

# **Ofcom Broadcast Bulletin**

**Issue number 170  
22 November 2010**

# Contents

<u>Introduction</u>	3
<u>Licence Revocation</u>	
<b>TLCS 865 – “DBN” held by <i>Kashmir Broadcasting Corporation Limited</i></b>	4
<b>Standards cases</b>	
<u>In Breach</u>	
<b>Bluebird</b> <i>Northern Birds, 8 September 2010, 15:05 to 15:35 and 26/27 September 2010, 23:40 to 00.35 Essex Babes, 21 September 2010, 00:45 to 01:15</i>	5
<b>Bluebird</b> <i>Live 960, 22 September 2010, 02:45 to 03:15</i>	8
<b>Comment</b> <i>Press TV, 18 February 2010, 27 May 2010, 3 June 2010, 10 June 2010, 17 June 2010, and 24 June 2010, 19:00</i>	10
<b>Andy Henly at Drive</b> <i>Total Star 107.5, 31 August 2010, 16:30</i>	19
<b>Law Show</b> <i>Prime TV, 2, 9, 16 and 23 August 2010, 17:00</i>	21
<b>“I’m on a Boat” music video</b> <i>Clubland TV, 12 September 2010, 17:55</i>	23
<b>Fairness &amp; Privacy cases</b>	
<u>Not Upheld</u>	
<b>Complaint by Mr Charles Dowdye</b> <i>BBC London News, BBC1, 17 May and 12 June 2010</i>	24
<b>Other programmes not in breach</b>	29

## Introduction

The Broadcast Bulletin reports on the outcome of investigations into alleged breaches of those Ofcom codes and licence conditions with which broadcasters regulated by Ofcom are required to comply. These include:

- a) Ofcom's Broadcasting Code ("the Code"), the most recent version of which took effect on 1 September 2010 and covers all programmes broadcast on or after 1 September 2010. The Broadcasting Code can be found at:  
<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>.

Note: Programmes broadcast prior to 1 September 2010 are covered by either the 2009, 2008 or the 2005 versions of the Code (depending on the date of their broadcast).

- b) the Code on the Scheduling of Television Advertising ("COSTA") which came into effect on 1 September 2008 and contains rules on how much advertising and teleshopping may be scheduled in programmes, how many breaks are allowed and when they may be taken. COSTA can be found at:  
<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/advert-code/>.

- 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 (see Rules 9.2 and 9.3 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>1</sup>; and
  - the imposition of statutory sanctions in advertising cases.

The BCAP Code can be found at:

[www.bcap.org.uk/The-Codes/BCAP-Code.aspx](http://www.bcap.org.uk/The-Codes/BCAP-Code.aspx)

- 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 on television and radio licences can be found at: <http://licensing.ofcom.org.uk/tv-broadcast-licences/> and <http://licensing.ofcom.org.uk/radio-broadcast-licensing/>.

Other codes and requirements may also apply to broadcasters, depending on their circumstances. These include the Code on Television Access Services (which sets out how much subtitling, signing and audio description relevant licensees must provide), the Code on Electronic Programme Guides, the Code on Listed Events, and the Cross Promotion Code. Links to all these codes can be found at:  
<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/>

It is Ofcom's policy to describe fully the content in television and radio programmes that is subject to broadcast investigations. Some of the language and descriptions used in Ofcom's Broadcast Bulletin may therefore cause offence.

---

<sup>1</sup> BCAP and ASA continue to regulate conventional teleshopping content and spot advertising for these types of services where it is permitted.

## Licence Revocation

**Licence number:** TLCS 865 or “the licence”  
**Service name:** “DBN”  
**Licensee:** Kashmir Broadcasting Corporation Limited (“KBC”)

---

On 1 March 2010 the licensee KBC was directed by Ofcom to provide certain information. Ofcom required this information to determine whether KBC was providing the service DBN in accordance with section 362(2) of the Communications Act 2003 and was complying with its obligations as a licensee<sup>1</sup>.

Having reviewed the information provided by KBC in response to the direction and further requests for clarification, Ofcom notified KBC that it considered that KBC was not providing the DBN service. This was because Ofcom considered that KBC did not have general control over which programmes and other services were comprised in the DBN service<sup>2</sup>.

Ofcom was therefore minded to revoke the Licence and to consider it appropriate to do so because KBC had entered into an agreement under which it purported to ‘lease’ the licence to a third party. KBC informed Ofcom that it did not intend to provide a service as authorised by the licence until after the lease agreement ended.

Ofcom gave KBC an opportunity to make representations about the matters constituting its grounds for revoking the licence. Having considered KBC’s response, Ofcom was satisfied that KBC had ceased to provide the DBN service and it was appropriate to revoke the licence.

Accordingly, Ofcom revoked the licence on 18 November 2010.

---

<sup>1</sup> Broadcast Bulletin Issue No. 153 published on 8 March 2010, which is available at: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb153/>

<sup>2</sup> See Ofcom’s Guidance regarding the ‘provider of a broadcasting service’ and ‘subletting of capacity’ at: <http://licensing.ofcom.org.uk/binaries/tv/service-provider.pdf>

## Standards cases

### In Breach

#### Bluebird

*Northern Birds, 8 September 2010, 15:05 to 15:35 and 26/27 September 2010, 23:40 to 00.35*

*Essex Babes, 21 September 2010, 00:45 to 01:15*

---

The channels Northern Birds and Essex Babes are owned and operated by the licensee Satellite Entertainment Limited (“SEL” or “the Licensee”).

Northern Birds and Essex Babes are situated in the 'adult' section of the Sky electronic programme guide and are available freely without mandatory restricted access. They are broadcast on Sky channel numbers 954 and 955 respectively. At the times indicated above the channels promoted a service on screen known and branded as Bluebird TV. The channels broadcast programmes during the day based on daytime chat, and after the 21:00 watershed programmes based on interactive 'adult' sex chat services. Viewers are invited to contact onscreen female presenters via premium rate telephony services ("PRS"). The female presenters dress and behave in a flirtatious way during the day and a more sexually provocative way after the watershed while encouraging viewers to contact the PRS numbers.

Condition 11 of SEL’s licences states that the Licensee must make and then retain a recording of all its programmes for a period of 60 days from broadcast, and at Ofcom’s request must produce recordings “forthwith”. Ofcom has made clear that recordings “must be of a standard and in a format which allows Ofcom to view the material as broadcast.”

Ofcom received complaints about alleged inappropriate content broadcast at around:

- 15:20 on 8 September 2010 on Northern Birds;
- 01:00 on 21 September 2010 on Essex Babes; and
- 23:40 on 26 September 2010 on Northern Birds.

In order to make an initial assessment of the complaints (to consider whether or not to investigate the issues), Ofcom requested recordings of material from 15:05 to 15:35 on 8 September 2010 and 23:40 to 00:35 on 26/27 September for Northern Birds, and 00:45 to 01:15 on 21 September 2010 for Essex Babes from the Licensee.

#### Response

Between 9 September and 13 October 2010 Ofcom formally asked SEL on several occasions, and set explicit deadlines, to provide recordings of its output at the times and dates specified. In response, the Licensee failed to provide recordings of the programmes requested.

The Licensee said that Ofcom had “exercised an administrative power to ask for recordings” and that Ofcom had sought to “justify such exercise by reference to alleged communications [ie the complaint to Ofcom] allegedly received by you”. The Licensee also raised a number of questions about the validity of the complaint and expressed its wish to deal with the complaint in the first instance. Ofcom responded by acknowledging the Licensee’s questions and assuring it that we would deal with the points raised at a later date if Ofcom decided to investigate further the requested

broadcast material. Ofcom said that under the terms of the Licensee's broadcast licence, SEL was required to provide broadcast material requested by Ofcom "forthwith".

