assad to go both at home and abroad have decided to target what hurt the most, Syria's diversity: pitting people against each other. After every massacre, and every killing, rivers of blood have been joined by streams of mutual accusations and hatred"* (Rossiya 24 Reporter);

*"Some of the ignorant opposition, and sometimes some of the extremist groups are trying to push the conflict in order to make it sectarian. It's not a move between one sect to another. We should keep our unity that we live all our lifetime in Syria, throughout history"* (Abdullah Mawazini, Journalist); and

*"It is part of the US strategy, and some of the Western strategy, is to destroy Syria by Syrians and by Arabs. And this they are doing successfully"* (Daoud Khairallah, International Law Professor, Georgetown University).

Furthermore, we did not agree with the Licensee that the views of Robert Harneis provided a relevant alternative viewpoint, given that he was clearly being critical of those countries that might be described as being supportive of the Syrian opposition:

*"I am quite sure that there will be some modification of the ban [on supplying arms to Syria] to leave a loophole so that Britain and France can actually drive a coach and horses through it. They have already been sending weapons to Syria, so it's childish to pretend this is a new development. But they want to do it more openly and moderately legally"*.

We therefore considered that *The Cost of War* segment did not provide alternative viewpoints to balance those included in the first half of *Syrian Diary*.

Third, Ofcom also had regard to TV Novosti's argument that due impartiality had been achieved by the Licensee over "a series of programmes taken as a whole" (see Rule 5.5). The Licensee said that RT "has, and continues to broadcast many programmes presenting alternative views on the Syrian situation" such as the *Crosstalk*<sup>18</sup> series, and that this "along with RT's several other regular commentary and analysis programmes, plus the continual rolling news coverage of the channel, taken together provide the balance required" by Rule 5.5. In addition, TV Novosti said that it would be "impractical (and bad television) to attempt to provide viewers with editorial links to the many other programmes which refer to similar issues as depicted in *Syrian Diary*".

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<sup>18</sup> RT describes *Crosstalk* as its "flagship programme". Its format is a studio discussion with a presenter and guests such as politicians, journalists, decision makers and opinion formers. RT referred to two particular programmes in this series in its representations, 'Syria Exploited' (a debate about the internationalisation of the conflict) broadcast on 6 February 2013, and 'Syria Reshuffle' (a debate about the Syrian opposition and whether it is a puppet of the West) broadcast on 14 November 2012.



Ofcom did not agree. In Rule 5.5 of the Code, the meaning of “a series of programmes taken as a whole” is:

“more than one programme in the same service, editorially linked, dealing with the same or related issues within an appropriate period and aimed at a like audience. A series can include, for example, a strand, or two programmes (such as a drama and a debate about the drama) or a 'cluster' or 'season' of programmes on the same subject.”

Contrary to TV Novosti’s argument, the Code therefore does not permit due impartiality to be preserved on a licensed television service across the whole of that service’s programming output<sup>19</sup>. Nor in Ofcom’s view is it reasonable to take into account programmes in a very different news and current affairs strand such as the debate programme *Crosstalk*, broadcast earlier in November 2012 and February 2013, when *Syrian Diary* was not signalled in any way as editorially linked, labelled as a “personal view” reportage style documentary and broadcast in March 2013. The Licensee provided no evidence to Ofcom that either of the two earlier programmes was editorially linked to *Syrian Diary* in any way. We therefore considered that alternative viewpoints on this matter of political controversy and matter relating to current public policy were not presented by TV Novosti over a series of programmes taken as a whole.

For all the reasons set out above, Ofcom concluded that the Licensee failed to preserve due impartiality as required by Section Five of the Code and this programme therefore breached Rules 5.5 and 5.9 of the Code.

In view of this Finding (and two other recent decisions) in which Ofcom found that TV Novosti breached Section Five of the Code, Ofcom is requesting the Licensee to attend a meeting to discuss compliance with regard to its due impartiality obligations.

### **Breaches of Rules 5.5 and 5.9**

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<sup>19</sup> Ofcom took into account the fact that, under section 320(4)(a) of the Act, licensed television and national radio services may preserve due impartiality over “a series of programmes taken as a whole”. This contrasts with the separate requirement on licensed local radio services, set out in section 320(4)(b) of the Act, not to give undue prominence to the views and opinions of particular bodies or bodies “in the service, in question, taken as a whole”. We therefore considered, in this case, that contrary to TV Novosti’s arguments, the legislation does not envisage a scenario where due impartiality can be preserved on licensed television services across a whole service’s programming output.

## In Breach

### Breakfast Show

Halton Community Radio, 2 October 2013, 08:10

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#### Introduction

Halton Community Radio is a community radio station providing a service for people in Runcorn, Widnes and surrounding areas. The licence for this service is held by Halton Community Radio (“HCR” or “the Licensee”).

A complainant alerted Ofcom to offensive language broadcast at 08:10 during the song “Billionaire” by Travie McCoy.

Ofcom noted that after three seconds of this song being transmitted, the following lyrics were broadcast:

*“I wanna be a billionaire so fucking bad”.*

At this point, the volume of the song was turned down, and the presenter said the following:

*“I didn’t realise that swore then, I didn’t realise that swore. We must sort that one out, won’t we? I do apologise for that”.*

The volume of the song was then turned up. After a further 40 seconds the following lyrics were broadcast:

*“...and a bunch of names that ain’t never had shit...”.*

The song was then stopped, and the presenter said the following:

*“Well I’m certainly not going to play that one again – take that one off the system, we do apologise”.*

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

Rule 1.14: “The most offensive language must not be broadcast...when children are particularly likely to be listening...”.

Rule 1.16: “Offensive language must not be broadcast... when children are particularly likely to be listening...unless it is justified by the context.”

We therefore asked the Licensee how the material complied with these rules.

#### Response

The Licensee described the incident as an honest mistake on the part of an experienced presenter. It explained that the song, which had been played in response to a listener request, had been stored on an external hard-drive and that “Both the track title and artist’s name were innocuous and gave no hint as to the content”. HCR noted that the presenter had “removed the track and made due

apologies”. The Licensee apologised for the broadcast, emphasising that it had not intended to cause offence. HCR also sought to assure Ofcom that it was “taking all reasonable steps in order to avoid any repetition of this regrettable incident”.

## **Decision**

Under the Communications Act 2003, Ofcom has a duty to set standards for the content of programmes as appear to it best calculated to secure the standards objectives, one of which is that “persons under the age of eighteen are protected”. This objective is reflected in Section One of the Code.

### Rule 1.14

Rule 1.14 states that the most offensive language must not be broadcast on radio when children are particularly likely to be listening.

Ofcom research on offensive language<sup>1</sup> notes that the word “fuck” and its derivatives are considered by audiences to be among the most offensive language. The Code states that the phrase “when children are particularly likely to be listening” particularly refers to “the school run and breakfast time”. Further, Ofcom’s guidance on offensive language on radio<sup>2</sup> advises broadcasters to “have particular regard to broadcasting content...between 06:00 and 09:00 and 15:00 and 19:00 Monday to Friday during term-time...”.

In this case, the word “fucking” was broadcast during the school run at 08:10 on a Wednesday during term-time. The material was therefore in breach of Rule 1.14.

### Rule 1.16

Rule 1.16 states that offensive language must not be broadcast on radio when children are particularly likely to be listening unless it is justified by the context.

Ofcom’s guidance on offensive language on radio<sup>3</sup> states that when offensive language is broadcast at a time when children are particularly likely to be listening, in addition to apologising promptly at the earliest opportunity:

“...prompt action should be taken to prevent the broadcast of any further examples of potentially offensive language”.

In this case, although the Licensee had apologised on air immediately after an instance of the most offensive language had been broadcast, the presenter then allowed the song to continue, at which point a further example of offensive language was used. Although Ofcom’s research on offensive language notes the word “shit” might be acceptable in some contexts, audiences considered that care needed to be

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<sup>1</sup> Audience attitudes towards offensive language on television and radio, August 2010 (<http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf> ).

<sup>2</sup> Ofcom Guidance, Offensive language on radio, December 2011, paragraph 13 (<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/offensive-language.pdf>).

<sup>3</sup> Ibid., paragraph 21.

taken over its use when children were particularly likely to be listening<sup>4</sup>.

As noted above, this use of offensive language followed shortly after an example of the most offensive language at 08:10 on a weekday morning during term-time. Given this, we considered that the broadcast of offensive language described above could not be justified by the context. As a result, we considered the programme was in breach of Rule 1.16.

### **Breaches of Rules 1.14 and 1.16**

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<sup>4</sup> Audience attitudes, p.91.

## In Breach

### News

*Samaa, 14 September 2013, 17:00*

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#### Introduction

Samaa is a Pakistani news and entertainment channel broadcasting in Urdu, which is re-transmitted in the UK. The licence for Samaa is held by Up and Coming TV Limited (“the Licensee”).

A complainant alerted Ofcom to footage, which was shown at around 17:00 on a Saturday, of a man who was shot as he tried to prevent a robbery. The viewer considered that the footage, which was shown repeatedly and with no warning, was unsuitable for this time of day.

At around 17:00, presenters opened a news bulletin on the channel by stating that they had obtained CCTV footage of an incident in which a man had been murdered trying to prevent the theft of a motorcycle. The presenters explained that the man had been shot in the head and had died before reaching hospital, and that despite CCTV footage of the crime, the police had so far been unable to trace the killers. The report included an interview with the victim’s father who was distressed that the police had been unable to trace the assailants 20 days after the incident.

The feature about the shooting lasted approximately seven minutes in total. During this feature a sequence lasting around 60 seconds was shown. The sequence included CCTV footage of the following events: a man in an alley wheeling away a motorcycle; the owner of the motorcycle emerging from a door and pursuing the man; the owner tackling the man to the ground; an accomplice running from the end of the alley to assist the thief; a brief scuffle during which the accomplice pointed a gun at the owner of the motorcycle, who then fell to the ground as the attackers fled; the arrival of a woman to assist the man, who herself then fled as the assailants, still at the end of the alley, apparently fired again; the motorbike owner writhing on the ground before staggering to his feet and collapsing once more; and the woman returning to the scene as more people arrived to help the wounded man.

During the feature, the 60 second sequence was shown six times, alternately in full screen and split screen. This footage was initially broadcast without any ambient audio, but the sound of two gunshots was present on the third, fourth and fifth showing of the clips, firstly at the point when the accomplice pointed a gun at the owner of the motorcycle, and secondly when the woman initially emerged to help the wounded man.

Around two minutes into the report, after the footage had been played twice (once in split screen and once in full screen), a presenter said: *“It is very sad and heartrending footage and we would say that children and the faint hearted should refrain from watching this footage”*. A similar warning was repeated shortly afterwards.

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

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

Rule 1.11: “Violence, its after-effects and descriptions of violence, whether verbal or physical, must be appropriately limited in programmes broadcast before the watershed...and must also be justified by context.”

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

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

## **Response**

The Licensee said that the footage should not have been broadcast uncensored in the UK, and that the same footage was masked in a later bulletin. It confirmed that the sound of the gunshot was not present in the original CCTV footage.

The Licensee said that since the incident, the playout operator had been suspended, the assistant editor had been relieved of his duties, and that disciplinary action was taken against the editor on duty at the time of the broadcast. The Licensee added that it would be “taking all necessary measures to rectify any further incidents”.

## **Decision**

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that “persons under the age of eighteen are protected” and that “generally accepted standards” are applied so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material.

These duties are reflected in Sections One and Two of the Code respectively. Broadcasters are required to comply with the rules in Section One of the Code to ensure that children are protected. Broadcasters are also required under Rule 2.3 of the Code to ensure that material which may cause offence is justified by the context.

In determining whether broadcasters have complied with the Code, Ofcom takes into account that Article 10 of the European Convention on Human Rights, as incorporated in the Human Rights Act 1998, provides for the right of freedom of expression, including the right to receive and impart information and ideas without interference by public authority. Ofcom must balance this right with its duties to ensure that under-eighteens are protected from material that is unsuitable for them, and to provide adequate protection for members of the public from potentially offensive material.

It is important to state at the outset that the Code contains no prohibition on images depicting extreme violence, including fatal shootings, because there may be occasions when such images are editorially justified. Ofcom believes in particular that, in line with the right to freedom of expression, it is important for news programmes to be able to report on events which they consider in the public interest. However, when showing distressing material, broadcasters must always comply with the rules in the Code.

### 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 assessed by reference to factors such as the time of broadcast, the nature of the channel, and the availability of children to view, taking into account whether the broadcast is at weekends or during school holiday periods.

Ofcom first considered whether the material was suitable for children. Ofcom noted that it was not immediately discernible from the footage alone that the man had been fatally shot, but that this was made clear from the beginning of the accompanying commentary.

Broadcast images of a fatal shooting have the potential to be very disturbing for viewers. This is true especially with regard to under-eighteens, whose exposure to death (and their ability to understand it and place it in context) is generally more limited than that of adults. Images – as here – of a man who was shown and described to have been fatally shot clearly had the potential to cause distress to children. We considered that the addition of the gunshot sound effects in some showings of the footage and the numerous repetitions of the footage increased that potential. The material was therefore not suitable for children.

We next considered whether children were protected by appropriate scheduling. This content was broadcast before the watershed on a Saturday at 17:00 in the UK. Although news programmes are unlikely to attract many child viewers, Ofcom noted that children were nevertheless available to view. Ofcom did not consider that the broadcast of this material at this time would be in line with the likely expectations of the audience for this channel, and in particular those of parents. For these reasons, this content was not appropriately scheduled so as to protect children and Rule 1.3 was breached.

### Rule 1.11

Rule 1.11 states that violence, its after-effects and descriptions of violence, whether verbal or physical, must be appropriately limited in programmes broadcast before the watershed, and must also be justified by context.

As described above, this sequence contained repeated images of a man being fatally shot. The full impact of the shooting was not immediately apparent, nonetheless there was sufficient detail in the repetition of the images alongside running commentary and the added sound effect of the gunshots, for viewers to be clear about what had taken place.

Ofcom noted that the CCTV footage was shown in total on six occasions, and that the production team had deliberately added the sound of a gun being fired to the footage in a number of the later showings. We noted also that on each occasion the footage was repeated, the fatally wounded man could be seen writhing on the ground, before staggering to his feet and collapsing once more. We considered that no measures had been taken by the Licensee to limit the impact of the footage itself other than the presenter stating in commentary, some two minutes into the broadcast and after the sequence had already been shown twice, that “*children and the faint hearted should refrain from watching this footage*”. For these reasons the violence in this sequence was not appropriately limited.

Ofcom noted that this footage had come to light apparently 20 days after the incident rather than in the immediate aftermath, and that it was shown in the context of highlighting concerns that the police had been unable to trace the assailants. However, we considered that the repeated broadcast of this material and in particular the addition of the sound effects of a gun being fired and the images of the victim suffering after the shooting were not justified by the context. Ofcom acknowledges it is important that television news broadcasters can report and illustrate the news fully. However, Ofcom's opinion was that to achieve this aim the Licensee did not need to show this material six times in this form. To do so was not in keeping with audience expectations for this channel at this time.

The material therefore breached Rule 1.11.

### Rule 2.3

Rule 2.3 states that in applying generally accepted standards broadcasters must ensure that potentially offensive material is justified by the context. Context is assessed by reference to factors such as the editorial content, the degree of offence, and likely audience expectations.

Ofcom first considered whether the material was potentially offensive. As pointed out in relation to Rule 1.3, broadcast images showing the moment of death obviously have the potential to be very disturbing for viewers. Images – as here – of a person who was fatally shot clearly had the potential to cause considerable offence.

We next considered whether the material was justified by the context. Ofcom noted that the channel features a mixture of breaking news and general entertainment. The audience for this channel is likely to be small and self-selecting in the UK. Nonetheless, as already pointed out, the images broadcast were clearly capable of causing a high level of offence, and so would have exceeded the expectations of the audience for this channel at this time. We also considered it had the potential to be very distressing for viewers who came across it unawares at this time. In addition, while noting that some two minutes into the report the presenter stated that “*children and the faint hearted should refrain from watching this footage*”, we did not consider the statement had been either placed appropriately to forewarn viewers about the material, or that it would have been sufficient to justify either the repetition of the footage or the addition of gun shot sound effects. The broadcast of this material was not therefore justified by the context and Rule 2.3 was also breached.

We noted both the Licensee's apology and the disciplinary measures it had taken as a result of the incident. However, we were concerned that it had not specified how it intended to prevent similar incidents in future and have recorded breaches of Rules 1.3, 1.11 and 2.3.

### **Breaches of Rules 1.3, 1.11 and 2.3**



## In Breach

### Sponsorship of Sanskaar-Dharohar Apnon Ki

Colors, 8 October 2013, 19:00

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#### Introduction

Colors is a general entertainment channel broadcast in Hindi. The licence for Colors is held by Viacom 18 Media (UK) Limited (“Viacom” or “the Licensee”).

A complainant alerted Ofcom to the sponsorship credits for Lycamobile broadcast around the programme *Sanskaar – Dharohar Apnon Ki*.

Ofcom noted that the brief sponsorship credits for Lycamobile included the text:

*“Sponsored by Lycamobile; call the world for less.”*

Ofcom considered that the sponsorship credit raised issues warranting investigation under Rule 9.22(a) of the Code, which states that:

“Sponsorship credits must be distinct from advertising. In particular:

- a) Sponsorship credits broadcast **around sponsored programmes** must not contain advertising messages or calls to action. Credits must not encourage the purchase or rental of the products or services of the sponsor or a third party. The focus of the credit must be the sponsorship arrangement itself. Such credits may include explicit reference to the sponsor’s products, services or trade marks for the sole purpose of helping to identify the sponsor and/or the sponsorship arrangement.”

Ofcom sent a copy of its Preliminary View to the Licensee on 12 November 2013, at the same time giving the Licensee the opportunity to provide written representations as to how this material complied with this rule.

#### Response

The Licensee did not provide any comments.

#### Decision

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

The AVMS Directive limits the amount of advertising a broadcaster can transmit and requires that advertising is kept distinct from other parts of the programme service. Sponsorship credits are treated as part of the sponsored content and do not count towards the amount of airtime a broadcaster is allowed to use for advertising. To prevent credits effectively becoming advertisements, and therefore increasing the

amount of advertising transmitted, broadcasters are required to ensure that sponsorship credits do not contain advertising messages.

Rule 9.22(a) of the Code reflects this requirement. Among other things, Rule 9.22(a) requires that sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action.

Ofcom's guidance<sup>1</sup> about the use of sponsor's slogans and straplines in sponsorship credits makes clear that "[I]t is possible for some sponsors' slogans and straplines to be used within a credit, for the purpose of helping to identify the sponsor and/or the sponsorship arrangement, provided they do not encourage the purchase or rental of the sponsor's products/services (e.g. by featuring claims)".

In this case, Ofcom considered that the sponsor's tagline – "*call the world for less*" – was a claim that the sponsor's communication services were less expensive than those of other international call providers. Consequently, we considered it represented an advertising claim. As such, the sponsorship credit was in breach of Rule 9.22(a).

Ofcom has published a number of findings in relation to sponsorship credits in recent years, and has made clear the need for licensees to exercise care to ensure that credits do not contain advertising messages. More specifically, Ofcom published a finding about the use by another broadcaster of the "*call the world for less*" slogan in a sponsorship credit in issue 236 of Ofcom's Broadcast Bulletin<sup>2</sup>.

It is the responsibility of licensees to ensure that the material they broadcast is compliant with the Code. Ofcom therefore expects licensees to take account of published rulings. We are concerned, therefore, by the Licensee's compliance failure in this case, particularly as this is the second occasion on which we have a recorded a breach of Rule 9.22(a) by Viacom<sup>3</sup>.

We are putting Viacom on notice that should similar compliance issues arise Ofcom may take further regulatory action.

### **Breach of Rule 9.22(a)**

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<sup>1</sup> See: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>.

<sup>2</sup> See: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb236/>.

<sup>3</sup> See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb189/obb189.pdf>.

## In Breach

### Sponsorship of Saraswatichandra

*Star Plus, 24 September 2013, 19:00*

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#### Introduction

Star Plus is a general entertainment channel broadcast in Hindi. The licence for Star Plus is held by Star India PVT Ltd (“Star TV” or “the Licensee”).

*Saraswatichandra* is a soap drama sponsored by four companies. Ofcom viewed the programme broadcast on 24 September 2013 while assessing a complaint from a viewer on an unrelated matter. The programme sponsorship arrangements were identified before the start and end of the programme with static cards bearing the name of each sponsor and a voiceover describing the sponsorship arrangement. However, when the cards were transmitted as the programme entered and came out of internal advertising breaks, no reference to the sponsorship arrangement was included.

Ofcom considered the credits broadcast around the internal advertising breaks raised issues warranting investigation under Rule 9.19, which states:

“Sponsorship must be clearly identified by means of sponsorship credits. These must make clear:

- (a) The identity of the sponsor by reference to its name or trade mark; and
- (b) The association between the sponsor and the sponsored content”.

Ofcom therefore asked Star TV for its formal comments on how the sponsorship credits complied with Rule 9.19(b).

#### Response

Star TV confirmed that the static cards were sponsorship credits and apologised for not having fully understood the sponsorship requirements. Star TV said it was “now in the process of putting a text across all the static cards stating ‘This programme is sponsored by’”.

On receipt of our Preliminary View in this case, the Licensee confirmed that it had “successfully activated” the sponsorship message stating “This programme is sponsored by” on all such credits.

#### Decision

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

The AVMS Directive requires sponsored programmes to be “clearly identified as such by the name, logo and/or any other symbol of the sponsor such as a reference to its

product(s) or services(s) or a distinctive sign thereof in an appropriate way for programmes at the beginning, during and/or end of the programmes”. Such identification is usually achieved by way of sponsorship credits broadcast around sponsored programmes.

The requirements of the AVMS Directive to identify sponsorship arrangements are reflected in Rule 9.19 of the Code which states that sponsorship must be clearly identified by means of sponsorship credits, and that the sponsorship credits must make clear the identity of the sponsor and the association between the sponsor and the sponsored content.

In this case, the sponsorship credits broadcast around internal advertising breaks during the programme did not make any reference to the sponsorship arrangement. Although we acknowledged the steps taken by the Licensee to ensure future compliance with the Code, because the associations between the sponsors and the programme were not made clear, we recorded a breach of Rule 9.19(b).

**Breach of Rule 9.19(b)**

## In Breach

### Sponsorship of Azan-e-Asr

CHSTV, 7 August 2013, 18:30

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#### Introduction

CHSTV is a general entertainment channel aimed at the Bangladeshi community in the UK and Europe. The licence for CHSTV is held by CHS.TV Limited (“the Licensee”).

A complainant alerted Ofcom to sponsorship credits broadcast during *Azan-e-Asr*, an Islamic call to prayer, which was approximately three minutes 15 seconds in duration and was sponsored by Oasis Crescent, Henna Jewellers and Bangla Town.

On 12 occasions during the programme, brief visual sponsorship credits were broadcast in the left hand area of the screen. The credits were kept distinct from the visual editorial content of *Azan-e-Asr*, which was shown within a reduced screen insert and featured scenes of pilgrims attending the Sacred Mosque in Mecca.

As noted in Section Nine of the Code, any reference to a sponsor that appears in a sponsored programme (with the exception of sponsorship credits around a programme) as a result of a commercial arrangement with the broadcaster, the programme maker or a connected person will be treated as product placement<sup>1</sup>.

Also, as set out in Rule 9.12(a) of the Code, product placement is not permitted in religious programmes produced under UK jurisdiction<sup>2</sup>. Ofcom’s Guidance to Section Nine of the Code makes clear that a religious programme “is a programme that covers religious acts of worship or whose main focus is religious belief...”. As a call to prayer, *Azan-e-Asr* was a religious programme within the terms of Rule 9.12(a) of the Code.

Ofcom considered the material raised issues warranting investigation under Rule 9.23 of the Code, which states:

“Where a sponsor is prohibited from product placing in the programme it is sponsoring, sponsorship credits may not be shown during the sponsored programme”.

We asked the Licensee for its comments as to how the content complied with this rule.

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<sup>1</sup> Product placement is defined as the inclusion in a programme of, or of a reference to, a product, service or trade mark where the inclusion is for a commercial purpose, and is in return for payment or other valuable consideration to the programme maker, the broadcaster or any person connected with either.

<sup>2</sup> As also set out in Section Nine of the Code, “programmes produced under UK jurisdiction” means any programme produced or commissioned by either: a) the provider of the television programme service or any person connected with that provider (except in the case of a film made for cinema); or b) any other person with a view to its first showing taking place in a television programme service under the jurisdiction of the United Kingdom (for the purposes of the AVMS Directive).

## Response

The Licensee asked Ofcom to note that *Azan-e-Asr* was a sponsored programme that contained no product placement.

In response to Ofcom's Preliminary View, the Licensee said it did not consider *Azan-e-Asr* was a religious programme, adding that "the context of Azan<sup>3</sup> is exactly [the] same as church bells", as each can occur for a variety of reasons.

## Decision

Under the Communications Act 2003 ("the Act"), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure a number of standards objectives. These include that "the proper degree of responsibility is exercised with respect to the content of programmes which are religious programmes" and "the product placement requirements...are met in relation to programmes included in a television service (other than advertisements)". The Act prohibits the inclusion of product placement in religious programmes made under UK jurisdiction.

These standards are reflected in, among other rules, Rule 9.12(a) of the Code, which prohibits product placement in religious programmes, and Rule 9.23 of the Code, which prohibits the broadcast of sponsorship credits during programmes in which product placement is prohibited.

Ofcom noted the Licensee's view that an Azan was comparable to a church bell. However, the words of the call to prayer featured in the programme stated:

*"Allah [God] is greatest, Allah is greatest,  
Allah is greatest, Allah is greatest,  
I bear witness that there is no god but Allah.  
I bear witness that there is no god but Allah,  
I bear witness that Muhammad (peace be upon him) is the Messenger of Allah.  
I bear witness that Muhammad (peace be upon him) is the Messenger of Allah.  
Hasten to the prayer.  
Hasten to the prayer.  
Hasten to success.  
Hasten to success.  
Allah is greatest, Allah is greatest,  
There is no god but Allah".*

The following prayer was then broadcast:

*"O Allah, owner of this perfect call and owner of this prayer to be performed,  
Bestow upon Muhammad a station in Jannah [Paradise] and a rank above the  
rest of creation.  
And raise him to the rank you have promised him.  
Verily, You never fail in Your promise".*

Ofcom considered the call to prayer (like the prayer itself) mainly focused on religious belief. Notwithstanding the view of the Licensee, we concluded that *Azan-e-Asr* was a religious programme under the terms of the Code.

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<sup>3</sup> An Azan (or Adhan) is an Islamic call to prayer or worship, recited by the muezzin (the appointed person at a mosque to lead such calls) at prescribed times of the day.

Although sponsorship credits may be broadcast before and/or after religious programmes, Rule 9.23 prohibits them from being shown *during* such programmes.

In this instance, 12 sponsorship credits (for Oasis Crescent, Henna Jewellers and Bangla Town) were screened during the religious programme, *Azan-e-Asr*, in breach of Rule 9.23.

**Breach of Rule 9.23**

## In Breach

### Sponsorship of Adhan-e-Isha

NTV, 6 August 2013, 22:05

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#### Introduction

NTV is a news and general entertainment channel that is broadcast in Bengali and serves the Bangladeshi community in the UK and Europe. The licence for NTV is held by International Television Channel Europe Limited (“ITCE” or “the Licensee”).

A complainant alerted Ofcom to sponsorship credits broadcast during *Adhan-e-Isha*, a three minute Islamic call to prayer sponsored by Aerolex Travel, JMG Air Cargo and Sasco Foods.

A sponsorship credit was broadcast before *Adhan-e-Isha* began. In addition, during the programme, which showed scenes from the Sacred Mosque in Mecca, brief sponsorship credits were screened twice, in captions.

As noted in Section Nine of the Code, any reference to a sponsor that appears in a sponsored programme (with the exception of sponsorship credits around a programme), as a result of a commercial arrangement with the broadcaster, the programme maker or a connected person, will be treated as product placement<sup>1</sup>.

Also, as set out in Rule 9.12(a) of the Code, product placement is not permitted in religious programmes produced under UK jurisdiction<sup>2</sup>. Ofcom’s Guidance to Section Nine of the Code makes clear that a religious programme “is a programme that covers religious acts of worship or whose main focus is religious belief...”. As a call to prayer, *Adhan-e-Isha* was a religious programme within the terms of Rule 9.12(a) of the Code.

Ofcom therefore considered the material raised issues warranting investigation under Rule 9.23 of the Code, which states:

“Where a sponsor is prohibited from product placing in the programme it is sponsoring, sponsorship credits may not be shown during the sponsored programme”.

We asked ITCE for its comments as to how the content complied with this rule.

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<sup>1</sup> Product placement is defined as the inclusion in a programme of, or of a reference to, a product, service or trade mark where the inclusion is for a commercial purpose, and is in return for payment or other valuable consideration to the programme maker, the broadcaster or any person connected with either.

<sup>2</sup> As also set out in Section Nine of the Code, “programmes produced under UK jurisdiction” means any programme produced or commissioned by either: a) the provider of the television programme service or any person connected with that provider (except in the case of a film made for cinema); or b) any other person with a view to its first showing taking place in a television programme service under the jurisdiction of the United Kingdom (for the purposes of the AVMS Directive).



## **Response**

ITCE said it would: “absolutely try everything to manage [its] channel according to [Ofcom’s] rules and regulation.”

## **Decision**

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure a number of standards objectives. These include that “the proper degree of responsibility is exercised with respect to the content of programmes which are religious programmes” and “the product placement requirements...are met in relation to programmes included in a television service (other than advertisements)”. The Act prohibits the inclusion of product placement in religious programmes made under UK jurisdiction.

These standards are reflected in, among other rules, Rule 9.12(a) of the Code, which prohibits product placement in religious programmes, and Rule 9.23 of the Code, which prohibits the broadcast of sponsorship credits during programmes in which product placement is prohibited.

Although sponsorship credits may be broadcast before and/or after religious programmes, Rule 9.23 prohibits them from being shown *during* such programmes.

In this instance, sponsorship credits (for Aerolex Travel, JMG Air Cargo and Sasco Foods) were screened during a call to prayer (a religious programme), in breach of Rule 9.23.

## **Breach of Rule 9.23 of the Code**

## In Breach

### The Buck Stops Here

NDTV 24x7, 7 October 2013, 16:30

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#### Introduction

NDTV 24x7 is a channel that shows news, current affairs and business programming. The service broadcasts in English and is based in India, however it is directed at UK audiences and is available on the Sky platform. The licence for NDTV 24x7 is held by New Delhi Television Limited (“New Delhi TV” or “the Licensee”).

Ofcom received a complaint about material likely to encourage religious hatred broadcast on this service. On reviewing the material Ofcom considered the programme in question did not raise issues in relation to encouraging religious hatred that warranted further investigation. However we noted the material provided by the Licensee raised separate issues under the Code.

Ofcom noted during the broadcast of *The Buck Stops Here* the following sponsorship credit appeared over: the opening titles; end-of-part and start-of-part bumpers; and end credits:

*“TradeIndia.com presents: The Buck Stops Here”.*

We therefore asked the Licensee for its comments as to how this content complied with Rule 9.15 of the Code, which states that:

*“News and current affairs programmes must not be sponsored.”*

#### Response

The Licensee confirmed that a sponsor credit was broadcast at the points highlighted by Ofcom and apologised for this error. New Delhi TV said that the principle of Rule 9.15 was well understood and that therefore such content is “normally removed from programmes on the UK feed”. It added that due to human error on this occasion the sponsor credit was not removed.

The Licensee said the prohibition of sponsorship of news and current affairs programmes had now been reinforced and communicated to the relevant NDTV production staff. It asked that, in conjunction with “the fact the [...] sponsorship reference was to a company that has no commercial presence in the UK, that Ofcom will accept the apology for this mistake”.

#### Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content which it considers are best calculated to secure a number of standards objectives. One of these objectives is that “the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”. The Audiovisual Media Services Directive explicitly prohibits the sponsorship of news and current affairs programmes. Rule 9.15 reflects that prohibition.

In this case Ofcom firstly noted that the credits made clear that *The Buck Stops Here* had a sponsorship arrangement with TradeIndia.com.

Secondly, we considered whether *The Buck Stops Here* was a current affairs programme. A current affairs programme is defined in the Code as:

“...one that contains explanation and/or analysis of current events and issues, including material dealing with political or industrial controversy or with current public policy”.

We noted that the Licensee had confirmed to Ofcom that the channel consisted of “news, review and debate on current issues”. We also noted that the programme on the day in question was a “special episode” broadcast live from the Keran sector in India about the “Line of Control”<sup>1</sup>. The programme reported that the region had been the focus of “national and international attention” and described reports from members of the Indian army who had witnessed alleged Pakistani militants entering India and with whom they had exchanged fire. This was followed by a panel debate on the potential repercussions of that event with participants including a former U.S. Ambassador to India and a retired Indian army general.

The programme also included reports on other issues relevant to India, such as industrial action by energy sector employees that had led to widespread power cuts throughout the country.

Given the coverage, debate and analysis of issues that were clearly of national and international concern, we considered the programme constituted a current affairs programme under the Code.

Ofcom noted the compliance measures taken by the Licensee following our request for comments. However, we concluded that the edition of *The Buck Stops Here* described above included a clear sponsorship message and was therefore in breach of Rule 9.15.

### **Breach of Rule 9.15**

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<sup>1</sup> The Line of Control is the military border control between the Indian and Pakistani-controlled parts of the former state of Jammu and Kashmir.

## In Breach

### Charity Appeal

NTV, 9 July 2013, 19:00

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#### Introduction

NTV is a news and general entertainment channel that is broadcast in Bengali and serves the Bangladeshi community in the UK and Europe. The licence for NTV is held by International Television Channel Europe Limited (“NTV” or “the Licensee”).

NTV ran a live appeal seeking donations for a young man in Bangladesh suffering from cancer. The appeal featured a presenter and three other people in the studio, whom the presenter referred to as “*brother Shaukat, brother Munir, and Mr Mohiuddin*”. The appeal lasted approximately 45 minutes, during which the presenter spoke to a number of viewers who called the studio to make donation pledges. Throughout the programme, an on-screen graphic displayed two telephone numbers: one to contact the studio directly, and one to make donation pledges off-screen. The graphic also contained a bank account number and sort code in the name of M. Mohiuddin.

A viewer questioned the authenticity of the appeal. The viewer, who noted that the donations appeared to be to an individual’s private bank account, questioned whether the appeal was on behalf of a registered charity.

Ofcom considered that the complaint raised issues warranting investigation under the following Code rule:

Rule 9.33: “Charity appeals that are broadcast free of charge are allowed in programming provided that the broadcaster has taken reasonable steps to satisfy itself that:

- a) The organisation concerned can produce satisfactory evidence of charitable status or, in the case of an emergency appeal, that a responsible public fund has been set up to deal with it”.

We therefore asked the Licensee for its comments as to how the content complied with Rule 9.33.

#### Response

NTV stated that, as a community channel, it supported charity events. The Licensee submitted that the appeal raised approximately £2,000 and that the money was paid directly into the bank account of the uncle of the individual who was the subject of the appeal. NTV offered to provide Ofcom with a copy of the relevant bank statements.

NTV said that it understood that if an amount raised was below £4,000, it did not need to provide a charity registration number.

The Licensee provided no information about the steps it took to establish the charitable status of the recipient of the appeal donations.

## **Decision**

Under the Communications Act 2003, Ofcom has a duty to set standards for broadcast content which appear to it to be best calculated to secure certain standards objectives. One of the standards objectives specified in the Act is that generally accepted standards are applied so as to provide adequate protection for members of the public from the inclusion of harmful material.

The rules in the Code are designed to reflect the standards objectives. As a result, the Code contains rules with the aim of protecting audiences from exposure to financial harm. One of the purposes of Rule 9.33 is to provide protection to viewers making charitable donations in response to on-air appeals, by ensuring that appeals are for organisations which either have an established charitable status or for which a responsible public fund has been established.