Ofcom did not receive the recordings. Since the Licensee was obliged under the terms of its licence to supply the recordings "forthwith" on request, Ofcom asked the Licensee for formal representations on its compliance with Condition 11 of its licences.

SEL did not provide any comments in response. Ofcom therefore proceeded to reach a decision.

## Decision

It is a condition of all broadcast licences that a licensee adopts procedures for the retention and production of recordings and provides these recordings to Ofcom "forthwith" if requested. Further, the recordings should be "as broadcast" (i.e. the same quality in terms of both sound and picture as when originally transmitted).

In particular, Condition 11 of the Television Licensable Content Service licence states:

"...the Licensee shall:

- (a) make and retain or arrange for the retention of a recording in sound and vision of every programme included in the Licensed Service for a period of 60 days from the date of its inclusion therein; and
- (b) at the request of Ofcom forthwith produce to Ofcom any such recording for examination or reproduction;..."

Ofcom formally asked SEL on several occasions to provide recordings of the output at the time and dates specified so that Ofcom could view them and decide whether they raised any potential issues under the Code. The Licensee failed to provide the recordings and provided no valid reasons to justify this failure. There were therefore three clear and separate breaches of Condition 11 (Retention and production of recordings) of SEL's licences to broadcast.

All contraventions of Condition 11 are serious matters because they mean that Ofcom is unable to assess whether a particular broadcast raises potential issues under the Code. This therefore impedes Ofcom from carrying out its statutory duty to regulate television and radio broadcasts.

It is broadcast licence condition requiring a licensee to provide Ofcom on request with a recording of its output. It is unacceptable for a licensee to refuse to provide such recordings.

Ofcom has recently found the Licensee in breach of Condition 11 for failure to provide material transmitted on 10 September 2010<sup>1</sup>. These three current contraventions are therefore examples of further individually serious breaches of SEL's licences which have been repeated. As a result, the Licensee is put on notice

---

<sup>1</sup> See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb169/issue169.pdf> dated 8 November 2010

that these present contraventions of its licences are being considered for the imposition of a statutory sanction.

**Breach of Licence Condition 11 (retention and production of recordings) – 8 September 2010**

**Breach of Licence Condition 11 (retention and production of recordings) – 26/27 September 2010**

**Breach of Licence Condition 11 (retention and production of recordings) – 21 September 2010**

## In Breach

### Bluebird

*Live 960, 22 September 2010, 02:45 to 03:15*

---

The channel Live 960 is owned and operated by the licensee Hoppr Entertainment ("Hoppr" or "the Licensee").

Live 960 is situated in the 'adult' section of the Sky electronic programme guide and is available freely without mandatory restricted access on Sky channel number 960. At the time indicated however it promoted a service on screen known and branded as Bluebird TV. The channel Live 960 broadcasts programmes after the 21:00 watershed based on interactive 'adult' sex chat services. Viewers are invited to contact onscreen female presenters via premium rate telephony services ("PRS"). The female presenters dress and behave in a sexually provocative way while encouraging viewers to contact the PRS numbers.

Condition 11 of Hoppr's licence states that the Licensee must make and then retain a recording of all its programmes for a period of 60 days from broadcast, and at Ofcom's request must produce recordings "forthwith". Ofcom has made clear that recordings "must be of a standard and in a format which allows Ofcom to view the material as broadcast."

Ofcom received a complaint about alleged inappropriate adult content broadcast at around 03:00 on 22 September 2010. In order to make an initial assessment of the complaint (to consider whether or not to investigate the issue), Ofcom requested a recording of material from 02:45 to 03:15 on 22 September 2010 from the Licensee.

### Response

Between 28 September and 11 October 2010 Ofcom formally asked Hoppr on several occasions, and set explicit deadlines, to provide a recording of its output for the time and date specified. In response, the Licensee failed to provide a recording of the programme requested.

The Licensee said that Ofcom had "exercised an administrative power to ask for recordings" and that Ofcom had sought to "justify such exercise by reference to alleged communications [ie the complaint to Ofcom] allegedly received by you". The Licensee also raised a number of questions about the validity of the complaint and expressed its wish to deal with the complaint in the first instance. Ofcom responded by acknowledging the Licensee's questions and assuring it that we would deal with the points raised at a later date if Ofcom decided to investigate further the requested broadcast material. Ofcom said that under the terms of Hoppr's broadcast licence, the Licensee was required to provide broadcast material requested by Ofcom "forthwith".

Ofcom did not receive the recordings. Since Hoppr was obliged under the terms of its licence to supply the recordings "forthwith" on request, Ofcom asked the Licensee for formal representations on its compliance with Condition 11 of its licence.

Hoppr did not provide any comments in response. Ofcom therefore proceeded to reach a decision.



## Decision

It is a condition of all broadcast licences that the licensee adopts procedures for the retention and production of recordings and provides these recordings to Ofcom “forthwith” if requested. Further, the recordings should be “as broadcast” (i.e. the same quality in terms of both sound and picture as when originally transmitted).

In particular, Condition 11 of the Television Licensable Content Service licence states:

“...the Licensee shall:

- (a) make and retain or arrange for the retention of a recording in sound and vision of every programme included in the Licensed Service for a period of 60 days from the date of its inclusion therein; and
- (b) at the request of Ofcom forthwith produce to Ofcom any such recording for examination or reproduction;...”

Ofcom formally asked Hoppr on several occasions to provide a recording of the output for the time and date specified so that Ofcom could view it and decide whether it raised any potential issues under the Code. The Licensee failed to provide the recording and provided no valid reasons to justify this failure. This was therefore a clear breach of Condition 11 of Hoppr’s licence to broadcast (retention and production of recordings).

All contraventions of Condition 11 are serious matters because they mean that Ofcom is unable to assess whether a particular broadcast raises potential issues under the Code. This therefore impedes Ofcom from carrying out its statutory duty to regulate television and radio broadcasts.

It is a broadcast licence condition requiring a licensee to provide Ofcom on request with a recording of its output. It is unacceptable for a licensee to refuse to provide such recordings.

Ofcom recently found the Licensee in breach of Condition 11 on two other separate occasions, on 26 October 2009 and on 8 November 2010.<sup>1</sup> This is therefore a third example of an individually serious breach of Hoppr’s licence which has been repeated. As a result the Licensee is put on notice that this present contravention of its licence is being considered for the imposition of a statutory sanction.

### **Breach of Licence Condition 11 (retention and production of recordings)**

---

<sup>1</sup> See: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb144/>; and <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb169/issue169.pdf>

## In Breach

### Comment

*Press TV, 18 February 2010, 27 May 2010, 3 June 2010, 10 June 2010, 17 June 2010, and 24 June 2010, 19:00*

---

#### Introduction

Press TV is an Iranian international news network, which broadcasts in English. Press TV states that it receives its funding from: Iranian tax payers, advertising revenue, sales from services provided in respect of the technical and engineering industry, and sales from its archives.

*Comment* is a weekly one hour “personal view” programme presented by former Respect Party MP, George Galloway, in which viewers can contribute to the news topic under discussion by phoning in or texting the presenter.

Ofcom received a complaint about an episode of *Comment*, broadcast on 18 February 2010, from a viewer who was concerned that the programme was biased against Israel when discussing the murder of Mahmoud al-Mabhouh, a Hamas leader, in Dubai. As the murder involved a number of suspects holding fake British passports and the British Government announced a full investigation by the Serious Organised Crime Agency, on the same day the programme was broadcast, Ofcom concluded this programme dealt with a matter of political controversy, namely the alleged involvement of the Israeli State in the murder of Mahmoud al-Mabhouh. The programme was therefore subject to special impartiality requirements as set out in Section 5 of the Code. Ofcom therefore conducted an investigation into this personal view programme with particular reference to Rule 5.5 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.”

Given this programme was an authored or “personal view” programme Ofcom also made reference to the particular requirements for due impartiality on such personal view programmes as set out in Rule 5.9:

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. Additionally, presenters must not use the advantage of regular appearances to promote their views in a way that compromises the requirement for due impartiality.”

As Rules 5.5 and 5.9 require Ofcom to consider whether due impartiality by way of alternative viewpoints are adequately represented either in the programme, or in a series of programmes taken as a whole, Ofcom undertook further monitoring of *Comment* on the following dates: 27 May, 3 June, 10 June, 17 June and 24 June 2010 to identify if, over the course of other programmes in the series, the broadcaster

sought to represent alternative viewpoints other than those supported by the presenters.

The programmes included a range of statements, including the following, made by the presenters George Galloway and guest presenter Jeremy Corbyn (3 June 2010 episode only) which could be interpreted as being pro-Palestinian and highly critical of the actions of the Israeli government and its military forces. For example:

Comment, Pres TV, 18 February 2010

George Galloway on the alleged role of Israel in the murder of the Hamas leader in Dubai: describes Israel as “a terrorist gangster state” that:

*“thinks nothing of using the passports of countries who profess themselves to be their closest allies to go around the world murdering people in hotel rooms”.*

Comment, Press TV, 27 May 2010

George Galloway: *“We want Israel to stop occupying the Palestinian people, stop torturing them, stop exiling them, stop imprisoning them, stop starving them, stop blockading them, comply with international law...and want the international community to treat them like the criminal rogue state that they would then undeniably be...it is up to the rest us to force our Government to treat Israel as they would any other miscreant, law breaking rogue, war launching, occupying state.”*

Comment, Press TV, 3 June 2010

Jeremy Corbyn: *“Israel has been referred to the Security Council on so many occasions so it is time surely for serious economic sanctions against Israel.”*

George Galloway spoke to presenter Jeremy Corbyn from Turkey and commented that the Israeli attack on the ship transporting aid to Gaza, the Marmara, was “mass murder on the high seas” and “an act of brigandry”.

Comment, Press TV, 10 June 2010

George Galloway: *“I have taken to describing Israel as - and I don't claim originality because it came from Norman Finkelstein - describing Israel as not a terrorist state, not a murderous state, not a rogue state, it is a lunatic state. Only a lunatic state would do what they did last week [reference to the attack on the Marmara] and imagine they could continue forever to do this sort of thing.”*

George Galloway on the UN policy towards Israel:

*“...it is completely dysfunctional. Completely two faced with double standards otherwise there would be sanctions now on Israel for having hundreds of nuclear weapons illegally acquired with the conspiratorial collaboration of Britain and France and Germany and the United States.”*

George Galloway on Iran:

*“If I was running Iran I would build a bomb because Israel is aiming hundreds of nuclear weapons at me.”*

Comment, Press TV, 17 June 2010

*“Israel went into International waters to give a message to Iran and Turkey they can do whatever they want because of US support”*

Comment, Press TV, 24 June 2010

George Galloway on the living conditions of the Palestinians:

*“...rancid refugee camps... or under illegal occupation...or under murderous siege if you have the misfortune of being trapped in Gaza. There are no peace talks. There are proximity talks which are a bad joke. Israel is not remotely interested in giving...the President of the Palestinian Authority anything remotely resembling a viable state.”*

Ofcom concluded that, whilst other topics for discussion were raised at the start of some of the programmes such as the Bloody Sunday Inquiry or the war in Afghanistan, the recurring theme throughout this series of programmes was the discussion, and criticism of, the policies and related actions of the Israeli government. For example, when discussing the Bloody Sunday Inquiry, George Galloway commented:

*“We’re talking about Bloody Sunday in itself but also comparing the British attitude to the investigation of that crime and the Israeli attitude to the massacre on the Mediterranean – the Marmara Massacre.”*

Consequently, it was Ofcom’s view that the discussions featured on the six episodes of *Comment* repeatedly dealt with matters of political controversy (namely, the policies and actions of the Israeli State towards the Palestinian Authority and population) because they were issues which politicians and the media were actively engaged in debating. Therefore these episodes were also subject to the due impartiality requirements of Rule 5.5 of the Code.

Ofcom therefore asked Press TV to provide comments with reference to these programmes to explain how the programmes complied with Section 5 of the Code, in particular Rules 5.5 and 5.9 as set out above.

## **Response**

In response the broadcaster confirmed that *Comment* was a “personal view” programme and that it was therefore “reasonable for the presenter to broadcast his own views”. To comply with due impartiality it referenced six examples sourced from four separate programmes, broadcast on 18 February, 13 May, 3 June and 17 June 2010, in which *Comment* presented alternative viewpoints to those put forward by George Galloway. These were:

1. *Comment*, Press TV, 18 February 2010

An email from a contributor called Jonathan was read out:

*“George, I am so infuriated by you and your basic simple views....Do you see the difference between terrorism and legitimate assassination. I bet my life I know what your response will be”.*

A contributor called Jeremy who phoned-in to speak to George Galloway about the presenters assertions that Israel was responsible for the murder of the Hamas leader:

*“You haven’t got any proof yet. You haven’t got any proof at all”.*

2. Comment, Press TV, 13 May 2010

A contributor called Kay from the UK:

*“I just want to say I respectfully disagree with some of the comment regarding Israel...Israel is to me a model for the Middle East. The Palestinians should unite and build courts; build prison places...change their text books, anti-Semitism against the Israelis”.*

3. Comment, Press TV, 3 June 2010

The broadcaster referred to the inclusion of a clip of a Channel 4 News interview with an Israeli government spokesman talking about the attack on the Marmara.

4. Comment, Press TV, 3 June 2010

The broadcaster referred to two comments made by Professor Scobbie, an international lawyer defining the legal position of Israel’s attack on the Marmara:

*“One, this is not an act of piracy, that allegation has made because public ships were involved; Israeli public ships were involved and the idea of piracy is completely beside the point”*

*“Israel has denied it remains in occupation of Gaza, that is not a view shared by international lawyers”*

5. Comment, Press TV, 17 June 2010

A contributor called Jamie from London via email:

*“How typical of you to bring back Israel on your show. Your non-stop hatred of Israel does not help peace in the region. And your new convoy decoy won’t be successful. Do you think that Israeli forces should hold an inquiry? What for? Those activists still have not answered. Why were they carrying weapons?”*

Further, the broadcaster highlighted how the presenter had encouraged contributions from viewers particularly if their point of view differed from his own and provided a range of dates (13, 20 and 27 May 2010, and 10 and 17 June 2010) when invitations were made by George Galloway to encourage alternative views. For example:

Comment, 13 May 2010

George Galloway: *“I want to hear from you, particularly if you have a different point of view to mine. Your call, your text, your email will be prioritised because, hey – we want it to be a debate!”*

Comment, 20 May 2010

George Galloway: *“Whatever your point of view and especially if it disagrees with mine I want to hear from you!”*

Comment, 27 May 2010

George Galloway: *“If you have a different point of view to mine, well your call will be prioritised, and that’s a promise!”*

Comment, 17 June 2010

George Galloway: *“We want to take your points of view especially if it’s a different one from mine”*

However, in conclusion the broadcaster argued that “even though it appears that the number of people who support Israel is negligible, it seems that Ofcom requires *Comment* to present the Israeli viewpoint nonetheless”. Press TV stated the only way that the broadcaster could do this would be by the presenter providing the Israeli viewpoint and considered that this would not reflect the expectations of the viewers who actually watch the programme. Press TV stated that if “Ofcom insists” this was necessary then the broadcaster would have to change its approach to the programme and asked Ofcom to clarify how the programme should express the Israeli viewpoint.