These safeguards provide viewers with a degree of confidence about the operation and objectives of a charitable organisation. For UK organisations, charitable status can be demonstrated via registration with an appropriate body, e.g. the Charity Commission. For charities based outside the UK, licensees should take appropriate steps to satisfy themselves of the charitable status of an organisation before running an appeal on its behalf, for example by seeking evidence that an organisation complies with the relevant legislation in the country where it is based. In the case of an emergency appeal, licensees should ensure that donations are held in a public fund.

Ofcom noted that in this case the appeal was on behalf of a private individual, with donations sent directly to the UK bank account of the individual's uncle. It is important to emphasise that Ofcom has no grounds to question the authenticity of the appeal or the purpose for which the donations were used. As the communications regulator, our role is to assess whether or not material broadcast by the Licensee is compliant with the rules set out in the Code. The issue for us to determine in this case, therefore, was not whether the money donated was used for the purpose for which it was claimed, but whether the Licensee had taken the steps required of it to determine whether the appeal was for an established charitable purpose.

We did not consider the Licensee's ability to access the bank account statements of a private individual were sufficient to demonstrate that it had taken appropriate action to satisfy itself that the appeal had been for an organisation with a recognised charitable status. Further, the Licensee did not demonstrate that this was an emergency appeal for which a public fund had been established – it was clear from the broadcast that donations were being made to the UK bank account of a private individual. The programme was therefore in breach of Rule 9.33 of the Code.

### **Breach of Rule 9.33**

## Resolved

### City Vibe News Hour

Siren FM, 8 November 2013, 17:35

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#### Introduction

Siren FM is a community radio service providing a mix of music and speech programming primarily aimed at students, young people, children, performance, arts and community groups in Lincoln. The licence holder for this service is the University of Lincoln (“the Licensee”).

The Licensee notified Ofcom that it had broadcast offensive language on Siren FM around 17:35 during a pre-recorded package. On assessing the material Ofcom noted a segment when the presenter appeared to misread a line, and said “*fuck*” before re-reading the line correctly.

An apology was broadcast at the end of the programme around 17:59 as follows:

*“Just before we go, we’d like to apologise for an inadvertent swear word which crept into our entertainment guide earlier this evening. We hope that it didn’t spoil your enjoyment of tonight’s programme.”*

Ofcom considered the material raised issues warranting investigation under Rule 1.14 of the Code, which states:

“The most offensive language must not be broadcast...when children are particularly likely to be listening.”

We therefore requested comments from the Licensee as to how this material complied with this rule.

#### Response

The Licensee explained that the item in question was still being edited very close to the time of broadcast, and the programme editor had not been able to check it in full. The Licensee said that after the broadcast the programme team had received robust guidance about the error, and that any future items still being edited whilst a programme is being transmitted would be checked by another member of the team before being broadcast.

#### Decision

Under the Communications Act 2003, Ofcom has a duty to set standards for the content of programmes as appear to it best calculated to secure the standards objectives, including that “persons under the age of eighteen are protected”. This objective is reflected in Section One of the Code.

Rule 1.14 of the Code states that “the most offensive language must not be broadcast...when children are likely to be listening”. Ofcom’s research on offensive

language<sup>1</sup> notes that the word “fuck” and other variations of this word are considered by audiences to be amongst the most offensive language.

In discussing the meaning of “when children are particularly likely to be listening”, Rule 1.5 of the Code states that the phrase particularly refers to the school run and breakfast time “but might include other times”. In giving further advice to broadcasters on the meaning of the same phrase, Ofcom’s guidance on offensive language on radio published on 20 December 2011<sup>2</sup> says that: “broadcasters should have particular regard to broadcasting content...between 15:00 and 19:00 Monday to Friday during term-time”. This material was broadcast around 17:35 on Friday 8 November, which was clearly within these times.

This material was therefore an example of the most offensive language broadcast at a time when children were particularly likely to have been listening.

However, Ofcom took into account that: the Licensee notified Ofcom of the matter; the offensive language was broadcast in error; an apology was broadcast at the end of the programme; and, the station has a good compliance record. We also welcome the measures taken to avoid any similar problem occurring in the future.

Given all of these circumstances, Ofcom considers this matter resolved.

## **Resolved**

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<sup>1</sup> Audience attitudes towards offensive language on television and radio, August 2010, available at: <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>.

<sup>2</sup> Ofcom Guidance, Offensive language on radio, December 2011, available at: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/offensive-language.pdf>.

## Resolved

### Coverage of Andover Business Fair

*The Breeze (Andover), 6 September 2013, 15:45*

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This finding was originally published in issue 242 of Ofcom's Broadcast Bulletin on 18 November 2013 but was subsequently withdrawn by Ofcom because we received additional information relating to this case that was not available prior to the time of publication. The following is Ofcom's revised finding on the matter:

#### Introduction

The Breeze (Andover) ("The Breeze") is a local commercial radio service providing music, local news and information for listeners in the Andover area. The licence for The Breeze is held by Celador Radio (Andover) Ltd ("Celador" or "the Licensee").

Throughout the day on 6 September, The Breeze broadcast a series of short pre-recorded features about Andover Business Fair ("the Fair"). Celador contacted Ofcom to inform us about this material, which it said had been conceived, produced, recorded and broadcast by a contracted sales executive, with the knowledge of The Breeze's Managing Director but without the knowledge of its sales and programming managers.

The Licensee said businesses at the Fair had been offered the opportunity to promote themselves in short sponsored self-promotional interviews broadcast as if live from the event.

Celador was concerned that, in one instance, it "may have unintentionally breached the Code".

The commercial reference aired at 15:45 was broadcast in return for payment from Oaktree Business Management – an independent accountancy company participating in the Fair. The feature began with a voiceover that stated: *"The following message is paid for by the sponsor"*. However, instead of then broadcasting an interview with a representative of the sponsor, Oaktree Business Management, the Licensee broadcast the following interview with a local Councillor:

Presenter: *"Strolling up the High Street on this Friday afternoon, I bump into County Councillor Tony Hooke<sup>1</sup> – what's your view on what's happening here today?"*

Cllr Hooke: *"Oh there's no doubt, it's been a fantastic effort and I can see it growing, if we carry on with it for a few more sessions. So, no – very very good indeed – fantastic!"*

Presenter: *"Influence from Councillor Carr<sup>2</sup>?"*

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<sup>1</sup> Tony Hooke is the UKIP member of Hampshire County Council for the Andover South division.

<sup>2</sup> Ian Carr is the Leader of Test Valley Borough Council and the Conservative member for the Charlton ward.



Cllr Hooke: *“As you know I have called for Councillor Ian Carr to resign. That man is sitting on millions of pounds that could be invested in this town and we wouldn’t be scratching around for ideas, we would have a vibrant town – if we could get the right leadership. And people want to have their businesses here, have their shops here and, of course, shop here.”*

Presenter: *“Let’s move away from politics for the time being and lighten the mood slightly, and let’s talk taxation and accountancy. This is Sarah Ridge. Sarah, tell me about your company – that’s Oaktree Business Management.”*

The feature then continued with the paid-for commercial reference – an interview with a partner in Oaktree Business Management in which the organisation’s services were promoted.

Celador stated that the interview with the Councillor had been added “as there was not sufficient content in the client interview” but confirmed that the Councillor’s interview was not broadcast as part of a commercial arrangement with any third party.

Ofcom considered the feature raised issues warranting investigation under Rule 10.1 of the Code<sup>3</sup>, which states:

“Programming that is subject to, or associated with, a commercial arrangement must be appropriately signalled, so as to ensure that the commercial arrangement is transparent to listeners”.

We therefore requested comments from the Licensee about how the feature complied with this rule<sup>4</sup>.

## **Response**

Celador said the sponsored features relating to the Fair had been broadcast instead of commercial breaks.

The Licensee considered that opening the features with the statement, *“the following message is paid for by the sponsor”*, provided appropriate transparency for listeners about the commercial arrangement. It acknowledged that “the sponsor was not immediately identified, but “[believed] it would be obvious to any listener that the interviewee was a representative of the sponsor”. Nevertheless, it added that to follow the sponsorship credit with “an interview with a County Councillor on a political matter, could [have caused] some confusion as to whether or not they had sponsored that feature.” The Licensee confirmed that neither the County Council nor the Councillor had sponsored the feature.

Celador considered “the particular breadth of skills that the Andover Sales Executive

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<sup>3</sup> Section Ten of the Code applies to radio only.

<sup>4</sup> Celador provided Ofcom with recordings and a script of contemporary material broadcast on The Breeze, which both included comment by Councillor Carr and countered Councillor Hooke’s view. Ofcom did not therefore consider the political editorial content in the feature raised a potential issue under Section Five (Due Impartiality and Due Accuracy and Undue Prominence of Views and Opinions) of the Code.

possessed (the ability to broadcast, edit and load material) [were] not ones that any other member of [its] sales operation would have.” The Licensee therefore believed “this was a one-off operation with unintentional consequences”, but added that it had taken the following steps to prevent recurrence:

- the immediate suspension of the Managing Director and contractor responsible for the material;
- the restructuring of Celador’s Thames Valley region, with the Regional Managing Director now having “a direct line” to sales executives;
- ensuring that unusual airtime sales agreements are also considered by the programming team before confirmation; and
- the introduction of material for broadcast being checked and loaded centrally, with sales executives then being unable to change audio.

## Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure standards objectives, including that “generally accepted standards are applied to the contents of...radio services so as to provide adequate protection for members of the public from the inclusion in such services of...harmful material”.

This is reflected in, among other rules, Rule 10.1 of the Code, which requires the appropriate signalling to listeners of programming that is subject to, or associated with, a commercial arrangement with a third party.

Ofcom’s guidance to Rule 10.1 of the Code<sup>5</sup> clarifies, among other things, that radio programming “subject to” a commercial arrangement comprises broadcast material that forms part of that arrangement (e.g. commercial references). The rule goes on to state that such programming: “...may therefore include an entire programme/feature (i.e. sponsored programming) *and* commercial references within the sponsored output (e.g. sponsor references within the sponsored programming).” In practice, this means that a sponsorship agreement (a form of commercial arrangement) is made transparent to listeners by a sponsorship credit, which is itself a form of commercial reference.

Unusually, the series of features broadcast over the day were, in this instance, each supposed to comprise two commercial references – a short paid-for promotional interview, preceded by a sponsorship credit (intended to signal the commercial arrangement to listeners). However, the feature broadcast at 15:45 comprised (in order):

- a sponsorship credit (i.e. “*The following is paid for by the sponsor:*”), which was intended to reflect the commercial arrangement in place between The Breeze and Oaktree Business Management;
- an interview with a Hampshire County Councillor, which was *not* subject to the commercial arrangement; and

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<sup>5</sup> See Broadcast Guidance Notes: Section Ten, which can be found at: <http://stakeholders.ofcom.org.uk/broadcasting/guidance/programme-guidance/bguidance/>.

- an interview with a partner in Oaktree Business Management, which was subject to the commercial arrangement.

Ofcom's guidance to Rule 10.1 clarifies that, when assessing what is appropriate signalling of programming subject to a commercial arrangement (to ensure the arrangement is transparent to listeners), broadcasters should consider, among other things, the wording and positioning of the message and the identification of the sponsor. In particular, Ofcom considers that appropriate transparency of a commercial arrangement generally requires signalling at the outset of the broadcast material subject to it. Further, where a sponsorship credit is used to signal the commercial arrangement, Ofcom generally expects the sponsor to be clearly identified within it.

In this instance, Ofcom noted that the sponsorship credit did not identify the sponsor and was not positioned directly before the material to which it was intended to refer. In Ofcom's view, because the sponsorship credit preceded an interview with Hampshire County Councillor Cooke about the Fair, listeners were likely to consider that the material had been sponsored by either the Councillor or the County Council.

Although Ofcom generally expects radio sponsorship credits to identify the sponsor by name, we noted that, in this instance, the promotional interview with Oaktree Business Management opened with the following:

*"This is Sarah Ridge. Sarah, tell me about your company – that's Oaktree Business Management".*

Ofcom accepted that, in this particular instance, had the sponsorship credit been correctly positioned – i.e. immediately before this interview – the wording of the credit would have been sufficient to signal to listeners the commercial arrangement between Oaktree Business Management and The Breeze. Nevertheless, as the sponsorship credit was incorrectly positioned, the interview was not appropriately signalled as being subject to a commercial arrangement.

However, Ofcom took into account that the Licensee alerted us to the error and the steps it took to remedy the breach including additional checks of unusual airtime sales agreements and the introduction of central checking for broadcast material. We therefore consider the matter to be resolved.

## **Resolved**

## Fairness and Privacy cases

### Upheld

#### **Complaint by Joseph Frasier Solicitors on behalf of Ms Saba Maryam**

*Statement, Noor TV, 27 April to 1 May 2013*

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#### **Summary**

Ofcom has upheld the complaint made by Joseph Frasier Solicitors on behalf of Ms Saba Maryam of unjust or unfair treatment in the programme as broadcast.

Between the dates of 27 April and 1 May 2013, Noor TV broadcast repeatedly, about every 15 to 20 minutes, a statement in Urdu that alleged that Ms Maryam had been using Noor TV's name to deceive and cheat people. The statement was accompanied by a still image of the complainant. The image was taken from an earlier programme broadcast on Noor TV during the period when Ms Maryam had been a volunteer at the channel<sup>1</sup> and showed her in a television studio looking directly at the camera.

Noor TV provided Ofcom with signed written statements from four witnesses that it said corroborated the allegations against Ms Maryam. Noor TV also said that it had sent a letter to Ms Maryam asking her for a response to allegations; however, no response was received.

Ofcom found that:

- the programme presented a significant allegation of fraud against Ms Maryam in a way that was likely to materially and adversely affect viewers' perceptions of Ms Maryam in an unfair way. Ofcom considered that the broadcaster had not taken reasonable care to ensure material facts were not presented, disregarded or omitted in a way that was unfair to Ms Maryam; and
- the comments made in the programme about Ms Maryam amounted to a significant allegation of wrongdoing. Therefore, the broadcaster was required to offer her an appropriate and timely opportunity to respond prior to broadcast of the programme. Its failure to do so also resulted in unfairness to Ms Maryam.

#### **Introduction and programme summary**

Noor TV is a digital satellite television channel that broadcasts Islamic-based programmes in a number of languages, including English, Urdu and Punjabi. It can be received in the United Kingdom, Europe, Africa, the Middle East and Asia.

A transcript in English (translated from the original Urdu) of the broadcast was prepared by an independent translation company for Ofcom. Ms Maryam confirmed that the translated transcript fairly represented the content in the programme relevant to the complaint, and that she was satisfied for Ofcom to rely on the translated transcript in considering the complaint. Ofcom gave Noor TV an opportunity to

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<sup>1</sup> Ms Maryam was a volunteer at Noor TV between 2009 and 2012.

comment on the accuracy of the translation, but it did not respond. Ofcom therefore assumed that it was content with the translation.

Between 27 April and 1 May 2013, Noor TV broadcast repeatedly a statement relating to the complainant. The statement, which also appeared in text on screen, said:

*“All viewers are advised that the lady by the name of Saba Maryam, who is using Noor TV’s name to deceive and cheat people, has no connection whatsoever with Noor TV, hence Noor TV is not responsible for [the] actions of Saba Maryam. Viewers are requested to beware of such people who use Noor TV’s name to request for money or at the behest of medical treatment try to gain financial benefit”.*

The statement was also accompanied by a still image of the complainant, which had been taken from an earlier programme broadcast when Ms Maryam had been a volunteer at Noor TV.

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

Joseph Frasier Solicitors complained that Ms Maryam was treated unjustly or unfairly in the programmes as broadcast because:

- a) Between 27 April and 1 May 2013, Ms Maryam was falsely accused by Noor TV on air of being “a fraud” and viewers were advised that she was not to be trusted.

In the complaint, Joseph Frasier Solicitors said that Noor TV were in breach of the Broadcasting Code “by making false accusations” against Ms Maryam and, as a result of the broadcasts, Ms Maryam had suffered distress, anxiety and her confidence had been shattered. Ms Maryam had been contacted by people who accused her and questioned her as to whether the statement was true. This had made her feel unable to go out due to people in her community having seen the broadcasts.

In response, Noor TV said that the message had been broadcast in the interest of public information and that there was no intention to cause any unfairness. The broadcaster explained that it was prepared to take Ms Maryam’s views into consideration, but that she had been unavailable to communicate with it before the broadcasts. By way of background, Noor TV stated that, on 17 April 2013, a woman had visited Noor TV’s offices in Birmingham with a donation of money to give to Ms Maryam who, the woman claimed, had been collecting money on behalf of Noor TV at the Somerville Mosque in Small Heath, Birmingham. Noor TV also said that it had written statements (four of which it provided to Ofcom and which were dated 22 April 2013) from six women who claimed to have donated money to Ms Maryam who, it said, had claimed to be collecting money on behalf of Noor TV. Noor TV said that it had no knowledge of the collections.

- b) Ms Maryam was not given an opportunity to respond to the serious allegations made about her in the programme. Joseph Frasier Solicitors said that Ms Maryam was not made aware of the broadcasts in advance.

Noor TV said that it delivered, by hand, a letter, dated 23 April 2013, to Ms Maryam’s address which contained a request for her to reply to the allegations made against her by Noor TV. The letter also informed her that if Noor TV did not

hear from her it would “publish a disclaimer of Ms Maryam’s actions and also take out legal action”.

### **Ofcom’s Preliminary View**

Ofcom prepared a Preliminary View in this case that the complaint of unjust or unfair treatment in the programme as broadcast should be upheld. Ofcom provisionally concluded that the broadcasts of the statement which alleged that Ms Maryam had engaged in fraudulent activities amounted to a significant allegation of wrongdoing and was likely to adversely affect viewers’ perceptions of Ms Maryam, which resulted in unfairness. Ofcom also noted that Ms Maryam was not given an appropriate and timely opportunity to respond prior to the broadcasts of the message about Ms Maryam, which also resulted in unfairness to her.

Ms Maryam’s solicitors made representations on Ofcom’s Preliminary View. However, Ofcom did not consider these representations to be directly relevant.

Noor TV also made representations on the Preliminary View, which are summarised below.

#### *Noor TV’s Representations*

Noor TV said that Ms Maryam had not denied the allegations made against her. It also challenged Ofcom’s statement in the Preliminary View that Ms Maryam was not made aware of the broadcast of the statement on the basis that Noor TV had hand delivered a letter to her address informing her of its intention to broadcast the messages. It added that it might have been prudent for it to use recorded delivery to send this letter. Noor TV accepted, however, that its attempts to gain a response from Ms Maryam had “fallen short” of what Ofcom requires in the Code.

The broadcaster acknowledged that it should have put the allegation against Ms Maryam in context by making it clear to viewers that Ms Maryam had been given an opportunity to comment, but that no comment had been received by Noor TV.

### **Decision**

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

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

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

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

Ofcom's Broadcasting Code ("the Code"). Ofcom had particular regard to this rule when reaching its decision.

- a) Ofcom first considered the complaint that Ms Maryam was treated unjustly or unfairly in the broadcasts because she was falsely accused by Noor TV on air of being "a fraud" and viewers were advised that she was not to be trusted.

Ofcom took account of Practice 7.9 of the Code which provides that, before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to the individual or organisation.

Ofcom noted the exact wording of the message broadcast (as set out in the "Introduction and programme summary" section above) and, in particular, that it stated that: "[Ms Maryam was] *using Noor TV's name to deceive and cheat people*" and that viewers should "*beware of such people who use Noor TV's name to request money or at the behest of medical treatment try to gain financial benefit*". There was no doubt in Ofcom's view that this was a serious allegation of wrongdoing and that it would have been clear to viewers that the statement asserted unequivocally that Ms Maryam had been involved in fraudulent, and potentially unlawful, activities. This allegation, repeated on a number of occasions on air between 27 April and 1 May 2013, questioned Ms Maryam's honesty and integrity.

Ofcom noted that in the complaint Joseph Frasier Solicitors said that Noor TV were in breach of the Broadcasting Code "by making false accusations" against Ms Maryam. The complainant therefore explicitly denied any wrongdoing. It also noted, however, that Noor TV provided to Ofcom signed witness statements from four women which corroborated the allegation.

In Ofcom's view, whenever a programme alleges wrongdoing or makes other significant allegations against an individual or organisation, the broadcaster must take certain measures to ensure compliance with Section Seven (Fairness) of the Code to avoid unjust or unfair treatment. For instance, broadcasters should normally:

- give the individual or organisation concerned an appropriate and timely opportunity to respond; and
- reflect any response in an appropriate way on air; and/or
- at least reflect the fact that the broadcaster has sought comment from the individual or organisation concerned; and/or
- place the allegation in an appropriate context (by, for example, explaining it is based on one source or is unverified).

In the circumstances of this particular case, Ofcom recognised that the parties disagreed as to whether or not a hand delivered letter was received by Ms Maryam informing her of the allegations made against her (see head b) below). Nonetheless, Ofcom noted that, although the broadcaster said it had invited Ms Maryam to comment on the allegations, it did not make clear in the statement broadcast that it had informed Ms Maryam of and sought her response to the allegations, reflected her alleged lack of comment or response in the statement broadcast, nor did it state the source or context of the allegations made against her (Noor TV did not for example in the broadcast message explain in factual terms that it had been approached by members of the community who alleged Ms

Maryam had been collecting money for Noor TV but that Ms Maryam did not in fact have any authorisation to do this. Rather, it stated that Ms Maryam had been *“using Noor TV’s name to deceive and cheat people”*). Moreover, the allegations in the statement were repeated numerous times between 27 April and 1 May 2013.

Ofcom noted Noor TV’s submission that it believed it was justified in broadcasting the allegations against Ms Maryam because of the witness statements it had obtained from six women from the community (four of which were provided to Ofcom). Ofcom is not able, nor is required for the purposes of making a decision on this complaint, to express a view on the truth or otherwise of the allegations about Ms Maryam’s conduct contained in the witness statements and made on-air by Noor TV.

Ofcom acknowledges that the right to freedom of expression is crucial for broadcasters and their audience and that broadcasters must be able to investigate and report on, and where appropriate broadcast warnings about, matters of interest to their audience freely. However, in doing so, broadcasters must always comply with the Code. In particular, broadcasters must not make (or repeat) significant allegations against individuals or organisations in a way that is unfair. In this case, Ofcom considered that Noor TV could have avoided any unfairness to Ms Maryam at the time of the broadcasts by taking some of the steps outlined above.

In Ofcom’s view, the repeated allegations made by the broadcast statement that Ms Maryam had been *“using Noor TV’s name to deceive and cheat people”* and advising viewers to *“beware of such people who use Noor TV’s name to request for money”* were likely to materially and adversely affect viewers’ perceptions of Ms Maryam in a way that was unfair to her. Ofcom considered that the broadcaster did not take reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to the complainant and its failure to do so resulted in unfairness to Ms Maryam.

- b) Ofcom then considered the complaint that Ms Maryam was not given an opportunity to respond to the serious allegations made about her in the programme.

In considering this aspect of the complaint, Ofcom took account of Practice 7.11 of the Code which states that, 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 already given in head a) above, Ofcom considered that the allegations made in the broadcasts amounted to allegations of serious wrongdoing against Ms Maryam. Given the serious nature of the allegations against Ms Maryam, Ofcom considered that it was incumbent on the broadcaster to ensure that Ms Maryam was given an appropriate and timely opportunity to respond to the allegation prior to the broadcasts. Ofcom noted that Noor TV stated that it had given Ms Maryam an opportunity to respond by sending her a hand delivered letter dated 23 April 2013 (a copy of which was provided to Ofcom), but that she had *“refused to make any comments or communicate”* with it. Noor TV did not provide Ofcom with any evidence that this letter was delivered (such as a file note or other record of its delivery.) However, Ms Maryam said in her complaint that she had not received any request for a response from Noor TV.



While Ofcom cannot determine whether or not Ms Maryam received the hand delivered letter from Noor TV, it appeared to Ofcom that Noor TV had made some attempt to provide her with an opportunity to respond to the allegations. However, Ofcom took into account that Noor TV had made no further attempts to contact Ms Maryam or confirm receipt of the letter when there was no response from Ms Maryam.

Ofcom considered that, because of the seriousness of the allegations made in the statements broadcast by Noor TV, the broadcaster had an obligation to ensure that any response from Ms Maryam to the allegations was reflected in the broadcasts, or at least to report that after attempting to contact Ms Maryam the broadcaster had not been able to establish her views. Ofcom noted that Noor TV had failed to do either. Ofcom considered that the allegations against Ms Maryam were such that Noor TV should not have broadcast the material and adverse comments about Ms Maryam's integrity in the form it did. Ofcom concluded that, in the circumstances detailed above and on the basis of the evidence available, the broadcaster had not given Ms Maryam an appropriate and timely opportunity to respond to the significant allegations made about her in the broadcasts.

In reaching this decision, Ofcom took account of Noor TV's representations on the Preliminary View. Ofcom recognised that Noor TV disagreed that Ms Maryam was not made aware of the allegations against her, because it said it delivered a letter to her address. It also recognised that the parties disagreed as to whether or not a letter was received by Ms Maryam informing her of the allegations made against her. Nevertheless, Ms Maryam's lack of response should have been reflected appropriately in the statement broadcast.

Ofcom also noted Noor TV's comment that Ms Maryam had not denied the allegations. Ofcom points, however, to the complaint form, submitted by Joseph Frasier Solicitors on behalf of Ms Maryam, which states that Noor TV made "false accusations" against Ms Maryam.

For these reasons, Ofcom maintained its position that Ms Maryam was unjustly or unfairly treated in the programmes as broadcast.

**Accordingly, Ofcom has upheld Ms Maryam's complaint of unjust or unfair treatment in the programmes as broadcast. Ofcom is directing the Licensee to broadcast a summary of its findings in this case.**

## Upheld

### Complaint by Ms Bernadette Tully

*Amber Sound Request Show, Amber Sound FM, 22 July 2013*

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#### Summary

Ofcom has upheld Ms Bernadette Tully's complaint of unjust and unfair treatment in the programme as broadcast.

Amber Sound FM broadcast an edition of its morning request show, in which a message was read out by the radio presenter that Ms Tully, referred to by her nickname "Berni" should "*remove her tongue from...some portion of the boss' anatomy*". This was accompanied by the UB40 song "Rat in Mi Kitchen" after which the presenter dedicated the song to "*Berni at Celebrity*<sup>1</sup> [Ms Tully's workplace]".

Ofcom found that the broadcast of Ms Tully's nickname and the reference to her workplace (which identified her), along with the content of the message read out by the presenter and the song played, were likely materially and adversely to affect listeners' perception of Ms Tully in a way that was unfair to her. The broadcaster had therefore failed in its obligation to avoid unjust or unfair treatment of Ms Tully in the programme as broadcast.

#### Introduction and programme summary

On 22 July 2013, Amber Sound FM, a local community radio station operating in Amber Valley, Derbyshire, broadcast an edition of its morning request show in which members of the public could text or phone in to request a song to be played on-air. During this edition of the programme, the following request was read out by the presenter:

*"Oh, good job I read through this prior to reading this out. Got some UB40 by a request, 'There's a Rat in Mi Kitchen' [sic]... specially for Berni at Celebrity who needs to remove her tongue from ohhhh, errr listen I really can't say exactly that, as I'm sure you'll understand the reasoning why but just suffice to say some portion of the boss' anatomy, let's leave it at that eh?"*

At the end of the song, the presenter said:

*"Amber Sound FM 107.2 'There's a Rat in Mi Kitchen' [sic] especially for Berni at Celebrity that one".*

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

Ms Tully complained that she was treated unjustly and unfairly in the programme as broadcast because the radio presenter read out an "insulting message" about her and, although she was not referred to by her full name, she was identified by her nickname "Berni" and her workplace "Celebrity".

Ms Tully said that Amber Sound FM was being played in her workplace when the message was read out. As a result, her work life was adversely affected because

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<sup>1</sup> Celebrity Motion Furniture Limited.

numerous people heard the message and recognised that the presenter was referring to her.

In response, Amber Sound FM said that during the programme it received a text message and a song request relating to Ms Tully. It said that the presenter censored some of the message but, as with all messages received, it was read out in good faith under the assumption that it was not sent maliciously. It said it would not read a text message knowing that it would cause any offence or distress.

Amber Sound FM added that it did not know of the context in which text messages were sent. It also stated that a message which appeared to be potentially offensive could be quite innocent and equally a message which appeared to be innocent could have an ulterior motive. Amber Sound FM provided Ofcom with text messages as examples of the type of messages the programme received.

Amber Sound FM said that, following the broadcast of the programme, it received a telephone call from Ms Tully requesting the mobile telephone number that the text message was sent from, followed by an email requesting the exact wording used in the text message and the time the message was sent. Amber Sound FM said that it apologised to Ms Tully for any offence that may have been caused and informed her that the text had been edited to the bare minimum. Amber Sound FM stated that at no point did Ms Tully complain about the text message being read out or that she felt she had been treated unfairly in the programme as broadcast.

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

Ofcom prepared a Preliminary View in this case that the complaint of unjust or unfair treatment in the programme as broadcast should be upheld. Ofcom provisionally concluded that the inclusion of the message in the programme had the potential to be hurtful and offensive to Ms Tully. In these circumstances, and given the context in which the message was read out, Ofcom took the view that the inclusion of the message had resulted in unfairness to Ms Tully because it had the potential materially and adversely to affect listeners' opinions of her in a way that was unfair.

Ms Tully made representations on Ofcom's Preliminary View. However, Ofcom considered that they were not directly relevant. Amber Sound FM submitted representations on the Preliminary View that were directly relevant to the complaint and Ofcom's investigation. These are summarised below.

#### *Amber Sound FM's representations*

Amber Sound FM acknowledged that reading a person's nickname accompanied by their place of work could make them identifiable. However, it stated that this was not a certainty. It maintained that the message was read out in good faith and was not meant to cause any harm to Ms Tully. In any event, Amber Sound FM said that it did not believe that Ms Tully's reputation had been damaged as a result of the broadcast of the programme. Amber Sound FM concluded that it did not agree that it had failed in its obligation to avoid unfair and unjust treatment of Ms Tully or that the message was likely to "negatively influence" the listeners' views.

### **Decision**

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unjust or unfair treatment and unwarranted infringement of

privacy in, or in connection with the obtaining of material included in, programmes in such services.

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

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

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 Ofcom's Broadcasting Code ("the Code"). Ofcom had particular regard to this rule when reaching its decision.

Ofcom considered Ms Tully's complaint that she was treated unjustly and unfairly in the programme as broadcast because an "insulting message" about her was broadcast.

Ofcom first noted the content of the message read out in the programme by the presenter which referred specifically to Ms Tully. This is set out in detail in the "Introduction and programme summary" section above. It noted too the context in which this message was included in the programme, namely as a request or song dedication that had been sent to the radio station via text message.

Ofcom then considered whether or not Ms Tully was identifiable from the comments made in the programme. Having carefully listened to the request and read a transcript of it, Ofcom took the view that the reference to "*Berni at Celebrity*", which was Ms Tully's nickname and the name of her employer, rendered her easily identifiable to her work colleagues and to those who knew her well.

Having established that Ms Tully was identifiable in the programme, albeit to a limited constituency of people, Ofcom considered whether the inclusion of the request in the programme was unfair to Ms Tully.

Ofcom recognised that the request was delivered by the presenter in a jovial tone and that it was in keeping with the light-hearted nature of the programme. It noted too Amber Sound FM's statement that the presenter exercised some "censorship" of the message and that it was read out "in good faith under the assumption that it was not sent maliciously". Ofcom acknowledged that neither the presenter nor the broadcaster knew of the context of the message. Nevertheless, there was no doubt in Ofcom's opinion that the content of the message had the potential not only to be hurtful, insulting and offensive to Ms Tully, but also had the potential to lead to adverse repercussions for Ms Tully and materially and adversely to affect listeners' opinions of her in a way that was unfair.

Ofcom acknowledges that broadcasters' right to freedom of expression is crucial and that they must be able to make programmes that are entertaining and of interest to their audiences without undue constraints. However, this comes with responsibility and an obligation for broadcasters to comply with the Code and, with particular

reference to this case, avoid unjust or unfair treatment of individuals or organisations in programmes.

Taking all the factors set out above into account, Ofcom was concerned that the broadcaster, a local community radio station, had allowed itself to be used as a platform for comments about a specific, identifiable person to be made that were likely materially and adversely to affect listeners' perceptions of that person, namely Ms Tully. Ofcom therefore concluded that the broadcaster had failed in its obligation under the Code to avoid unfairness to Ms Tully in the programme as broadcast.

Ofcom took into account Amber Sound FM's representations on the Preliminary View. Ofcom recognised that Amber Sound FM disagreed with Ofcom's Preliminary View and that it was not Amber Sound FM's intention to cause any harm to Ms Tully. Ofcom also noted that Amber Sound FM said that it believed that Ms Tully's reputation had not been damaged as a result of the broadcast of the programme. However, Ofcom held the view that Amber Sound FM should not have allowed itself to be used as a platform for prejudicial comments to be made about Ms Tully when those comments were likely materially and adversely to affect listeners' perceptions of her in a way which is unfair. For this reason, Ofcom maintained its original view and its decision to uphold the complaint remained unchanged.

**Accordingly, Ofcom has upheld Ms Tully's complaint of unjust or unfair treatment in the programme as broadcast.**

## Upheld in Part

### Complaint by Ford & Warren Solicitors on behalf of Mr Melvyn Levi

*Live coverage: Leeds United v Leicester City, Yorkshire Radio, 26 December 2010 and further announcements on 22 and 23 December 2010*

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#### Summary

Ofcom has upheld in part the complaint of unjust or unfair treatment and unwarranted infringement of privacy in the programmes as broadcast made on behalf of Mr Melvyn Levi by Ford & Warren Solicitors.

On 30 July 2013, Yorkshire Radio ceased broadcasting and on 31 July 2013 it surrendered its broadcasting licences to Ofcom. Between 22 and 26 December 2010, however, Yorkshire Radio<sup>1</sup> broadcast at least six radio announcements which stated that Leeds United Football Club was “*searching for the whereabouts of Melvyn Levi in order to serve him some papers in relation to a High Court action in Jersey*”. The announcements also asked listeners to contact Yorkshire Radio if they had seen Mr Levi. The background to the radio announcements was a dispute between the then Chairman of Leeds United Football Club, Mr Ken Bates, and Mr Levi, a businessman who had previously been a Director of the football club.

Ofcom found that:

- Mr Bates and Mr Shaun Harvey (the Chief Executive of Leeds United) used their control of the broadcaster to procure the radio announcements. The announcements encouraged listeners, many of whom would have been fans of Leeds United (where Mr Levi had previously been a Director), to report Mr Levi's whereabouts to the broadcaster and it was reasonable that Mr Levi should have felt troubled and distressed by this action. Ofcom therefore considered that Mr Levi had been treated unfairly in the programmes.
- the radio announcements would have led listeners to believe that Mr Levi was attempting to frustrate the operations of the courts by evading service and were likely materially and adversely to alter listeners' perceptions of him. As was later accepted by all parties, Mr Levi was not attempting to evade service. Even though the broadcaster was aware that Mr Levi's position was that he was on holiday at the time service was first attempted, this was not presented in the announcements. On balance, therefore, Ofcom's view was that the broadcaster had not taken reasonable care to satisfy itself that material facts were presented, disregarded or omitted in a way that was fair to Mr Levi.

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<sup>1</sup> At the time of the broadcast Leeds United Football Club Limited (which owns and operates the football club) and Yorkshire Radio Limited (which owns and operates the radio station) were subsidiaries of Leeds City Holdings Limited, which was majority-share owned by Mr Bates. Mr Bates was also Chairman of the football club and a director of Yorkshire Radio. (Information provided to Ofcom by Yorkshire Radio.) Leeds City Holdings Limited was subsequently taken over by LUFC Holdings Ltd, 90% of which is owned by GFH Capital. The corporate structure at the time of the radio broadcast is set out in head a) of Ofcom's Preliminary View section below.

- The fact that the radio announcements did not include Mr Levi's position in relation to the Jersey proceedings did not result in unfairness to Mr Levi because the Jersey proceedings were not the subject-matter of the broadcasts.
- The implication created by the radio announcements, that Mr Levi had attempted to evade service, was a significant allegation. Mr Levi was not given an appropriate and timely opportunity to respond to this significant allegation which resulted in unfairness to him.
- Mr Levi did not have a legitimate expectation of privacy in relation to the radio broadcasts in that they did not reveal anything that was of a private or sensitive nature.