## Decision

The Communications Act 2003, as set out in the Broadcasting Code, requires that due impartiality must be preserved by broadcasters in all matters of political or industrial controversy.

In reaching this decision Ofcom must also take into account the fact that broadcasters have a right to freedom of expression which gives the broadcaster a right to transmit and the audience a right to receive creative material, information and ideas without interference from a public body, but subject to restrictions prescribed by law and necessary in a democratic society. This is set out in Article 10 of the European Convention on Human Rights. Therefore, although broadcasters and viewers have this right, it is the responsibility of the broadcasters to ensure that the material they transmit is in accordance with the general law and the Code.

It should be noted that the importance of freedom of expression is considered to be at its highest in relation to political matters, including the manner of expression exercised by journalists in relation to political matters. The European Convention states:

“The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed in law and are necessary for a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others...”

In carrying out its duties Ofcom must therefore balance the right to freedom of expression on one hand with the need to preserve “due impartiality on matters relating to political or industrial controversy or matters relating to current public policy”. Therefore, whilst the Code does not prohibit broadcasters from the editorial freedom to discuss any controversial subject, or include a particular point of view within a programme, it must do so in a way which ensures compliance with the Code.

Section 5 of the Code sets out how broadcasters should preserve due impartiality and it is recognised that this acts to limit, to some extent, freedom of expression. In effect, broadcasters are required to ensure that when discussing a topic relating to matters of political or industrial controversy and matters relating to current public policy neither side of the debate is unduly favoured.

On reviewing the content of all of the *Comment* programmes investigated Ofcom noted that the issues discussed by presenter George Galloway, namely the policies of the State of Israel, were matters of political controversy and matters relating to current public policy and therefore the application of Rule 5.5 was required here to preserve due impartiality. Further, Rule 5.9 of the Code also makes clear the

principle that presenters in “personal view” programmes may express their own views on controversial matters *provided* alternative viewpoints are adequately represented and due impartiality is maintained. These were clearly “personal view” programmes. Having signalled the nature of this type of broadcast to the audience, presenters are free to include their own highly partial views and those of others on the condition that alternative views are adequately represented.

Taking the programmes as a whole, Ofcom noted that there were some, albeit extremely limited (as detailed above), contributions during the six programmes reviewed that could be labelled as being loosely supportive of the actions of the Israeli state and therefore alternative views to the presenters George Galloway and Jeremy Corbyn. For example: the two contributions from viewers on 18 February 2010 (Jeremy and Jonathan), the comment by a viewer on 13 May 2010 (Kay) and the email from the contributor on 17 June 2010 (Jamie).

In the 18 February 2010 programme, George Galloway espoused his own views on Israeli policy directly to camera and encouraged other callers to share their views. However, in effect, during this hour long programme broadcast the majority of callers expressed the same view as George Galloway and only two alternative viewpoints were included as set out above.

We also noted the submissions made by Press TV that the programmes on 3 June 2010 contained alternative viewpoints to that presented by George Galloway. The broadcaster referred to comments made by Professor Scobbie and the inclusion of a clip of an Israeli government spokesman which originated from an interview on Channel 4 News.

In Ofcom’s view, the Channel 4 News clip referred to by the broadcaster did not adequately provide the Israeli viewpoint on the attack on the ship carrying aid to Gaza, the Marmara. The two edited clips of the interview between Channel 4 News presenter Jon Snow with the Israeli government spokesman were used, not to enable the programme to present the Israeli government’s explanation for the attack on the flotilla, but in fact, to give the opportunity for the programme to further criticise the Israeli government as demonstrated by the interchange in the two clips shown:

Clip #1

Jon Snow: *“Will you apologise to them?”*

Israeli Spokesman: *“For what?”*

[End of clip]

The presenter Jeremy Corbyn then commented: “there you have it – nothing to apologise for”.

Clip#2

Jon Snow: *“The next flotilla will be accompanied by a Turkish warship. What will you do?”*

Israeli Spokesman: *“This isn’t serious”*

Jon Snow: *“What will you do?”*

Israeli Spokesman: *“This is not a serious question”*

After the clip Jeremy Corbyn commented:

*“Will that smile stay on his face? Quite clearly a change in public opinion after this not just because of this but the killings in Dubai and Operation Cast Lead” [the Israeli incursion of Gaza].*

Further, in Ofcom’s view, the interview with Professor Iain Scobbie was included not as a means of articulating a viewpoint in support of the Israeli legal position with regard to the attack on the Marmara but to determine exactly which international law the Israeli government had breached in conducting the attack on the Marmara. Professor Scobbie explained that the attack was not “an act of piracy...because Israeli public ships were involved.” He went on to explain that the issue, with relation to international law, was the blockade of Gaza and he clearly states: “Israel has denied that it remains in occupation of Gaza. That is not a view which is shared by many international lawyers”. Therefore Professor Scobbie, as an international lawyer, was not advocating the Israeli legal position regarding the blockade of Gaza but clearly questioning it. Indeed, Professor Scobbie went on to explain that Israel had been relying on the San Remo Manual<sup>1</sup> to justify its actions in Gaza and stated: “Israel’s views on the San Remo Manual have been very selective. One of the provisions of the San Remo Manual, and it says it quite clearly, is that a blockade is illegal if it is for the purposes of starving the civilian population...”

We do not therefore consider that either of the submissions noted by the broadcaster, as set out above, could be reasonably recognised as ensuring the programme adequately gave the Israeli government position. The Professor Scobbie contribution was clearly not intended to present the Israeli viewpoint whilst the Channel 4 clip was chosen to reinforce to the audience the presenter’s assertion that Israel was not concerned about their actions on the Marmara. In any event, Ofcom would not consider that two short edited clips (clip #1 and #2) on an hour long programme or across a series of programmes could reasonably be described as an effective method for the licensee to achieve due impartiality on this programme or the series as a whole.

In terms of the contributions from viewers presenting an alternative view to George Galloway and Jeremy Corbyn, Ofcom acknowledges that the presenter made repeated comments across the programmes encouraging contributions particularly if they were different to his. However, the issue with reference to Rule 5.5 is whether those limited views were effective enough to achieve due impartiality and ensure the other side of the discussion was presented.

It is the case that the few examples of alternative views made by the contributors (as detailed above) challenged George Galloway directly but it is arguable that the nature and duration of the viewer contributions was enough to credibly present the other side of the argument. In this regard Ofcom also noted the manner in which George Galloway treated such contributions, which could be labelled loosely as pro-Israeli, was very different to the way in which he treated contributors who supported a pro-Palestinian perspective. Any alternative views in these programmes were not debated and/or discussed but dismissed and used as a further opportunity for the presenter to put forward his views.

---

<sup>1</sup> The San Remo Manual on International Law Applicable to Armed Conflicts at Sea was adopted in June 1994 by the International Institute of Humanitarian Law after a series of round table discussions by naval and legal experts. The Manual is a codification of customary international law for naval conflict. and is a legally recognised document but is not binding.



Comment, Press TV, 18 February 2010

On the subject of the murder of the Hamas leader in Dubai:

An email from a contributor called Jonathan:

*“George, I am so infuriated by you and your basic simple views....Do you see the difference between terrorism and legitimate assassination. I bet my life I know what your response will be.”*

Response from George Galloway:

*“Well Jonathan call in if you think you are brave enough...What exactly is a legitimate assassination? What is legitimate about going to a third country using the passports of at least four other nations and murdering someone in their hotel room? What is legitimate about that assassination? If you cannot see how hollow your words ring to me, the audience here or anyone who hears them then I think there is not much hope for you”.*

A contributor called Jeremy:

*“You haven’t got any proof yet. You haven’t got any proof at all”.*

Response from George Galloway:

*“The Israeli press, every newspaper, every tv station in Israel are acknowledging this is a Mossad operation. The Dubai police chief is 99% if not 100% sure Israel were involved in the killing. Now I ask you again, do you think Israel is not involved? ... Jeremy thinks it was a Palestinian group who got their hands on British, Irish, French and German passports and were pictured in all that footage in Dubai and carried out the murder. I don’t know Jeremy if you really believe that or if it was a wind up”.*

Comment, Press TV, 17 June 2010

On the subject of the Israeli attack on the Marmara aid flotilla to Gaza:

A contributor called Jamie via email:

*“How typical of you to bring back Israel on your show. Your non-stop hatred of Israel does not help peace in the region. And your new convoy decoy won’t be successful. Do you think that Israeli forces should hold an inquiry? What for? Those activists still have not answered. Why were they carrying weapons?”*

Response from George Galloway:

*“I’m not sure if that is a joke but I’ll treat it seriously for the purposes of argument. The activists were not carrying weapons. All the dead were activists and all the wounded were activists. None of the wounded or dead were Israeli. They stormed this peaceful ship like they were in a war. I know you’ll find that hard to believe. [George Galloway then explained the plans for the next sea and land flotilla] Do you get that Jamie? Did you write that all down? It ain’t no decoy son its absolutely what is going to happen.”*

Therefore given the above analysis of the two areas in which the broadcaster has argued that the programme provided due impartiality, Ofcom has concluded that: the contributions from the viewers; the clips of the Israeli spokesman; and the comments by Professor Scobbie did not adequately represent the particular and important perspective in the debate over Israeli policy towards the Palestinians, namely, the views of the Israeli State.

Further, the broadcaster failed to engage or debate with any point of view that was contrary to the view presented by George Galloway. Rather, Ofcom is of the view that George Galloway, in particular, used the alternative opinions made by the viewers, which were contrary to his own, only as vehicles to punctuate what could be classed as a form of on-going political polemic, delivered by the presenter directly to camera and unchallenged.

It is important to note that the broadcasting of highly critical comments concerning the policies and actions of any one state (such as demonstrated in the content of these programmes) is not in itself a breach of due impartiality. It is, in fact, essential that current affairs programmes are able to explore and examine such issues and take a position even if that is highly critical. Broadcasters are also free to include controversial presenters who hold strong opinions on certain subjects. Audience participation programmes such as *Comment*, where viewers and listeners are encouraged to telephone, email or text in to the programme, do not have to ensure an equal number of points are view are featured in any one programme or even across the series as a whole.

Further, in clearly signalled “personal view” programmes such as these, Ofcom takes account of the fact that many in the audience are comfortable with adjusting their expectations for due impartiality. This is why Rule 5.9 specifically provides for presenters of “personal view” broadcasts to express their own highly partial views – provided that alternative viewpoints are adequately represented, in audience participation programmes alternative views are encouraged and not excluded, and due impartiality is preserved. In these cases, however, for all the reasons set out above, alternative viewpoints were not adequately represented.

It is the responsibility of the broadcaster, when the subject matter of the programme raises a matter of political controversy, to ensure that due impartiality is maintained. To this end the broadcaster must ensure that if the presenter has strongly held views and there are few, if any, alternative views expressed by the audience, then the broadcasters must take appropriate action and have systems in place to ensure that due impartiality is maintained.

In this case, alternative viewpoints were not adequately represented in the individual programmes or across the series as a whole. Ofcom remains concerned about Press TV’s understanding and compliance processes in relation to Section Five of the Code. Therefore Press TV will be requested to attend a meeting with the regulator to explain and discuss its compliance processes further in this area.

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

## In Breach

### Andy Henly at Drive

*Total Star 107.5, 31 August 2010, 16:30*

---

#### Introduction

*Andy Henly at Drive* is magazine-style radio show broadcast every weekday. Total Star 107.5 is a commercial radio station covering the West Wiltshire area.

During the programme, the presenter invited listeners to visit the station's website to obtain information about discounts offered by a number of local businesses. The presenter went on to mention two particular businesses by name and gave details of their specific offers:

*"you can find out all about the half-price sale on our website. There's deals on photography, also on short breaks, yes, you can still maybe have a short break before Christmas, sport and leisure and also health and beauty, and food and drink. Total Bathrooms have a fantastic offer on their 'lovemeter' and if you are musically enthralled, then Duck, Son and Pinker has some good deals as well. Check out all the deals, today's deals on our website."*

Ofcom received a complaint from a listener who was concerned that the presenter's references to the discounts were tantamount to advertising.

Ofcom therefore sought the broadcaster's comments with regard to the following Code rules:

- Rule 10.3: "Products and services must not be promoted in programmes."
- Rule 10.4: "No undue prominence may be given in any programme to a product or service."
- Rule 10.5: "Product placement is prohibited."

#### Response

Total Star 107.5 stated that no payment had been received for the inclusion of the references to two companies, Total Bathrooms, and Duck, Son and Pinker, in this programme segment.

The broadcaster explained that purpose of the "half price offers" section of its website was not to directly promote any business but "to provide listeners with some exclusive deals". It added that it felt it was "important to relate to its listeners and offer as many facilities as possible".

Total Star said that "the presenter clearly defined" the feature as "a special offer" which invited listeners "to access a variety of limited exclusive services through the station website." The broadcaster argued that this provided editorial justification for the commercial references to be included in the programme.

## **Decision**

Ofcom noted the broadcaster's stated that it did not receive payment for the inclusion of the commercial references in the programme. We found no evidence that the broadcast was in breach of Rule 10.5 which prohibits product placement.

Rule 10.3 of the Code prohibits the promotion of products and services within programmes. Ofcom noted that the presenter encouraged listeners to visit the broadcaster's website for details of the station's special offers, which he referred to in some detail (e.g. *"There's deals on photography, also on short breaks, yes, you can still maybe have a short break before Christmas, sport and leisure and also health and beauty, and food and drink."*). He then referred to two companies and used phrases such as *"fantastic offer"* and *"good deals"* to describe those businesses' participation.

The presenter therefore promoted and endorsed the companies in question, in breach of Rule 10.3.

Further, Rule 10.4 of the Code requires that products and services are not given undue prominence in programmes. There appeared to be no editorial justification for the presenter to give specific details of the companies participating in the "half price offers" section of the broadcaster's website. Consequently, Ofcom concluded that these references were also in breach of Rule 10.4

## **Breaches of Rules 10.3 and 10.4**

## In Breach

### Law Show

*Prime TV, 2, 9, 16 and 23 August 2010, 17:00*

---

#### Introduction

Prime TV is a family entertainment channel serving the Pakistani community throughout Europe. It is broadcast primarily in Urdu, with some programmes in other languages, such as Punjabi and Gujarati.

*Law Show* is an interactive legal advice programme in which viewers are invited to call the presenter with their concerns. On this occasion the programme was sponsored by the firm, A-Z Solicitors. The lawyer who presents the programme featured in the sponsor credit broadcast during the programme.

Ofcom received a complaint that the sponsorship arrangement allowed the presenter to promote his own company. The viewer also believed the programme repeated the breaches that Ofcom had recorded against Prime TV in a recent finding<sup>1</sup>.