### **Introduction and programme summary**

Yorkshire Radio was a local digital radio station run by Leeds United Football Club Limited ("Leeds United") which broadcast live coverage of all first team football games, music and predominantly sport-related programming. Yorkshire Radio could be received in the Yorkshire, Lincolnshire and north Midlands areas of England. On 30 July 2013, Yorkshire Radio ceased broadcasting and on 31 July 2013 it surrendered its broadcasting licences to Ofcom.

On 26 December 2010, Yorkshire Radio broadcast two announcements during its live coverage of a football match in which Leeds United were playing at home to Leicester City. The first announcement was broadcast at around 14:20 hours and the second at around 16:05 hours. In summary, the announcements stated that Leeds United were trying to find out where Mr Melvyn Levi was, so it could serve court papers on him which related to a High Court action in Jersey, and asked listeners who had seen Mr Levi to contact Yorkshire Radio. (The full text of these messages is set out in the Decision section below under head a)).

Ofcom understood that a similar message was also broadcast three times on 22 December 2010 and at least once on 23 December 2010. Ofcom requested copies of these recordings but Yorkshire Radio indicated that recordings of these broadcasts had been erased as the recording retention time had elapsed when the request by Ofcom was made.

Ford & Warren Solicitors ("Ford & Warren"), legal representatives for the complainant, Mr Levi, made a complaint to Ofcom on behalf of Mr Levi that he was treated unjustly or unfairly in the programmes as broadcast and that his privacy had been unwarrantably infringed in the programmes as broadcast.

### **Background to the complaint**

In 2004, Mr Levi, a businessman, joined with other businessmen to form a consortium to take over Leeds United. Financial difficulties experienced by the club meant that it needed an urgent injection of capital which was provided by another consortium headed by Mr Ken Bates and it was this consortium that eventually took over the club in 2005. A number of legal disputes have arisen over the years in connection with the takeover involving, among others, Mr Levi and Mr Bates. In parallel, Mr Levi successfully brought libel proceedings against Mr Bates in 2009<sup>2</sup>.

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<sup>2</sup> *Levi v Bates* [2009] EWHC 1495 (QB).

It was against this background that allegations of harassment were pleaded by Mr Levi and his wife against Mr Bates, Leeds United and Yorkshire Radio in Leeds County Court (“the *Levi* case”). The action concerned, among other things, the radio announcements that formed the subject-matter of Mr Levi’s complaint to Ofcom.

Based on the findings of fact of His Honour Judge Gosnell, the parties’ witness statements in the *Levi* case and the parties’ submissions before it, Ofcom proceeded on the basis that the following events took place. On 21 December 2010 a process server<sup>3</sup>, instructed by Leeds United’s lawyers, attended Mr Levi’s home to serve papers on Mr Levi relating to separate legal proceedings in Jersey. Mrs Levi spoke to the process server and stated that Mr Levi was away and would not be returning until the New Year. The process server informed his employers that he believed that Mrs Levi’s behaviour was “evasive” as he thought it strange that Mr Levi was away and would not be spending Christmas with his family.

This information was passed on to Mr Harvey, the Chief Executive of Leeds United who, after consulting Mr Bates, instructed Yorkshire Radio to broadcast the series of radio announcements broadcast between 22 December and 26 December 2010. As it emerged during the harassment trial at Leeds County Court, the reason Mrs Levi had acted in a way perceived to be evasive was that she did not want to indicate to a stranger that the house would be unattended for several days over the Christmas period, due to security concerns. The process server’s company subsequently wrote to Mr Levi and an arrangement for it to effect service by appointment was made.

On 7 June 2012, a judgment handed down in the *Levi* case ordered Mr Bates to pay Mr Levi damages of £10,000 for harassment<sup>4</sup>. Ford & Warren submitted a complaint on behalf of Mr Levi to Ofcom on 12 July 2012.

## **Summary of the complaint**

### Unjust or unfair treatment

Ford & Warren complained on behalf of Mr Levi that he was treated unjustly or unfairly in the programmes as broadcast because:

- a) As found in the judgment in the *Levi* case, the announcements were used as a means to harass Mr Levi by those who had control of Yorkshire Radio (namely, Mr Bates and Mr Harvey).
- b) As found by the judgment of the Leeds County Court, the announcements portrayed Mr Levi unfairly in that they gave the false impression that he was attempting to evade the service of documents on him in relation to legal proceedings when, in fact, he had been on holiday at the time. Ford & Warren said that “the court found, as a matter of fact, that it was true that Mr Levi was away and not attempting to evade service and that Mr Harvey was told that a letter of appointment had been sent prior to the broadcasts”.
- c) Mr Levi was not given an opportunity to respond to the allegation of wrongdoing made in the announcements, i.e. that he was attempting to evade service. Ford & Warren noted that those in control of Yorkshire Radio made no approach to

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<sup>3</sup> The individual employed to serve the court papers on Mr Levi.

<sup>4</sup> *Levi v Bates* [2012] EW Misc 9 (CC).



anyone, including Mr Levi, Mrs Levi or their solicitors to discuss the announcements prior to broadcast.

- d) Yorkshire Radio did not take any care or steps to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Mr Levi.

Ford & Warren said that those in control of Yorkshire Radio and its broadcasts “were told that Mr Levi was away and chose to ignore that, were told that a letter of appointment had been sent to Mr Levi and chose to ignore that, did not even attempt to contact Mr Levi’s solicitors concerning service, [...] and instead and despite this elected to make the broadcasts”.

- e) Mr Levi had denied the claim forming the basis of the papers that were to be served and yet his view was not represented.

#### Unwarranted infringement of privacy

- f) Ford & Warren complained that Mr Levi’s privacy was unwarrantably infringed in the programmes as broadcast in that comments were broadcast in the announcements about his private life and that the broadcasts actively encouraged the public to report on his whereabouts.

#### **The broadcaster’s response**

In response to Mr Levi’s complaint Carter Ruck Solicitors (“Carter Ruck”), acting on behalf of the broadcaster, Yorkshire Radio, submitted two letters dated 30 January 2013 and 8 March 2013. The letters addressed the substance of the complaint made on Mr Levi’s behalf and their representations are summarised below.

#### The Levi case

Carter Ruck said that Mr Levi had already had the benefit of a well-publicised court judgment, an award of damages and an injunction. It stated that it was impermissible for Ofcom to rely on and adopt the findings of the judgment of 7 June 2012 because the complaint concerned different considerations to those in the harassment action and that Ofcom was required to consider the matters afresh.

It said that Mr Levi’s complaint in the court case concerned matters over a number of years and that, in the absence of other conduct (which was considered in the judgment), it was perfectly possible that the court would not have found harassment on the part of Yorkshire Radio. It added that Yorkshire Radio was an entirely separate legal entity to Mr Bates and that its only involvement in the harassment proceedings brought by Mr Levi concerned the radio broadcasts.

#### Ownership of Yorkshire Radio

Carter Ruck said that Yorkshire Radio was under entirely new ownership from its ownership in December 2010 and that Mr Bates did not now own shares in the broadcaster or any company with ownership of it. It further stated that Mr Bates was no longer on the board of Yorkshire Radio, nor did he hold an executive position at Leeds United or any other company with ownership of Yorkshire Radio. Carter Ruck confirmed that Mr Harvey continued to sit on the board of Yorkshire Radio, but disputed that Yorkshire Radio was ever under the “control” of Mr Harvey. It further stated that Mr Harvey was the Director of the broadcaster in December 2010. It said

that the new owners of Yorkshire Radio “know next to nothing” about the relevant events and/or the reasons behind them. It added that memories of relevant events had faded and that the evidence it relied on was confined to that of Mr Bates and Mr Harvey, which had been given for the purposes of the issues before the court in the harassment proceedings<sup>5</sup>.

#### Background to the radio broadcasts

By way of background to the broadcast of the announcements, Carter Ruck said that Mr Bates and Mr Harvey were advised by Leeds United’s lawyers in Jersey that there was “some urgency” in serving the relevant court papers on Mr Levi, otherwise a hearing fixed for 14 January 2011 would need to be adjourned to a later date. Carter Ruck said that Leeds United’s lawyers had arranged the personal service of the court papers on Mr Levi on 21 December 2010, but were informed that Mrs Levi had told the process server that Mr Levi was away until the New Year. Carter Ruck said that this had appeared to the process server to be suspicious and that it seemed unlikely that Mr and Mrs Levi would be apart over the Christmas and New Year period. It said too that Leeds United’s lawyers informed Mr Bates and Mr Harvey that they were of the view that Mr Levi was seeking to avoid service. Carter Ruck noted that, at the trial, it transpired that Mrs Levi had implied this to the process server, but that her reason was not to evade service, but because of security concerns: she did not want to divulge the fact that their home would be empty over the Christmas and New Year period.

Carter Ruck said that Mr Harvey made some “informal and discrete” enquiries to check the impression the process server had obtained that Mrs Levi was being evasive about the whereabouts of Mr Levi but, unfortunately, the information that resulted from this enquiry turned out to be incorrect. Mr Harvey considered the contact (who had provided the information that Mr Levi had been seen dining in Leeds on 21 December 2010) to be reliable and Mr Harvey did not think that the information from the process server and his contact may have been incorrect. Carter Ruck said that Mr Harvey and Mr Bates did not ignore the fact that a letter requesting an appointment for service had been sent, although the fact it had been sent did not mean that Mr Levi would respond to it or cooperate with it. Carter Ruck noted that, at the trial, the judge had observed that Mr Harvey had had the “good grace” to accept that Mr Levi was not in fact in Leeds at the relevant time.

Carter Ruck said that, on the basis of the position as advised by Leeds United’s lawyers, the result of the enquiry and for historical reasons, Mr Bates and Mr Harvey concluded that Mr Levi was seeking to avoid service. Carter Ruck said that there was no way of knowing whether Mr Levi would respond to the letter that had been sent requesting an appointment for service, and that a response had not been received until after the New Year. As a result, the Jersey court proceedings were delayed and a new hearing date was subsequently fixed.

#### The radio broadcasts

Carter Ruck said that Mr Bates and Mr Harvey arranged for the radio announcements to be made to try and avoid delay of service until the New Year and to avoid the hearing on 14 January 2011 being adjourned. It said that Yorkshire Radio honestly believed, incorrectly as it turned out, that Mr Levi was still in Leeds. Carter Ruck said that the broadcast of the announcements on Yorkshire Radio arose

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<sup>5</sup> Ofcom notes that Carter Ruck’s representations were submitted before Yorkshire Radio ceased operating on 30 July 2013.

out of an unhappy misunderstanding giving rise to incorrect suspicions that were held by the process server and Leeds United's lawyers, which Mr Bates and Mr Harvey then believed had been confirmed to be correct from the discrete enquiries Mr Harvey had made. Carter Ruck said that the announcements were neutral in tone, did not include background music or noise, and were not emotive. It said that, essentially, the announcements asked listeners to contact Leeds United if they had seen Mr Levi (a public figure in Leeds because of his past ownership of Leeds United and an ex-Director of Leeds United). Carter Ruck said that there was no implication that Mr Levi was seeking to evade service and that there was no allegation of wrongdoing in the announcements. Carter Ruck said that even if Mr Levi had been evading service that would not have involved wrongdoing at all on Mr Levi's part. It added that Mr Levi was under no obligation, whether legal or moral, to cooperate with service of court papers on him. It said that there was no reason for anyone to think less of Mr Levi, had he not been cooperating with attempts to serve the court papers on him.

#### Opportunity to respond to the radio broadcasts

Carter Ruck said that for the reason set out above (i.e. that the broadcast did not imply any wrongdoing), there was nothing unfair about not giving Mr Levi an opportunity to respond to the broadcasts. It said the point of broadcasting the announcements was to find Mr Levi so that court papers could be served on him as quickly as possible.

Carter Ruck said that the radio announcements stated nothing about the nature of the Jersey court proceedings or either party's position in relation to them. It argued that therefore there was no need as a matter of fairness, or for any other reason, to state that Mr Levi denied the claims in them.

#### Unwarranted infringement of privacy

Carter Ruck said that there was no request whatsoever made for private information about Mr Levi and there was nothing intrusive about the broadcasts in relation to Mr Levi's private life. It said that court proceedings are public and therefore there was no attempt to use private information concerning Mr Levi or to obtain private information about him. Carter Ruck said that if Mr Levi had been seen it would have been in a public place in or around Leeds and that this was little different to seeking information about a lost relative or other such information, and this is how Mr Bates and Mr Harvey saw matters at the time. Carter Ruck said that it noted that Mr Levi did not bring proceedings against Mr Bates and/or Yorkshire Radio for infringement of privacy.

### **Decision**

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

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

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast, and both parties' written submissions, including supporting material which included a copy of the judgment of 7 June 2012 and the witness statements of Mr Bates, Mr Harvey, the process server and the lawyer acting for Leeds United in the Jersey proceedings. Ofcom provided the parties with the opportunity to make representations on Ofcom's Preliminary View (which was to partially uphold the complaint). Neither party made any representations on the Preliminary View.

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 or organisations, as set out in Rule 7.1 of Ofcom's Broadcasting Code ("the Code"). Ofcom had regard to this Rule when reaching its decision on the complaint.

### Unjust or Unfair Treatment

- a) Ofcom first considered the complaint that Mr Levi was treated unjustly or unfairly in the programmes as broadcast because the announcements were used by those who had control of Yorkshire Radio (namely, Mr Bates and Mr Harvey) as a means to harass Mr Levi.

Ofcom first noted Carter Ruck's response to the Entertainment Decision that Ofcom should consider these matters afresh. This Decision is based on Ofcom's assessment of Mr Levi's complaint against the relevant Rules of the Code. However, Ofcom has also had regard to the judgment of His Honour Judge Gosnell in the civil action in Leeds County Court<sup>6</sup> and has given weight to his findings where Ofcom considered it appropriate.

Before assessing whether or not Mr Bates' comments were used as a "means to harass" Mr Levi resulting in unfairness, Ofcom first considered whether Mr Bates and Mr Harvey had "control" of Yorkshire Radio at the time of the broadcasts.

Ofcom examined in detail the corporate structure of the companies that were connected to this complaint through Mr Bates in December 2010, when the announcements at issue were broadcast. Based on the information provided to Ofcom by Leeds United in relation to Yorkshire Radio's broadcasting licence, the corporate structure at that time was as follows:

- 95% of Yorkshire Radio was owned by Leeds United Media (the remaining 5% being owned by two individual minority shareholders);
- 100% of Leeds United Media was owned by Leeds City Holdings Limited;
- 72.85% of Leeds City Holdings Limited was owned by Outro Limited (the remaining share percentages being owned by four separate companies, the largest shareholding being just 7.71%); and
- 100% of Outro Limited was owned by Mr Bates and his wife.

The net effect of these holdings was that Mr Bates and his wife owned 72.85% of Leeds City Holdings Limited, which in turn owned 95% of Yorkshire Radio at the time the announcements were broadcast.

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<sup>6</sup> *Levi v Bates* [2012] EW Misc 9 (CC).

Ofcom noted that in the judgment in the *Levi* case the judge concluded that both Mr Bates and Leeds United had “procured” the radio broadcasts about Mr Levi. Ofcom also agreed with the judge that Mr Bates was a central and influential figure in the management structure of Yorkshire Radio at the time the announcements were broadcast. Mr Harvey, in turn, was at the time of the broadcast a Director of Yorkshire Radio.

It was against this background that Ofcom considered whether the announcements, procured by those who had control of Yorkshire Radio (“the controllers of Yorkshire Radio”), were used as a means to harass, trouble or distress Mr Levi and whether this resulted in unfairness to him.

Ofcom noted that the announcement broadcast on 26 December 2010 at 14:20 hours stated:

*“...Leeds United are currently searching for the whereabouts of Melvyn Levi in order to serve him some papers in relation to a High Court action in Jersey. Now, if you’ve seen the former Leeds United director, you’re being asked to get in touch with Yorkshire Radio and let us know where and when you saw him. Now you can go to our website, [Yorkshireradio.net](http://Yorkshireradio.net). For all our contact details, you can text us, you can Tweet and you can email us and it’s the same contact details as well this afternoon”.*

The second, similarly worded announcement, broadcast at around 16:05 hours that day stated:

*“...[A] reminder that Leeds United are currently searching for the whereabouts of Melvyn Levi in order to serve him some papers in relation to a High Court action in Jersey. Now, if you’ve seen Mr Levi, the former Leeds United director, you’re being asked to get in touch with Yorkshire Radio and let us know where and when you saw him. You can go to the website, [yorkshireradio.net](http://yorkshireradio.net) for contact details or you can text us, Tweet us or email us”.*

Ofcom understood that a similar message had been broadcast three times on 22 December 2010 and at least once on 23 December 2010.

The announcements clearly encouraged members of the public to contact the radio station and report the whereabouts of Mr Levi. Ofcom noted that Mr Levi was a former Director of Leeds United and that the radio station’s audience was likely to have comprised a significant proportion of supporters of the club, many of whom would have known of Mr Levi who was a well-known figure in this community. Ofcom also took account of the fact that the radio broadcasts were broadcast on at least six occasions.

Ofcom took the view that such repeated broadcasts would have troubled Mr Levi in a manner which caused him distress and anxiety. Ofcom therefore concluded that the actions of the radio station in broadcasting the announcements were unfair to Mr Levi.

In reaching this conclusion, Ofcom had regard to the judgment of His Honour Judge Gosnell in the *Levi* case. Although the legal test for harassment has a very specific meaning, Ofcom did note that the judge in this case concluded that one of the motives of broadcasting the announcements was to harass.

The judge stated that the decision to broadcast the messages over three days at least six times was “entirely unreasonable”, “disproportionate to the problem trying to be solved”, and that the “mischief behind this decision” was to “wind up” Mr Levi. The judge found the broadcast of the announcements constituted “acts of harassment” and were motivated by a personal grudge that Mr Bates held against Mr Levi and had arisen from business dealings between them. Further, Ofcom noted that the judge found the broadcasts at issue amounted to harassment in their own right, independently of the other courses of conduct that formed the subject-matter of the *Levi* case and which were not relevant to Ofcom’s investigation.