Separately, Ofcom noted the sponsor credits for *Law Show* appeared only as the programme went into an advertising break and not at the beginning or end of the broadcast as required by the Code.

We asked Prime TV to comment on how the material complied with the following rules:

- Rule 9.5 (“There must be no promotional reference to the sponsor, its name, trademark, image activities services or products or to any of its other direct or indirect interests...”); and
- Rule 9.6 (“Sponsorship must be clearly identified as such by reference to the name and/or logo of the sponsor. For programmes, credits must be broadcast at the beginning and/or end of the programme.”)

#### Response

The broadcaster apologised for “inadvertent” breaches of Rules 9.5 and 9.6 and said it had “misread and misunderstood the rules”. It said that, as there was no reference to A-Z Solicitors in the programme, or the fact the presenter works for the organisation, there was no promotional reference to the sponsor. However, Prime TV said it now understood that the reference to “direct or indirect interests” of the sponsor in Rule 9.5 would have ruled out this sponsorship arrangement. The broadcaster added that it had since rectified its error.

Prime TV said the positioning of the sponsor credits was also a mistake, adding that its scheduling department had considered them to be advertisements, which had therefore been incorrectly placed.

The broadcaster said that the sponsorship of programmes “was not an area of the Code [it was] that familiar with” and noted that it had made arrangements for

---

<sup>1</sup> See <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb162/>

additional compliance training to take place with an experienced consultant, to ensure no recurrence. Prime TV also confirmed that, at the time of the previous finding published by Ofcom, which found *Law Show* in breach of Rules 10.3 and 10.4 of the Code, the programme had not been sponsored by A-Z Solicitors.

## Decision

Rule 9.5 of the Code prohibits, among other things, any promotional reference to the sponsor or its direct or indirect interests. Broadcasters must therefore take care to ensure that sponsored programmes are not – and do not appear to be – distorted for commercial purposes.

While no reference was made to the sponsor (A-Z Solicitors) by name within *Law Show*, it had a direct interest in the programme, as the presenter was a representative of sponsor (who also appeared in the sponsor credit). A-Z Solicitors was therefore directly promoting its interests within the programme, in breach of Rule 9.5 of the Code.

European legislation, the Audiovisual Media Services (AVMS) Directive<sup>2</sup>, states that broadcasters must clearly inform viewers about the existence of a sponsorship arrangement. Rule 9.6 of the Code sets out the minimum requirements to ensure sponsorship arrangements are appropriately transparent to viewers. The Rule requires that sponsorship credits are broadcast at the beginning and/or end of a sponsored programme. In this instance a sponsor credit for *Law Show* was broadcast only when the programme broke for an advertising break, and not at the beginning or end of the broadcast, in breach of Rule 9.6 of the Code.

Ofcom has recorded previous breaches of the Code against a broadcast of *Law Show* on Prime TV. The Code breaches on that occasion concerned Section Ten (Commercial References...) of the Code. The Code breaches in this instance concern Section Nine (Sponsorship) of the Code. Nevertheless, Ofcom is concerned that Prime TV has twice failed to apply appropriate compliance to *Law Show* and has now admitted that it was not familiar with its obligations in this area.

Ofcom expects broadcasters to be conversant with all Code Rules and how they are applied. We therefore welcome the action taken by Prime TV to avoid recurrence, as Ofcom does not expect any similar Code breaches from this broadcaster in the future.

## Breaches of Rules 9.5 and 9.6

---

<sup>2</sup> Article 10(1)(c).

## In Breach

### “I’m on a Boat” music video

*Clubland TV, 12 September 2010, 17:55*

---

#### Introduction

Clubland TV is a satellite television channel licensed to Penny Street TV Limited (“Penny Street TV”) which features dance music videos. An unedited version of the song “*I’m on a Boat*” by Lonely Island was played during its early evening schedule. The song, which lasted approximately three minutes, contained twelve instances of the word “*motherfucking*” or “*motherfucker*”, and one instance of the word “*fuck*”. Ofcom received a complaint from a viewer who considered this language unsuitable for a pre-watershed broadcast.

Ofcom therefore sought comments from Penny Street TV in relation to the following Code Rule:

- Rule 1.14; “the most offensive language must not be broadcast before the watershed...”

#### Response

Penny Street TV said that the transmission of the music video was, on this occasion, “an accident caused by a failure in the playout system after a technical upgrade had taken place.” It explained that a technician did not input the correct time into the system and as a result the video was broadcast by mistake. The broadcaster said it was alerted by to the matter by a viewer who contacted the station shortly after the incident. The fault was then identified immediately and rectified.

Penny Street TV recognised that the material was unsuitable for a pre-watershed broadcast and regretted any offence it may have caused viewers.

#### Decision

Our research indicates that the word “*fuck*” and its derivatives are an example of the most offensive language. Rule 1.14 states that the most offensive language must not be broadcast before the watershed.

Ofcom noted the immediate action taken by Penny Street TV to prevent further broadcasts of inappropriate material. However, as the music video contained repeated uses of the most offensive language, Ofcom concluded the broadcast was in breach of Rule 1.14 of the Code.

#### Breach of Rule 1.14

## Fairness and Privacy Cases

### Not Upheld

#### Complaint by Mr Charles Dowdye

*BBC London News, BBC1, 17 May and 12 June 2010*

---

**Summary:** Ofcom has not upheld this complaint of unfair treatment made by Mr Charles Dowdye.

These programmes highlighted the health risks of pupils eating unhealthy takeaway meals and the steps being taken by schools and members of the public to prevent pupils purchasing such meals, particularly at lunchtime. Both programmes included footage of three sixth form students eating burger and chip-style meals while sitting in front of a sign for Mr Dowdye's Caribbean Grill restaurant.

In summary, Ofcom found that the programmes broadcast on 17 May and 12 June 2010 did not associate Mr Dowdye's Caribbean Grill restaurant with the unhealthy takeaway foods referred to in the programmes.

#### Introduction

On 17 May 2010, BBC1 broadcast an edition of *BBC London News* which included a report about potentially harmful levels of salt, fat and calories found in much of the takeaway food sold near schools and how this put young people at a higher risk of blood pressure, heart attacks and strokes. The programme featured three sixth formers and showed them purchasing takeaways from an unidentified shop, being interviewed about their choice of food, sitting on a wall eating burgers and chips and being shown how much salt and sugar they were consuming.

Prominently featured a number of times in footage of the students eating their food and being interviewed, was a sign for the Caribbean Grill restaurant.

On 12 June 2010, BBC1 broadcast an edition of *BBC London News* which reported that a takeaway restaurant had been banned from opening near a school in East London after a legal ruling. One of the local residents who fought for the ban explained that Tower Hamlets had the second highest rate of obesity in the country and that young people were dying as a result of not eating healthy food.

The programme then showed footage of the three sixth form students featured in the 17 May 2010 edition of the programme referred to above with the sign for the Caribbean Grill again visible.

Mr Dowdye, the owner of the Caribbean Grill restaurant, complained to Ofcom that his business was treated unfairly in the programmes as broadcast.

#### The Complaint

##### Mr Dowdye's case

In summary, Mr Dowdye complained that his business, the Caribbean Grill restaurant, was unfairly portrayed in the programmes in that they associated the Caribbean Grill with the unhealthy, burger and chips lifestyle of young people by



featuring its sign prominently in the programmes, both of which featured the unhealthy eating habits of young people.

By way of background, Mr Dowdye said that the Caribbean Grill did not cook greasy food. Its food was steamed, grilled, roast or barbequed, but that since the programmes were broadcast it had recorded a huge drop in sales.