Taking into account the factors set out above, Ofcom was satisfied that the radio announcements resulted in unfair treatment of Mr Levi. Ofcom considered that this conduct was inappropriate and took the view that the fact that Yorkshire Radio (which had responsibility for ensuring that all its programming complied with the Code) deemed it acceptable at the time was of great concern.

Ofcom therefore considered that the broadcast of the announcements amounted to harassment to Mr Levi and that the lack of adequate compliance controls by the broadcaster, to ensure that its services were not used for such a purpose, resulted in Yorkshire Radio treating Mr Levi unfairly in the announcements as broadcast.

Ofcom concluded that Mr Levi was treated unfairly in this respect.

b), d) & e)

Ofcom next considered the complaint that the announcements portrayed Mr Levi unfairly because they gave the false impression that he was attempting to evade the service of documents on him in relation to legal proceedings when, in fact, he had been on holiday at the time. Ofcom also considered the complaint that Yorkshire Radio did not take any care or steps to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Mr Levi. Ford & Warren said that those in control of Yorkshire Radio were told that Mr Levi was away and that they chose to ignore it and did not even attempt to contact Mr Levi’s solicitors concerning service.

Further, Ofcom considered the complaint that Mr Levi had denied the claim forming the basis of the papers that were to be served and yet his view was not represented.

In assessing these heads of complaint, Ofcom had regard to Practice 7.9 of the Code. This states that, when broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

Ofcom noted the content of the announcements broadcast, as set out in head a) above, and considered that the message given in the announcements was that papers needed to be served on Mr Levi in relation to legal proceedings and that his whereabouts were unknown. However, Ofcom also noted that the judge in the *Levi* case found that Mr Levi “was not in fact attempting to evade service in any way”. It was also accepted by all the parties in the *Levi* case that Mr Levi had not been in Leeds during the relevant period of time and that the mistaken impression of the process server that Mrs Levi was evasive was the result of her

security concerns that she did not wish to confirm her property would be empty over the Christmas and New Year period.

Having listened to the announcements, Ofcom took the view that they would have led listeners to believe that Mr Levi was attempting to frustrate the operation of the courts and, implicitly, seeking to evade legal proceedings to which he was party. In Ofcom's view, the radio announcements were therefore capable of materially and adversely affecting listeners' perception of Mr Levi. As set out in head a) above, these radio broadcasts would have been particularly damaging to Mr Levi given that the likely audience would be composed by football fans of Leeds United where he had formerly been a Director.

Ofcom next considered whether the controllers of Yorkshire Radio were told that Mr Levi was away and chose to ignore it.

Ofcom took account of the witness statement of Mr Bates, provided in the *Levi* case, in which he confirmed that he had: "heard about the attempted service...[and] understood from the process server that [Mrs Levi] had said that [Mr Levi] had left until the New Year". Ofcom noted too that Mr Harvey also confirmed in his witness statement that he had been aware that Mrs Levi had informed the process server that Mr Levi was "away until New Year". Mr Bates and Mr Harvey therefore did not contest that they knew that Mrs Levi had said that her husband was away, although they did not believe this information at the time because of the impression Mr Levi's wife had created when approached by the process server (which all parties accepted was a misunderstanding), and false information they had received about Mr Levi dining in Leeds on the evening of 21 December 2010.

As set out in head a) above, Mr Bates and Mr Harvey exerted control over the broadcaster and Mr Harvey's witness statement provided in the *Levi* case confirms it was he who requested that the messages were broadcast and the content that was broadcast reflected this request. Ofcom therefore considered that the controllers of Yorkshire Radio were aware of Mr Levi's position that he was away at the time of the broadcasts. However, this was not reflected in any way in the announcements.

Ofcom next considered the complaint that the fact Mr Levi had denied the claim forming the basis of the papers that were to be served and yet his view was not represented in the broadcasts resulted in unfairness to him. Ofcom again carefully considered the contents of the radio announcements in relation to this aspect of Mr Levi's complaint. It noted that the radio announcements did not make any reference to the position of the respective parties in the Jersey court proceedings. Ofcom therefore did not consider that it was relevant for the broadcaster to put forward Mr Levi's position in this regard. Ofcom also noted that Ford & Warren did not provide Ofcom with any evidence that the controllers of Yorkshire Radio were aware of Mr Levi's position in relation to the Jersey court proceedings at the time of the broadcasts. However, even if the controllers of Yorkshire Radio had been aware of Mr Levi's position, Ofcom did not consider it was necessary for the broadcaster to include this information as the exclusion of this information would not have materially or adversely altered listeners' perceptions of Mr Levi.

In conclusion, Ofcom considered that the announcements created a false impression that Mr Levi was attempting to evade service in some way and that

the broadcaster had not taken reasonable care to satisfy itself that material facts were presented, disregarded or omitted in a way that was fair to Mr Levi.

Ofcom considered therefore that Mr Levi was treated unjustly or unfairly by the broadcaster.

- c) Ofcom considered the complaint that Mr Levi was not given an opportunity to respond to the allegation of wrongdoing made in the announcements, i.e. that he was attempting to evade service.

When considering this head of the complaint, Ofcom took into consideration Practice 7.11 stating that, 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.

Ofcom noted the representations of Carter Ruck on behalf of its client Yorkshire Radio that there was no allegation of wrongdoing in the announcements and therefore there was nothing unfair about not giving Mr Levi an opportunity to respond to the broadcast.

However, as set out in head b) above, Ofcom considered that the announcements implied that Mr Levi was attempting to evade service and that this could lead listeners to believe that Mr Levi was attempting to frustrate the operation of the courts. Ofcom considered that this allegation was significant and that it had the potential materially and adversely to affect the perceptions listeners would have had of Mr Levi. Ofcom therefore considered that this amounted to a significant allegation that warranted Mr Levi being given an appropriate and timely opportunity to respond to it.

Given that no such opportunity was given, Ofcom considered that Mr Levi had been treated unfairly in this respect.

#### Unwarranted infringement of privacy

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

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

- f) Ofcom considered the complaint that the announcements broadcast comments about Mr Levi's private life and encouraged the public to report on his whereabouts.

When considering this head of complaint Ofcom had regard to Practice 8.6 of the Code. This states that, if the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.



In assessing whether or not Mr Levi's privacy was unwarrantably infringed in the broadcast of the announcements, Ofcom first considered whether Mr Levi had a legitimate expectation of privacy in relation to the material broadcast.

Again, Ofcom noted the content of the announcements, as set out in head a) above. In particular, they stated that "*Leeds United are currently searching for the whereabouts of Melvyn Levi in order to serve him some papers in relation to a High Court action in Jersey*" and asked that "*if you've seen the former Leeds United director, you're being asked to get in touch with Yorkshire Radio and let us know where and when you saw him*".

Mr Levi was clearly identified in the announcements in that his name was used and his status as "*the former Leeds United director*" was referred to. The announcements also revealed that court papers needed to be served on him.

Ofcom assessed the nature of the information discussed in the announcements. The disclosure of an individual's name does not necessarily give that individual a legitimate expectation of privacy as to that disclosure. Also, information relating to an individual's former employment or position (especially high-profile or public office), or that they are parties to legal proceedings, is not information that would normally be regarded as private or confidential and deserving of protection. Ofcom did not consider that there was anything in the announcements that could reasonably be considered to be private or sensitive in nature. Ofcom therefore concluded that Mr Levi had no expectation of privacy in relation to the information which was broadcast in the radio announcements.

Given this conclusion, it was not necessary for Ofcom to consider whether any infringement of Mr Levi's privacy was warranted.

Ofcom concluded therefore that there had been no unwarranted infringement of Mr Levi's privacy in the broadcast of the programmes.

**Accordingly, Ofcom has upheld the complaint of unjust and unfair treatment in the programmes as broadcast made on behalf of Mr Levi by Ford & Warren. However, Ofcom has not upheld the complaint of unwarranted infringement of privacy in the programmes as broadcast.**

## Not Upheld

### Complaint by Mr Shaun Tudor

*Coppers, Channel 4, 9 January 2012*

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#### Summary

Ofcom has not upheld this complaint of unwarranted infringement of privacy made by Mr Shaun Tudor.

This edition of *Coppers* looked at the work of CID officers in Mansfield, highlighting the variety of situations and people they encounter. This episode included footage relating to Mr Tudor's arrest for the attempted rape of a ten year old boy.

Mr Tudor complained to Ofcom that his privacy had been unwarrantably infringed in connection with the obtaining of material included in the programme and in the programme as broadcast.

Ofcom found that Mr Tudor had a legitimate expectation of privacy in relation to the obtaining of footage of him and its subsequent broadcast. However, this was outweighed by the strong public interest in filming and subsequently broadcasting material showing the work of the police and, in particular, the way they handled a suspected offender for committing a serious sexual offence against a child. Mr Tudor's privacy was therefore not unwarrantably infringed in connection with the obtaining of material included in the programme or in the programme as broadcast.

#### Introduction and programme summary

On 9 January 2012, Channel 4 broadcast an edition of *Coppers*, a series of programmes looking at the work of police officers across England. This edition focused on the work of detectives from Mansfield CID and followed them carrying out a wide range of duties and also showed them discussing the issues that arose.

The programme showed officers investigating an incident in which an attempt had been made to rape a ten year old boy. It became apparent that a known sex offender had gone missing and the programme's commentary stated that this suspect, who was named as "*Shaun Tudor*", had spent 22 years in secure psychiatric units after trying to rape a 14 year old boy. It also stated Mr Tudor had been let out for two hours of unsupervised leave<sup>1</sup> because it was believed he was making progress towards rehabilitation.

The programme then stated that Mr Tudor had been arrested and footage was shown of him being escorted, handcuffed, from a police van into the custody suite of the police station. Mr Tudor was shown in the custody suite area of the police station being booked in and answering questions from the custody sergeant. He was shown being led away to be stripped of his clothes. Footage of Mr Tudor standing with his back to the camera and taking off his clothes, including his trousers and underwear, was shown. The programme also included audio footage of Mr Tudor giving his name and date of birth to detectives, accompanied by footage of the outside of an interview room door.

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<sup>1</sup> In July 2011 when the offence was committed, Mr Tudor was a patient at St Andrew's Healthcare, a mental health unit in Nottingham.

Later in the programme, detectives were shown conducting a case conference in which the detective who had interviewed Mr Tudor explained that he had made a confession and said he felt ashamed of what he had done. He also said that Mr Tudor believed that his family would now disown him. The programme then included footage of Mr Tudor standing at the custody suite desk speaking to his brother on the telephone and explaining what he had done. Towards the end of the programme, the narrator said that Mr Tudor had pleaded guilty to the attempted rape of a boy under 14 and had been given an indefinite prison sentence.

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

a) Mr Tudor complained that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme in that:

- he was filmed with the camera in his face at a time when he was under stress.
- he was not allowed his privacy with his solicitor and he was filmed talking to his family on the telephone.
- the programme makers stood outside the door of the room in which he was speaking privately with his solicitor and listened to their conversation.

In response, Channel 4 said that Mr Tudor was shown within the custody suite of the police station and acknowledged this was an area restricted to the general public, although it might be used to deal with members of the public who may have committed offences. In these circumstances, Channel 4 accepted that Mr Tudor had a legitimate expectation of privacy in relation to the obtaining of material included in the programme.

Channel 4 accepted that the programme makers did not obtain Mr Tudor's consent for the filming of him, but observed that he did not object to the filming nor did he ask not to be filmed. Channel 4 stated that consent was obtained from the police authorities for filming to take place during the series, for this episode and of Mr Tudor.

Channel 4 said that there was a "strong and undeniably important" public interest in making this series and filming the material complained of, so that viewers could see behind the scenes of British taxpayer-funded police work and examine that work. Channel 4 said that this public interest underpinned each episode of *Coppers* and was particularly relevant in the episode complained of, which offered the public a unique and intimate perspective of CID officers investigating the attempted rape of a ten year old boy and the subsequent search for and capture of the offender, a convicted paedophile who had been released from prison for two hours. Channel 4 said that the public interest in this case was evident at the time of the incident through the media appeal to the public for help to find the offender, footage of which was included in the programme. Further, the well-established principles of "open justice" in criminal cases provided that justice be administered in public and subject to public scrutiny. Channel 4 argued that its right to freedom of expression and to receive and impart information and ideas without interference outweighed Mr Tudor's legitimate expectation of privacy in being filmed.

As regards the complaint that Mr Tudor was filmed with the camera in his face at a stressful time, Channel 4 said that the manner in which filming in the custody suite occurred was sensitive and considered at all times. While Mr Tudor claimed

that he was filmed with the camera in his face and at a time when he was under stress, Channel 4 said that he was able to respond articulately and calmly to all questions asked of him by the officers and did not complain at the time about being filmed.

Channel 4 next responded to the complaint that Mr Tudor was not allowed privacy while talking to his solicitor or while talking to a family member. The director of the programme, who was present during the filming of Mr Tudor in the custody suite, did not recall filming Mr Tudor talking in private to his solicitor or talking to his solicitor at all. No filming took place inside any of the interview rooms and neither Mr Tudor nor any solicitor he may have spoken with had radio microphones attached to them so there would have been no way of hearing what they were saying in any event, even accidentally.

With regard to the telephone conversation Mr Tudor had with his brother, Channel 4 said that it believed that the public interest in filming Mr Tudor within the custody suite extended to activities such as him being on the telephone in the suite. Channel 4 observed that Mr Tudor had not asked not to be filmed and said that, even if he had requested not to be filmed, the public interest and freedom of expression rights would outweigh any legitimate expectation he had of privacy in connection with the obtaining of material included in the programme.

As regards the complaint that the programme makers stood outside the door of the room in which he was speaking privately with his solicitor and listened to their conversation, Channel 4 denied that the production team listened to any conversation Mr Tudor had with his solicitor.

b) Mr Tudor complained that his privacy was unwarrantably infringed in the programme as broadcast in that:

- he was shown getting undressed and taking his underwear off, but had not given permission for footage of him “naked” to be shown.
- he was shown speaking to his family on the telephone, but had not given permission for the programme to show his private conversations.

By way of background, Mr Tudor said that he should have had his face pixellated, but that this was not done. He said that he was still under the care of St Andrews Healthcare at the time and had not been asked to sign a disclaimer by Channel 4, the programme makers or the police.

In response, Channel 4 acknowledged that Mr Tudor would have a legitimate expectation of privacy that footage of him filmed in the custody suite of the police station would not be broadcast. However, it argued that such expectation was very limited given the public interest arguments set out above and the seriousness of the crime Mr Tudor, who was already a convicted paedophile, had committed.

Channel 4 said that Mr Tudor’s conviction for the offence of attempted rape of a boy under 14 years of age was confirmed before broadcast and that there were no other restrictions in place regarding his identification, so that the fact of Mr Tudor’s offending and conviction were a matter of public record and could be reported.

Channel 4 said that, as set out under its response under head a) above, it acknowledged that Mr Tudor's consent was not sought or given for inclusion of the footage of him in the programme.

Channel 4 argued that any privacy rights claimed by Mr Tudor were outweighed by the strong public interest in being able to broadcast footage showing how the officers dealt with a convicted criminal, who had re-offended by attempting to rape a ten year old boy. Channel 4 said that both it and the production company were conscious that, although there may be a strong public interest in including footage of Mr Tudor in the programme, it did not necessarily follow that it was warranted to show all footage of Mr Tudor in its entirety. However, it argued that there would have to be a very strong reason to limit the right to freedom of expression and to outweigh the public interest.

As regards the complaint that Mr Tudor was shown getting undressed, taking his underwear off and that he was shown "naked", Channel 4 said that the scene offered a unique and intimate perspective of officers investigating a serious crime. This process included requiring Mr Tudor to remove his clothes for evidential purposes, which was a crucial part of the CID officers' work. It was important to enable the viewers to fully appreciate what was involved, including that Mr Tudor was required to remove all of his clothing. Channel 4 accepted that it would be more difficult to argue that it was in the public interest to show Mr Tudor taking all his clothes off, but denied that the programme showed him "naked" and said that when filming this scene, the production team ensured that they filmed so that Mr Tudor was only visible from behind. Further, during editing much time was taken by the commissioning editor, producers and programme lawyer to ensure that the shots used in the programme as broadcast were not gratuitous and they carefully avoided showing more of Mr Tudor than was absolutely necessary. Channel 4 argued that it was justified to include Mr Tudor being asked to remove all of his clothes and close-up shots of Mr Tudor's foot, which were included to show mud on his feet, following earlier references in the programme to Mr Tudor having gone through stinging nettles and to the incident having occurred in a wood.

As regards Mr Tudor's complaint that private conversations were shown without his permission, Channel 4 said that no conversations of a private nature were included in the programme as broadcast and that no footage of Mr Tudor talking with any solicitors was broadcast. Channel 4 said that Mr Tudor's telephone conversation with his brother conducted in the custody suite, was illustrative of the process of interviewing a suspect (namely that an alleged offender was allowed to speak with a family member) and was warranted in the public interest to broadcast. Channel 4 said that only Mr Tudor's voice could be heard and that he did not object to being filmed at the time, although Channel 4 added that even if Mr Tudor had objected, any infringement would have been outweighed by the public interest.

### **Representations on Ofcom's initial Preliminary View**

Ofcom's initial Preliminary View in this case was that Mr Tudor's complaint of unwarranted infringement of privacy should be upheld in part. In particular, it took the view that in relation to two specific instances of footage, Mr Tudor's legitimate expectation of privacy outweighed the public interest in showing the work of the police. This was footage of him removing his clothes in the police station and of him having a telephone conversation with his brother. Ofcom considered that these two pieces of footage included in the programme as broadcast unwarrantably infringed Mr Tudor's privacy.

Both parties were given the opportunity to comment on the initial Preliminary View. Mr Tudor did not submit any representations. Ofcom has summarised the main points made by Channel 4 in its representations on the initial Preliminary View that were directly relevant to the complaint responded to by the broadcaster and considered by Ofcom.