### **The BBC's case**

In summary the BBC responded to the complaint as follows:

The BBC said that it did not believe that the reports unfairly portrayed Mr Dowdye's business and that several factors would have ensured that the programmes did not give viewers the impression that the food served at his business was unhealthy.

In relation to the programme broadcast on 17 May 2010, the BBC said that in the scene in which the students ate and discussed their food, a sign advertising Mr Dowdye's business could be seen. The BBC said that the sign was on the side of Mr Dowdye's business and featured the words "Caribbean Grill" and in smaller font the words "Jerk Chicken".

The BBC said that the full name of the restaurant was in fact "Simmerz Caribbean Grill" and that the word "Simmerz" was very prominent in the sign at the front of the shop and on the website of the business. The BBC said that listings websites, food review online communities and sites that offered online ordering referred to it as "Simmerz Grill".

The BBC said that it did not believe that the wording of the sign which could be seen in the programmes identified Mr Dowdye's business by name, but merely described the type of restaurant it was – a Caribbean Grill. The BBC said that there were many such businesses in South London and that, accordingly, it believed that viewers who were not already familiar with the business would not have been able to identify it from the sign shown in the programme alone. The BBC said that any viewers who may have already been familiar with Simmerz Caribbean Grill, and who could identify it from the sign featuring the generic term "Caribbean Grill" would also know what type of food was available there, and would not have been misled as to the nature of the food sold by Mr Dowdye.

The BBC said that the sign in the programme advertised that "Jerk Chicken" was served at that Caribbean Grill, whereas the students in the programmes were filmed buying the food from a burger/kebab-style takeaway and ordering wings and chips, chicken and chips and a steak burger. The BBC said that it believed that the juxtaposition would have helped to ensure that viewers understood that the food had been bought elsewhere and that there was no automatic connection between the food being consumed and discussed and that available from Simmerz Caribbean Grill.

The BBC said that the report showed the students purchasing their food from a takeaway counter, following which they were seen walking away from the restaurant towards the camera to the place where they would be filmed eating their lunch.

The BBC said that it believed that those shots would have ensured that no confusion arose in the minds of viewers as to the nature of the food available in Mr Dowdye's establishment. The BBC said that the first shot showed the interior of the restaurant selling the students their food – which was distinct from the interior of Simmerz

Caribbean Grill – and a man preparing their food – who was not employed at Mr Dowdy’s restaurant. The second shot showed the students walking away from the restaurant, down the street which would form the backdrop of the shot which included the “Caribbean Grill” sign. The BBC said that it would therefore have been clear to viewers that the students had purchased food from further afield than the establishment immediately behind them. The BBC said it did not believe that viewers would have assumed that the sign included in the shot had any association with the matters discussed or the food consumed.

In relation to the programme broadcast on 12 June 2010, the BBC said that the report was about the efforts of a local community group in Tower Hamlets to prevent a takeaway fast food restaurant – “Fried and Fabulous” – from opening in their area. The BBC said that the report featured footage from the broadcast of 17 May 2010 to illustrate the problem of students eating unhealthily during lunchtimes. The BBC said that over footage from the earlier report of the students eating (including the sign advertising the Caribbean Grill), the voiceover referred to the fact that some London schools now prevented pupils from leaving the school grounds at lunchtimes.

The BBC said that it believed that the majority of the arguments above would also apply to the footage as it appeared in the 12 June 2010 programme.

## **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 unfair treatment and unwarranted infringement of privacy in, or in the making of, programmes included 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 considered all the relevant material provided by both parties. This included recordings and transcripts of the programmes as broadcast and both parties’ written submissions.

Ofcom considered the complaint that the Caribbean Grill was unfairly portrayed in the programmes as broadcast because it was associated with the unhealthy, greasy, burger and chips lifestyle of students.

In considering this complaint Ofcom took account of Rule 7.1 of the Ofcom Broadcasting Code (“the Code”), which states that broadcasters must avoid unfair treatment of individuals and organisations in programmes, and had regard to Practice 7.9, which states that broadcasters should take reasonable care to ensure that material facts have not been presented, omitted or disregarded in a way that is unfair.

### *Programme broadcast on 17 May 2010*

Ofcom first considered the programme broadcast on 17 May 2010 and noted that it was concerned with pupils leaving school grounds and snacking on junk food containing potentially harmful amounts of salt, fat and calories which it said could lead to a risk of higher blood pressure, heart attacks and strokes. The programme

followed and interviewed three sixth form students as they bought meals from a takeaway restaurant and as they sat on a wall eating them.

Footage of the inside of a takeaway restaurant and the person serving them in Clapham, South London was broadcast showing the students buying their meals, but the restaurant was not identified. Footage of the students being interviewed on a street was also broadcast, again with no restaurant identified. Finally, footage of the students sitting on a wall and eating their “*unhealthy*” but “*cheap and nice*” meals, being informed about the salt and fat content of their meals and being interviewed about their attitude towards the health issues of such food was broadcast.

On the occasions that footage of the students sitting on the wall was broadcast, a yellow sign at right angles to the shop front wall was clearly visible in the background. The sign bore the words “Caribbean Grill” and, in smaller lettering, “Jerk Chicken”. On three occasions the sign appeared blurred and unreadable, on two occasions, when the footage showed all three students at once, the sign appeared behind them and was clearly readable and on one occasion the footage showed two students and the sign appeared for approximately five seconds very prominently behind and centrally between them and was again clearly readable.

Given the prominence of the Caribbean Grill sign in the programme and that it was the only restaurant identified, in the absence of any other factors, Ofcom considered that there was a risk of viewers associating Mr Dowdye’s restaurant with the sort of unhealthy food referred to in the programme. However, Ofcom noted that there were a number of factors which in its view reduced the likelihood of viewers making such an association.

Ofcom noted that the main sign for Mr Dowdye’s restaurant and the one facing the street refers to it as “Simmerz Caribbean Grill” rather than “Caribbean Grill”. Ofcom considered that by excluding the restaurant’s name from the programme and simply including the sign attached at right angles to the front of the restaurant, most viewers would be likely to have understood the sign to be descriptive of the type of restaurant it was and would not have associated it with Mr Dowdye’s restaurant. Ofcom recognised that some viewers may have been able to identify Mr Dowdye’s restaurant from the featured sign alone, but considered that such viewers would be those who were already familiar with Mr Dowdye’s restaurant and therefore aware that it did not serve the type of food featured in the programme.

Ofcom also noted that the sign featured in the programme made clear that the restaurant specialised in Caribbean grilled food and jerk chicken in particular. While Ofcom appreciated that some takeaway restaurants offer a wide range of food, it considered that it was unlikely that viewers would have associated the burger and chips-style meals that the students were consuming in the programme with a Caribbean grill restaurant.

Finally, although Ofcom recognised that viewers were likely to watch such a programme casually and without concentrated attention to detail or a second viewing, Ofcom noted that the programme showed the students purchasing their food from a restaurant and then walking along a street before sitting on the wall in front of Mr Dowdye’s restaurant to eat their food. As a result, Ofcom considered that it was unlikely that many viewers would have concluded that the students had purchased their food from the Caribbean Grill.

While each of the above factors individually may not have been sufficient to have disassociated Mr Dowdye’s restaurant from the unhealthy food referred to in the

programme, in Ofcom's view, the combination of the factors meant that it was unlikely that viewers would have made such an association.

In light of the above factors, Ofcom was satisfied that in relation to this programme the broadcaster had taken reasonable care not to present material facts in a way that resulted in unfairness to Mr Dowdye's Caribbean Grill restaurant.

Ofcom has not therefore upheld the complaint in relation to the programme broadcast on 17 May 2010.