#### *Channel 4's representations on the initial Preliminary View*

In summary, Channel 4 said that it did not agree that the footage as broadcast showed Mr Tudor "completely naked" as the phrase would reasonably be understood. It reiterated that as Mr Tudor could only be seen from the side and the back, it did not constitute him being broadcast "completely naked" as his full body was not in view. It said that while it was accepted that Mr Tudor was naked at the time he was filmed in the room, care was taken not to capture his whole body in the footage and that this, and the more "private" genital area, were not broadcast. Channel 4 said that the effect of this would have been the same as Mr Tudor being partially covered by clothing. Channel 4 said that fully to fulfil the public interest recognised by Ofcom, the fair and accurate representation of the process involved in dealing with Mr Tudor needed to be shown, which included the scene where he was asked to remove his clothes. It said that this footage was a major aspect of the process and showed not only how Mr Tudor reacted to the situation, but also how the process was handled by the police in a sensitive and dispassionate way.

In relation to the inclusion of Mr Tudor talking on the telephone to his brother, Channel 4 reiterated that it did not believe that any of the information broadcast of the telephone call was sufficiently "private" in nature and that too much weight was placed on Mr Tudor's perceived vulnerability. It maintained that there could be no infringement of Mr Tudor's privacy in relation to the information conveyed by him during the telephone call and that for Ofcom to come to the contrary view was an unnecessary interference of the viewers' right to receive information and ideas and with Channel 4's right to freedom of expression. Channel 4 added that although weight was placed on Mr Tudor's perceived vulnerability, it was clear from the footage that he remained calm, coherent and co-operative throughout the process. It said that the inclusion of the telephone call had been illustrative of the process of dealing with a suspect such as Mr Tudor and conveyed the complexities and nuances of a person like Mr Tudor to viewers in a way that played an important public interest role in allowing the public to gain a greater understanding of how the police handle cases like this.

In conclusion, Channel 4 said that the inclusion of both scenes referred to above assisted to portray an aspect of policing rarely seen, especially where it deals with a convicted paedophile who had attempted to rape a ten year old boy and therefore largely outside public scrutiny. It said that not only was this educative generally to the public's understanding of both police and the offenders they have to deal with, but more specifically with regard to raising awareness of child protection. Channel 4 said that the public interest in this matter was clearly very strong and it believed that the scenes of Mr Tudor removing his clothes and talking on the telephone should not be held to be an unwarranted infringement of his privacy.

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

Having carefully considered Channel 4's representations on the initial Preliminary View, Ofcom concluded that that the further points raised by the broadcaster merited that Ofcom reconsider its initial Preliminary View. After an intense focus and consideration of all the factors, Ofcom came to the revised Preliminary View that the

complaint should not be upheld. Ofcom provided Mr Tudor and Channel 4 with the opportunity to make representations on Ofcom's revised Preliminary View (which was not to uphold the complaint). Neither party made any representations on the revised Preliminary View.

## **Decision**

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript, both parties' written submissions, and Channel 4's representations on Ofcom's initial Preliminary View. Neither party made any representations on the revised Preliminary View.

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

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

- a) Ofcom first considered the complaint that Mr Tudor's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme.

In considering this part of the complaint, Ofcom had regard to Practice 8.5 of the Code, which states that any infringement of privacy in the making of a programme should be with the person's consent or be otherwise warranted. Ofcom also had particular regard to Practice 8.8 of the Code which states that when filming in potentially sensitive places (including police stations), separate consent should normally be obtained before filming those in sensitive situations, unless not obtaining consent is warranted.

Ofcom considered the particular issues raised by Mr Tudor, as follows:

- he was filmed with the camera in his face at a time when he was under stress.
- he was not allowed his privacy with his solicitor and he was filmed talking to his family on the telephone.

- the programme makers stood outside the door of the room in which he was speaking privately with his solicitor and listened to their conversation.

In considering whether or not Mr Tudor's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme as broadcast, Ofcom first considered the extent to which he could have legitimately expected that the footage of him arriving at the police station and while he was there would not be filmed by the programme maker.

Channel 4 informed Ofcom that the production company no longer had the untransmitted footage. Due to its sensitive nature and as it contained identifying material of the victim, the footage had been stored separately from other material and was, inadvertently, not backed up. It was therefore not possible for Ofcom to determine the nature of all the footage of Mr Tudor that was filmed or whether the camera was in his face, as he complained. Ofcom noted Channel 4's position that the material was filmed in a sensitive manner. Ofcom observed from the footage of Mr Tudor that was included in the programme that there were several close up shots of him, for example, when he first arrived at the desk in the custody suite and spoke to the custody sergeant and when he spoke to his brother on the telephone. It is not Ofcom's role to resolve a conflict of evidence between the parties, but, in respect of this head of the complaint, to determine whether Mr Tudor had a legitimate expectation of privacy in relation to the filming of him. Ofcom therefore considered the nature of the footage that was available, namely the programme itself. In Ofcom's view, whether or not the camera was "in Mr Tudor's face", there was a number of shots of him in the programme that suggested that filming was close up and may have felt intrusive to Mr Tudor.

Ofcom noted that Mr Tudor complained that footage was filmed of him with his solicitor and Channel 4's denial that this was the case. In the absence of the untransmitted footage, Ofcom was not able to determine whether footage was filmed of Mr Tudor with his solicitor or whether the programme makers listened to private conversations between Mr Tudor and his solicitor.

Ofcom noted Channel 4's acknowledgement that Mr Tudor had a legitimate expectation of privacy in relation to the filming of footage of him for the programme.

Ofcom noted that Channel 4 did not dispute that Mr Tudor's prior consent for the filming of the footage of the programme had not been sought or given. As regards Channel 4's position that Mr Tudor did not ask for the filming to stop, Ofcom noted that Mr Tudor was facing a charge for a serious offence about which he was clearly upset, as the officers dealing with the case observed. Ofcom also noted Mr Tudor's vulnerability given that he was a patient under the care of St Andrew's Healthcare, a mental health unit in Nottingham. He had also informed the custody sergeant that he had learning difficulties. In these circumstances, Ofcom took the view that it was understandable that Mr Tudor might not have thought to take active steps to ask that the filming stop.

Taking all the above factors into account, Ofcom considered that Mr Tudor had a legitimate expectation of privacy in relation to the footage of him filmed arriving and being dealt with at the police station without the programme makers securing his prior consent.

Having found that Mr Tudor had a legitimate expectation of privacy in relation to the filming, Ofcom went on to weigh the broadcaster's competing right to freedom



of expression and the need for broadcasters to have the freedom to gather information and film footage in making programmes without being unduly constrained, as well as the audience's right to receive information and ideas without unnecessary interference.

Ofcom noted that Channel 4 accepted that Mr Tudor had not given consent to be filmed and therefore went on to consider whether there was a sufficient public interest or other reason to justify the intrusion into Mr Tudor's privacy without having obtained his prior consent. The Code states that if a broadcaster argues that an infringement of privacy is warranted it must demonstrate "why in the particular circumstances it is warranted". Ofcom noted Channel 4's argument that the filming of the footage was warranted on the basis that there was a public interest in viewers being able to examine the work of the police and, in particular, to see how officers investigated the attempted rape of a ten year old boy, resulting in the conviction of the offender, a convicted paedophile who had been released from a secure psychiatric unit for two hours.

In Ofcom's view, the manner in which the police deal with potential criminals in custody suites and the situations that arise while in custody suites is a matter of strong public interest. Ofcom considered that it would be undesirable ordinarily for programme makers to be unduly restricted in circumstances such as the present case, where programme makers are filming as people are brought into the custody suite. Ofcom also recognised that the programme makers had obtained the consent of the police authorities to film in the custody suite and that the public interest in filming the material was significant. Having taken into account all the factors above, Ofcom considered that the broadcaster's right to freedom of expression and the audience's right to receive information and ideas without interference outweighed Mr Tudor's legitimate expectation of privacy in being filmed without his consent.

Ofcom considered therefore that there was no unwarranted infringement of Mr Tudor's privacy in connection with the obtaining of material included in the programme.

- b) Ofcom then considered Mr Tudor's complaint that his privacy was unwarrantably infringed in the programme as broadcast.

Ofcom took into consideration Practice 8.6 of the Code, which states that if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

By way of background, Mr Tudor said that he should have had his face pixellated, but that this was not done. He said that he was still under the care of St Andrews Healthcare at the time and had not been asked to sign a disclaimer by Channel 4, the programme makers or the police.

Ofcom considered the particular issues raised by Mr Tudor, as follows:

- he was shown getting undressed and taking his underwear off;
- he had not given permission for footage of him naked to be shown;
- he was shown speaking to his family on the telephone; and
- he had not given permission for the programme to show his private conversations.

Ofcom first considered the extent to which Mr Tudor had a legitimate expectation of privacy in relation to the broadcast of footage of him in the custody suite at the police station.

Ofcom noted that the programme followed the report of the assault on a ten year old boy, the issuing of a description of the perpetrator and the discovery that a sex offender had gone missing. The commentary said:

*“The suspect, Shaun Tudor, has spent the last 22 years in secure psychiatric units after trying to rape a 14 year old boy... He’d been let out for two hours of unescorted leave<sup>2</sup> because it was believed he was making progress towards rehabilitation”.*

The programme then showed Mr Tudor being brought into the custody suite of the police station, where he told the custody sergeant that he had learning difficulties and that he “felt down” because of what he had done. He was then shown being led away to be stripped of his clothes. Footage of Mr Tudor standing with his back to the camera and taking off his clothes, including his trousers and underwear, was shown. The programme also included audio footage of Mr Tudor giving his name and date of birth to detectives, accompanied by footage of the outside of an interview room door. Detectives were later shown discussing the case and one of them reported that Mr Tudor had admitted responsibility for the assault and that he was very upset about it. Mr Tudor was then shown standing at the custody suite desk speaking to his brother on the telephone and saying:

*“I’ve got to tell you some bad news and you may put the phone down when I tell you. I can fully understand if you do that, but all I can say is that I have reoffended...towards a ten year old boy. I can tell you’re upset by the way you’re not saying anything. I’ll leave it to you to tell the rest of the family. All I can say is, I hope your lives go well in your future”.*

Further footage was shown of Mr Tudor being escorted into the custody suite towards the end of the programme and the commentary said:

*“Shaun Tudor pleaded guilty to the attempted rape of a boy under 14. Handing down an indefinite prison sentence, the judge said he didn’t believe he should ever be released”.*

Ofcom noted that Mr Tudor featured prominently in the programme in that he was named and that clearly identifiable and audible footage of him was included. This included footage of him removing his clothes at the request of an officer, with images shown of him with no clothes on, albeit from the side and the back. Ofcom further noted Channel 4’s acknowledgement that Mr Tudor had a legitimate expectation of privacy in the footage broadcast of him at the police station. Ofcom also took into account that Mr Tudor was a psychiatric patient and that he informed the custody sergeant on admission that he had learning difficulties.

Taking all these factors into account, Ofcom considered that Mr Tudor had a legitimate expectation of privacy in relation to the footage of him broadcast in the custody suite.

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<sup>2</sup> From the St Andrew’s Healthcare unit.

Ofcom noted that Channel 4 did not dispute that Mr Tudor's prior consent for the broadcast of the footage of the programme had not been sought or given.

Having found that Mr Tudor had a legitimate expectation of privacy, Ofcom went on to weigh the broadcaster's competing right to freedom of expression and the audience's right to receive information and ideas without unnecessary interference. Ofcom also considered the public interest in examining the work of the police and whether there was a sufficient public interest to justify the intrusion into Mr Tudor's privacy without his consent.

Ofcom recognises that there is a strong public interest in broadcasting programmes of this nature. It considered that the programme gave a valuable insight into the range of situations that police officers have to deal with, the manner in which they treat suspects in custody, and how police officers cope with the challenges of their work and the emotional impact some of the cases have on them. However, it should not be assumed by broadcasters that a public interest or other justification will exist in all circumstances for all material included in programmes of this type. Broadcasters and programme makers must consider whether it is appropriate to identify individuals who feature in such programmes, for example someone who is questioned, arrested or charged. In relation to considering privacy issues, regard should be given to, for instance, the actions of the individual (including the relative seriousness of any criminal behaviour on his/her part), what details about the individual are to be featured, and any public interest or other justification for breaching any expectation of privacy the individual may have.

In this case, Ofcom considered that the offence to which Mr Tudor pleaded guilty and for which he was given an indeterminate prison sentence was a very serious one. It took the view that there was a strong public interest in including this case in the programme as it demonstrated one of the many, very difficult, sensitive and emotive situations police officers are called upon to deal with. In Ofcom's view, the inclusion of Mr Tudor's story also gave a valuable insight into the professional manner with which he was treated by the police officers handling the case.

With regards to Mr Tudor's argument that his image should have been pixellated, Ofcom took the view that it was warranted in this case to include identifiable images of him in the programme, given the seriousness of the offence he admitted to committing and the fact that his conviction and sentence were, by the time of the broadcast, matters of public record. Ofcom noted that a brief shot of the outside of an interview room was shown as Mr Tudor was heard giving his name and date of birth. No other private conversations were included in relation to this particular audio footage and there was no footage shown of Mr Tudor speaking with his solicitor. As a whole, therefore, Ofcom took the view that the inclusion of Mr Tudor's story and identifiable footage of him was in the public interest.

After the receipt of Channel 4's representations on our initial Preliminary View, Ofcom reconsidered its view as to whether Mr Tudor's privacy was unwarrantably infringed in relation to two specific pieces of footage of Mr Tudor, namely the footage of Mr Tudor taking all his clothes off and the footage of him speaking on the telephone to his brother.

### Taking clothes off

To establish whether or not Mr Tudor's privacy was unwarrantably infringed in this respect, Ofcom first assessed the extent to which he had a legitimate expectation of privacy. Ofcom noted Channel 4's position that the programme did not include footage of Mr Tudor naked and that it disagreed with Ofcom's description in the initial Preliminary View that Mr Tudor was shown "completely naked". Ofcom recognised that Mr Tudor was not shown in the programme "completely naked" as stated in the initial Preliminary View and it accepted that the phrase suggested that Mr Tudor's whole body had been in view. Therefore, Ofcom has revised this phrase from "completely naked" to "taking/take all his clothes off".

Ofcom considered that the police appeared to be following their usual procedures by requiring Mr Tudor to take off all his clothes, and that this placed Mr Tudor in a sensitive and vulnerable situation. Ofcom also took into account that Mr Tudor was a psychiatric patient and that he informed the custody sergeant on admission that he had learning difficulties. Ofcom further noted Channel 4's acknowledgement that Mr Tudor had a legitimate expectation of privacy in the footage broadcast of him at the police station would not be broadcast. Taking these factors into account, namely Mr Tudor's vulnerability when taking off his clothes and that he was a psychiatric patient with learning difficulties, Ofcom concluded that Mr Tudor had a high legitimate expectation of privacy in relation to the broadcast of footage of him taking all his clothes off.

Ofcom considered whether the infringement of Mr Tudor's legitimate expectation of privacy in the footage broadcast showing him taking all his clothes off was warranted. In Ofcom's view, the manner in which the police deal with potential criminals in custody suites and the situations that arise while in custody suites is a matter of strong public interest. Ofcom considered that it would be undesirable ordinarily for programme makers to be unduly restricted in circumstances such as the present case, where programme makers are filming people following procedures in the custody suite. Ofcom also recognised that the programme makers had obtained the consent of the police authorities to film in the custody suite and that the public interest in filming the material was significant.

After very careful consideration and an intense focus of all the factors above, Ofcom considered that the broadcaster's right to freedom of expression and to receive and impart information and ideas without interference outweighed Mr Tudor's legitimate expectation of privacy in the footage of him which was broadcast.

Ofcom considered that Mr Tudor's legitimate expectation of privacy in relation to the footage of him taking all his clothes off as broadcast in the programme was outweighed by the broadcaster's right to freedom of expression in including it.

### Telephone call

To establish whether or not Mr Tudor's privacy was unwarrantably infringed in this respect, Ofcom first assessed the extent to which he had a legitimate expectation of privacy. Ofcom considered that the nature of the phone call with a member of his family was personal and sensitive even though there were police officers present at the time. Mr Tudor was visibly upset about having to explain what he had done and his feelings about the likely reaction from his family. Again, Ofcom took into account that Mr Tudor was a psychiatric patient and that he

informed the custody sergeant on admission that he had learning difficulties. Ofcom noted Channel 4's representation that it did not believe that any of the information broadcast during the telephone call was sufficiently "private" in nature and that too much weight was placed on Mr Tudor's perceived vulnerability. However, Ofcom concluded that Mr Tudor did have a legitimate expectation of privacy in relation to the footage broadcast of him speaking to his brother on the telephone.

Ofcom considered whether the infringement of Mr Tudor's legitimate expectation of privacy in the footage broadcast of him speaking to his brother on the telephone was warranted. Ofcom took into account Channel 4's argument that it was warranted to show Mr Tudor speaking to his brother on the telephone as it was illustrative of the process of dealing with a suspect, namely that an alleged offender was allowed to speak with a family member. Ofcom noted that, before this footage was shown, one of the police officers dealing with the investigation had already explained that Mr Tudor had admitted to committing the offence, was upset about what he had done and was worried about telling his family, as he feared they would disown him.

However, Ofcom considered that in the circumstances of this particular case, the footage served to facilitate viewers' understanding of the process of suspects being allowed to make a telephone call and conveyed to viewers the complexities of Mr Tudor's situation thereby contributing to a greater understanding by the public of paedophiles that is very rarely seen in programmes.

After very careful consideration and an intense focus of all the factors above, Ofcom considered that the broadcaster's right to freedom of expression and the audience's right to receive information and ideas without interference outweighed Mr Tudor's legitimate expectation of privacy in the footage which was broadcast.

Ofcom's view was that *Coppers* was an observational documentary programme about an important and serious subject, and that there was a public interest justification in its depiction of the way the police dealt with a convicted paedophile suspected of committing a further serious sexual offence against a child and increasing viewers understanding of the processes involved in such cases. It recognised too that there was often a very difficult judgement for programme makers and broadcasters to make in producing programmes like this to balance their right to freedom of expression against the privacy rights of those featured in those programmes. While Ofcom recognised that Mr Tudor had an expectation of privacy which needed to be carefully considered in the making of the programme and the broadcast of footage of him subsequently in a programme, Ofcom considered that the programme provided viewers with a unique insight, not only into the way the police officers handled a suspect like Mr Tudor, but also the implications for Mr Tudor of his actions. Also, in Ofcom's view, this edition of *Coppers*, and in particular its depiction of the arrest of Mr Tudor, contributed to a wider debate of public interest relating to how paedophiles are regarded in society and the circumstances in which Mr Tudor was able to commit the offence (i.e. being allowed out on unescorted leave from a secure mental health unit).

Ofcom has intensely focused on the factors set out above, namely that Mr Tudor was a psychiatric patient with learning difficulties and the strong public interest in allowing the public to gain a greater understanding of how the police handle cases like this. Ofcom carefully balanced Mr Tudor's right to privacy against the competing right of the broadcaster to freedom of expression, and Ofcom concluded that the broadcaster's right to freedom of expression and the

audience's to receive information without interference, in the circumstances of this particular case, outweighed Mr Tudor's expectation of privacy in relation to the broadcast of the footage of him taking all his clothes off and the broadcast of footage of him making a telephone call to his brother. Ofcom therefore considered that the inclusion of these two particular instances in the programme as broadcast was warranted in the circumstances.

Ofcom found that Mr Tudor's privacy was not unwarrantably infringed in the programme as broadcast.

**Accordingly, Ofcom has not upheld Mr Tudor's complaint of unwarranted infringement of privacy in connection with the obtaining of material included in the programme and in the programme as broadcast.**

## Other Programmes Not in Breach

Up to 2 December 2013

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>
2013 Biggest Hits of the Year So Far	4 Music	07/10/2013	Scheduling
Aik Din Geo Kay Saath	Geo News	05/10/2013	Generally accepted standards - other
BBC News at Six	BBC 1	07/11/2013	Generally accepted standards - other
Masters of Sex	Channel 4	08/10/2013	Scheduling

## Complaints Assessed, not Investigated

### Between 19 November and 2 December 2013

This is a list of complaints that, after careful assessment, Ofcom has decided not to pursue because they did not raise issues warranting investigation.

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
"Born Risky" channel ident	Channel 4	10/11/2013	Surreptitious advertising	1
5 Live Breakfast	BBC Radio 5 Live	07/11/2012	Outside of remit / other	1
A Great British Christmas with Sarah Beeny	Channel 4	02/12/2013	Outside of remit / other	1
Adventure time	Cartoon Network	01/04/2013	Scheduling	1
Advertisements	Various	n/a	Advertising scheduling	1
Akaal Advice Bureu	Akaal Channel	06/11/2013	Outside of remit / other	1
Alan Carr: Chatty Man	Channel 4	15/11/2013	Generally accepted standards	1
Arrow	Sky1	11/11/2013	Television Access Services	1
Ary News (trailer)	ARY News	28/10/2013	Generally accepted standards	1
Asus' sponsorship credits	Alibi	n/a	Outside of remit / other	1
Bargain Hunt	BBC 1	25/11/2013	Gender discrimination/offence	1
BBC News	BBC 1	20/11/2013	Outside of remit / other	1
BBC News	BBC 1	29/11/2013	Outside of remit / other	1
BBC News	BBC News	29/11/2013	Outside of remit / other	1
BBC News at Six	BBC 1	26/11/2013	Outside of remit / other	1
Big Boss 7	Colors	21/10/2013	Generally accepted standards	1
Big Fat Gypsy Weddings	More4	26/11/2013	Generally accepted standards	1
Bouncers	Channel 4	21/11/2013	Gender discrimination/offence	1
Breakfast	BBC 1	21/11/2013	Outside of remit / other	1
Breakfast	BBC 1	26/11/2013	Scheduling	1
Canimals	ITV	23/11/2013	Scheduling	1
Celebrity Juice	ITV2	07/11/2013	Race discrimination/offence	1
Channel 4 News	Channel 4	07/11/2013	Crime	1
Channel 4 News	Channel 4	15/11/2013	Due accuracy	1
Channel 4 News	Channel 4	19/11/2013	Generally accepted standards	1
Channel 4 News	Channel 4	22/11/2013	Due accuracy	1
Charlie Brooker's How Videogames Changed the World	Channel 4	30/11/2013	Generally accepted standards	1
Children in Need 2013	BBC 1	15/11/2013	Scheduling	1
Clare in the Community	BBC Radio 4	14/11/2013	Offensive language	1
Colin Ireland: Born to Kill?	5*	07/11/2013	Scheduling	1



Competition	True Entertainment	n/a	Generally accepted standards	1
Conference Football: Barnet v Cambridge United	BT Sport 1	16/11/2013	Generally accepted standards	1
Coronation Street	ITV	n/a	Generally accepted standards	1
Countdown to Murder	Channel 5	14/11/2013	Fairness	1
Countdown to Murder: The Wife Slayer	Channel 5	07/11/2013	Generally accepted standards	1
Countryfile	BBC 1	24/11/2013	Outside of remit / other	1
Daybreak	ITV	08/10/2013	Religious/Beliefs discrimination/offence	2
Daybreak	ITV	20/11/2013	Crime	2
Daybreak	ITV	20/11/2013	Outside of remit / other	2
Daybreak	ITV	22/11/2013	Due accuracy	1
Daybreak	ITV	25/11/2013	Crime	2
Deadtime Stories	CITV	13/11/2013	Scheduling	1
Deadtime Stories	CITV	17/11/2013	Scheduling	1
Deal or No Deal	Channel 4	13/11/2013	Generally accepted standards	1
Deal or No Deal	Channel 4	14/11/2013	Television Access Services	1
Dickinson's Real Deal	ITV	20/11/2013	Generally accepted standards	1
Dinner Date	ITV	03/08/2013	Scheduling	1
Dirty Harry	Channel 5	13/11/2013	Race discrimination/offence	1
Dog Squad	Sky2	20/11/2013	Generally accepted standards	1
Don't Tell the Bride	BBC 3	19/11/2013	Offensive language	1
Don't Tell the Bride	Really	24/11/2013	Offensive language	1
EastEnders	BBC 1	26/11/2013	Outside of remit / other	1
Enterprise	Pick TV	29/11/2013	Outside of remit / other	1
Eurotunnel's sponsorship of Meridian Weather	ITV	n/a	Sponsorship credits	1
Fear of Flying: Caught on Camera	Channel 4	18/11/2013	Generally accepted standards	3
Figure Skating	British Eurosport 2	02/11/2013	Outside of remit / other	1
Fort Boyard	CITV	21/11/2013	Animal welfare	1
Foxy Bingo's sponsorship of The Jeremy Kyle Show	ITV	n/a	Sponsorship credits	1
Gemma Cairney	BBC Radio 1	24/11/2013	Sexual orientation discrimination/offence	1
Geoff Lloyd's Hometown Show	Absolute Radio	25/11/2013	Religious/Beliefs discrimination/offence	1
Gogglebox	Channel 4	13/11/2013	Generally accepted standards	1
Greg James	BBC Radio 1	20/11/2013	Offensive language	1
Halfords' sponsorship of Happy Motoring on Dave	Dave	14/11/2013	Generally accepted standards	1
Hawksbee and Jacobs	Talksport	22/11/2013	Generally accepted standards	1

Homeland	Channel 4	10/11/2013	Violence and dangerous behaviour	1
I'm a Celebrity, Get Me Out of Here Now!	ITV2	20/11/2013	Outside of remit / other	1
I'm a Celebrity, Get Me Out of Here!	ITV	17/11/2013	Advertising scheduling	1
I'm a Celebrity, Get Me Out of Here!	ITV	18/11/2013	Animal welfare	1
I'm a Celebrity, Get Me Out of Here!	ITV	21/11/2013	Generally accepted standards	1
I'm a Celebrity, Get Me Out of Here!	ITV	22/11/2013	Outside of remit / other	2
I'm a Celebrity, Get Me Out of Here!	ITV	23/11/2013	Animal welfare	2
I'm a Celebrity, Get Me Out of Here!	ITV	24/11/2013	Animal welfare	1
I'm a Celebrity, Get Me Out of Here!	ITV	25/11/2013	Animal welfare	1
I'm a Celebrity, Get Me Out of Here!	ITV	27/11/2013	Animal welfare	1
I'm a Celebrity, Get Me Out of Here!	ITV	27/11/2013	Outside of remit / other	1
I'm a Celebrity, Get Me Out of Here!	ITV	28/11/2013	Animal welfare	1
I'm a Celebrity, Get Me Out of Here!	ITV	28/11/2013	Generally accepted standards	1
I'm a Celebrity, Get Me Out of Here!	ITV	01/12/2013	Animal welfare	1
I'm a Celebrity, Get Me Out of Here!	ITV2	24/11/2013	Animal welfare	1
I'm a Celebrity, Get Me Out of Here!	STV	01/12/2013	Animal welfare	1
I'm a Celebrity, Get Me Out of Here! (trailer)	ITV	17/11/2013	Generally accepted standards	1
I'm a Celebrity, Get Me Out of Here! (trailer)	ITV	18/11/2013	Generally accepted standards	1
ITV News Anglia	ITV Anglia	13/11/2013	Due accuracy	1
ITV News Calendar	ITV Yorkshire	14/11/2013	Due impartiality/bias	1
Jamie's Thirty Minute Meals	Good Food +1	18/11/2013	Gender discrimination/offence	1
JFK's Secret Killer: The Evidence	Channel 5	13/11/2013	Materially misleading	1
Jo Good	XFM London	20/11/2013	Generally accepted standards	1
Last Tango in Halifax	BBC 1	26/11/2013	Religious/Beliefs discrimination/offence	1
Little Nicky	Channel 5	17/11/2013	Scheduling	3
Live Hajj 2013	Islam Channel	17/10/2013	Sponsorship credits	1
Loose Women	ITV	11/11/2013	Promotion of products/services	1
Made in Chelsea (trailer)	Channel 4	08/11/2013	Surreptitious advertising	1
Mandmdirect.com's sponsorship of The Simpsons	Channel 4	31/10/2013	Sponsorship credits	1
Mandmdirect.com's sponsorship of The Simpsons	Channel 4	n/a	Sponsorship credits	5

Matthew Price	BBC Radio Jersey	05/11/2013	Outside of remit / other	1
MTV European Music Awards (trailer)	Viva	10/11/2013	Scheduling	1
Murderland	ITV3	14/11/2013	Generally accepted standards	1
Never Mind the Buzzcocks	BBC 2	04/11/2013	Sexual orientation discrimination/offence	1
Never Mind the Buzzcocks	BBC 2	04/11/2013	Sexual orientation discrimination/offence	1
Off Their Rockers	ITV	17/11/2013	Generally accepted standards	1
Panorama	BBC 1	25/11/2013	Outside of remit / other	1
Panorama	BBC 1	25/11/2013	Outside of remit / other	1
Pause for Thought	BBC Radio 2	n/a	Outside of remit / other	1
Programming	ITV Border	n/a	National/regional/local issues	1
Programming	Various	n/a	Generally accepted standards	1
Question Time	BBC 1	14/11/2013	Television Access Services	1
Red Light	Red Light 2	22/10/2013	Participation TV - Harm	1
Regional News and Weather	BBC 1	05/11/2013	Outside of remit / other	1
Regional News and Weather	BBC 1	13/11/2013	Generally accepted standards	1
Remembering '84	Sangat TV	18/10/2013	Religious/Beliefs discrimination/offence	1
Rental films	Virgin media	n/a	Television Access Services	1
Rhino Wars (trailer)	Animal Planet	17/11/2013	Generally accepted standards	1
Ripper Street	BBC 1	04/11/2013	Violence and dangerous behaviour	1
Ripper Street	BBC 1	18/11/2013	Information/warnings	1
Ripper Street	BBC 1	18/11/2013	Generally accepted standards	1
Robert Kenny	Reading 107 FM	19/11/2013	Generally accepted standards	1
Rude Tube	E4	25/11/2013	Animal welfare	1
Sex Box	Channel 4	07/10/2013	Scheduling	1
Sex Box	Channel 4	07/10/2013	Generally accepted standards	7
Sex Box	Channel 4	08/10/2013	Scheduling	2
Sex Box	Channel 4	09/10/2013	Scheduling	5
Sex Box	Channel 4	10/10/2013	Scheduling	9
Sex Box	Channel 4	11/10/2013	Scheduling	34
Sex Box	Channel 4	14/10/2013	Scheduling	9
Sex Box	Channel 4	n/a	Outside of remit / other	1
Sex Box	Channel 4	Various	Scheduling	1
Sex Box	Channel 4	Various	Scheduling	1
Sex Box and Masters of Sex	Channel 4	09/10/2013	Scheduling	1
Sky News with Dermot	Sky News	25/11/2013	Due impartiality/bias	1

Murnaghan				
Sky News with Kay Burley	Sky News	31/10/2013	Violence and dangerous behaviour	1
Sky News with Kay Burley	Sky News	21/11/2013	Generally accepted standards	1
South Today	BBC 1 (South)	21/11/2013	Outside of remit / other	1
Sponsorship	ITV4	n/a	Sponsorship	1
Sports programming	Sky channels	n/a	Gambling	1
Stand Up for the Week	Channel 4	22/11/2013	Race discrimination/offence	1
Stephen Nolan	BBC Radio 5 Live	16/11/2013	Religious/Beliefs discrimination/offence	1
Strictly Come Dancing	BBC 1	16/11/2013	Generally accepted standards	3
Strictly Come Dancing	BBC 1	30/11/2013	Materially misleading	1
Strictly Come Dancing: It Takes Two	BBC 2	18/11/2013	Generally accepted standards	1
Subtitling	Freeview	n/a	Television Access Services	1
Surprise Surprise	ITV	29/09/2013	Undue prominence	1
Teletext	BBC 1	n/a	Outside of remit / other	1
Teletext and Television Access Services	BBC channels	n/a	Television Access Services	1
Television Access Services	Sky channels	n/a	Television Access Services	1
Television Access Services	Sky Go service	n/a	Television Access Services	1
Television Access Services	Various	n/a	Television Access Services	2
The Blacklist	Sky Atlantic	08/11/2013	Television Access Services	1
The Jeremy Kyle Show	ITV	28/10/2013	Offensive language	1
The Jeremy Kyle Show	ITV	27/11/2013	Scheduling	1
The JFK Assassination: Minute by Minute	BBC Radio 2	22/11/2013	Outside of remit / other	1
The Mentalist	Channel 5	07/11/2013	Scheduling	1
The Nolan Show	BBC Radio Ulster	09/10/2013	Outside of remit / other	1
The Paul O'Grady Show	ITV	12/11/2013	Promotion of products/services	1
The Paul O'Grady Show	ITV	29/11/2013	Generally accepted standards	1
The Paul O'Grady Show	ITV	29/11/2013	Television Access Services	1
The Radio 1 Breakfast Show with Nick Grimshaw	BBC Radio 1	25/11/2013	Scheduling	1
The Revolution Will be Televised	BBC 3	14/11/2013	Generally accepted standards	1
The Sound of Musicals	Channel 4	19/11/2013	Sexual orientation discrimination/offence	1
The Wright Stuff	Channel 5	27/11/2013	Race discrimination/offence	54
The X Factor	ITV	19/10/2013	Generally accepted standards	58
The X Factor	ITV	02/11/2013	Drugs, smoking, solvents or alcohol	1

The X Factor	ITV	09/11/2013	Disability discrimination/offence	1
The X Factor	ITV	16/11/2013	Premium rate services	1
The X Factor	ITV	23/11/2013	Race discrimination/offence	1
The X Factor	ITV	23/11/2013	Outside of remit / other	1
The X Factor	ITV	30/11/2013	Race discrimination/offence	3
The X Factor	ITV	01/12/2013	Race discrimination/offence	1
The X Factor Results Show	ITV	20/10/2013	Scheduling	122
The X Factor Results Show	ITV	27/10/2013	Scheduling	317
The X Factor Results Show	ITV	17/11/2013	Outside of remit / other	1
The X Factor Results Show	ITV	24/11/2013	Outside of remit / other	3
The X Factor Results Show	ITV	24/11/2013	Voting	1
The X Factor Results Show	ITV	01/12/2013	Outside of remit / other	8
The Xtra Factor	ITV2	23/11/2013	Generally accepted standards	2
The Xtra Factor	ITV2	30/11/2013	Generally accepted standards	4
The Xtra Factor	ITV2	01/12/2013	Race discrimination/offence	1
The Xtra Factor	ITV2	01/12/2013	Scheduling	2
This Morning	ITV	18/11/2013	Competitions	1
This Morning	ITV	18/11/2013	Promotion of products/services	1
This Morning	ITV	28/11/2013	Scheduling	1
Tipping Point	ITV	18/11/2013	Materially misleading	1
Toast of London	Channel 4	24/11/2013	Gender discrimination/offence	1
UEFA Champions League	ITV	26/11/2013	Offensive language	1
UEFA Champions League	ITV	26/11/2013	Outside of remit / other	1
Universal Channel November Highlights promotion	Christmas 24	17/11/2013	Scheduling	1
Victoria Derbyshire	BBC Radio 5 Live	11/11/2013	Generally accepted standards	1
West Indies v India	Sky Sports 3	24/11/2013	Outside of remit / other	1
What's Next for Craig?	BBC 1	12/11/2007	Under 18s in programmes	1
Will and Grace	Channel 4	26/11/2013	Scheduling	1
Wonga.com's sponsorship of 5 Movies	5*	04/11/2013	Sponsorship credits	1
WWE Raw	Sky Sports 3	12/11/2013	Generally accepted standards	1
Zindgi me Hakikat Se Amna Samna	Colours - India	01/11/2013	Materially misleading	1

## Investigations List

If Ofcom considers that a broadcast may have breached its codes, it will start an investigation.

Here is an alphabetical list of new investigations launched between 20 November and 4 December 2013.

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission date</b>
Advertisements	Bliss	14 November 2013
Bangla TV News	Bangla TV	Various
Battlecam Comedy	FilmOn.tv	15 November 2013
BBC 5 Live Investigates	BBC Radio 5 Live	29 September 2013
Countdown to Murder	Channel 5	31 October 2013
Dog and Beth: On the Hunt	CBS Reality	14 November 2013
Jack FM Ale promotion	Jack FM (Southampton)	13 November 2013

**It is important to note that an investigation by Ofcom does not necessarily mean the broadcaster has done anything wrong. Not all investigations result in breaches of the Codes being recorded.**

For more information about how Ofcom assesses complaints and conducts investigations go to:

<http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/>.

For fairness and privacy complaints go to:

<http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/fairness/>.