*Programme broadcast on 12 June 2010*

With regard to the programme broadcast on 12 June 2010, Ofcom noted it reported that a takeaway restaurant had been banned from opening near a school in East London after a legal ruling. One of the local residents who fought for the ban explained that Tower Hamlets had the second highest rate of obesity in the country and that youngsters were dying as a result of not eating healthy food.

At the end of the item, the programme then showed footage of the three students featured in the 17 May 2010 edition of the programme with the sign for the Caribbean Grill again visible. On this occasion, the sign appeared blurred and unreadable for approximately four seconds, appeared behind the three students sitting on the wall and readable for approximately three seconds and then very prominently behind and centrally between two students for approximately one second.

The Caribbean Grill was the only restaurant identified in the programme which referred to people dying from eating unhealthy food, however, on this occasion, the footage which included the Caribbean Grill sign in readable form was very brief and the footage which showed the sign very prominently lasted just one second.

In the circumstances, Ofcom considered that the footage of the sign was too brief for viewers to be likely to have associated the Caribbean Grill with the unhealthy food referred to in the programme.

In light of the above, Ofcom was satisfied that in relation to this programme the broadcaster had taken reasonable care not to present material facts in a way that was unfair to Mr Dowdye's Caribbean Grill restaurant.

Ofcom has not therefore upheld the complaint in relation to the programme broadcast on 12 June 2010.

**Accordingly Ofcom has not upheld Mr Dowdye's complaint of unfair treatment in the programmes as broadcast.**

## Other Programmes Not in Breach

Up to 1 November 2010

Programme	Transmission Date	Broadcaster	Categories	Number of complaints
101 Dalmatians	16/10/2010	BBC 1	Offensive language	1
4thought.tv	20/10/2010	Channel 4	Race discrimination/offence	1
A Girls Guide to 21st Century Sex	22/09/2010	Fiver	Nudity	1
A Girl's Guide to 21st Century Sex	13/10/2010	Fiver	Sexual material	1
Adrian Coll	11/10/2010	Clyde 1	Generally accepted standards	1
Adrian Durham	28/10/2010	Talksport	Race discrimination/offence	1
Afternoon Live	29/10/2010	Sky News	Due accuracy	1
Afternoon Live	20/10/2010	Sky News	Disability discrimination/offence	1
All New Fat Families	25/10/2010	Sky1	Generally accepted standards	1
America's Next Top Model	11/10/2010	Living +1	Race discrimination/offence	1
An Idiot Abroad	21/10/2010	Sky1	Religious/Beliefs discrimination/offence	1
An Idiot Abroad	28/10/2010	Sky1	Nudity	1
Aviva's sponsorship of Downton Abbey	26/09/2010	ITV1	Materially misleading	1
Aviva's sponsorship of Downton Abbey	10/10/2010	ITV1	Generally accepted standards	2
Bob Strong	04/09/2010	Felixstowe Radio 107.5 FM	Sexual orientation discrimination/offence	1
Channel 4 News	21/10/2010	Channel 4	Generally accepted standards	3
Channel 4 News	11/10/2010	Channel 4	Due impartiality/bias	1
Channel 4 News	29/10/2010	Channel 4	Generally accepted standards	1
Chowder	05/10/2010	Cartoon Network	Generally accepted standards	1
Coca Cola's sponsorship of ITV Saturday Nights	16/10/2010	ITV1	Materially misleading	1
Come Dine with Me	30/10/2010	Channel 4	Generally accepted standards	1
Commonwealth Games	13/10/2010	BBC 2	Race discrimination/offence	1
Community Channel	29/09/2010	Community Channel	Religious/Beliefs discrimination/offence	1
Coronation Street	18/10/2010	ITV1	Generally accepted standards	4
Coronation Street	28/10/2010	ITV1	Drugs, smoking, solvents or alcohol	1
Coronation Street	22/10/2010	ITV1	Disability discrimination/offence	1
Coronation Street	21/10/2010	ITV1	Generally accepted standards	2
Coronation Street	15/10/2010	ITV1	COSTA	1

Crimewatch	26/10/2010	BBC 1	Generally accepted standards	1
Daybreak	15/10/2010	ITV1	Generally accepted standards	1
Daybreak	26/10/2010	ITV1	Generally accepted standards	1
Deal or No Deal	25/10/2010	Channel 4	Generally accepted standards	1
Dispatches	25/10/2010	Channel 4	Generally accepted standards	1
EastEnders	18/10/2010	BBC 1	Violence and dangerous behaviour	2
EastEnders	18/10/2010	BBC 1	Generally accepted standards	1
EastEnders	25/10/2010	BBC 1	Drugs, smoking, solvents or alcohol	1
EastEnders	26/10/2010	BBC 1	Generally accepted standards	1
Emmerdale	13/10/2010	ITV1	Generally accepted standards	1
Film Review	24/10/2010	Sky News	Violence and dangerous behaviour	1
Five News	21/10/2010	Five	Generally accepted standards	1
Five News	21/10/2010	Five	Due impartiality/bias	1
Harry and Paul	21/10/2010	BBC 2	Generally accepted standards	1
Harry Hill's TV Burp	16/10/2010	ITV1	Generally accepted standards	1
Harry Hill's TV Burp	23/10/2010	ITV1	Generally accepted standards	1
Harry Hill's TV Burp	24/10/2010	ITV1	Disability discrimination/offence	1
Have I Got News for You	21/10/2010	BBC 1	Race discrimination/offence	1
Have I Got News for You	14/10/2010	BBC 1	Generally accepted standards	1
Hollyoaks	25/10/2010	Channel 4	Generally accepted standards	3
Hollyoaks	18/10/2010	Channel 4	Generally accepted standards	1
Hollyoaks	20/10/2010	Channel 4	Scheduling	1
Hollyoaks	20/10/2010	Channel 4	Generally accepted standards	2
Hollyoaks	21/10/2010	Channel 4	Generally accepted standards	3
Hollyoaks	22/10/2010	Channel 4	Generally accepted standards	1
Hyundai's sponsorship of Five Movies	31/10/2010	Five	Nudity	1
Hyundai's sponsorship of Five USA Movies	n/a	Five USA	Generally accepted standards	1
ITV News	25/10/2010	ITV1	Due accuracy	1
Katie and Alex: For Better or Worse	14/07/2010	ITV2	Product placement	1
Kundli Aur Kismat/Future & Fortune	20/07/2010	Sunrise TV	Harm	1
Law and Order: UK	09/09/2010	ITV1	Generally accepted	4

			standards	
Little Red Flowers	26/10/2010	Film4	Sexual material	1
Loose Women	19/10/2010	ITV1	Generally accepted standards	2
Lorraine	12/10/2010	ITV1	Due impartiality/bias	39
Michael McIntyre's Comedy Roadshow	23/10/2010	BBC 1	Race discrimination/offence	1
Midsomer Murders	19/10/2010	ITV1	Violence and dangerous behaviour	3
Midsomer Murders	18/10/2010	ITV1	Offensive language	1
Midsomer Murders	21/10/2010	ITV1	Violence and dangerous behaviour	1
My Funniest Year	23/10/2010	E4	Generally accepted standards	1
My Parents Are Aliens	23/10/2010	CITV	Sexual material	1
New You've Been Framed!	13/10/2010	ITV1	Generally accepted standards	1
Nick Ferrari	08/10/2010	LBC 97.3FM	Race discrimination/offence	1
Nigella's Kitchen	30/10/2010	BBC 1	Sexual material	1
Night of the Living Dead	26/09/2010	Showcase TV	Violence and dangerous behaviour	1
Paul O'Grady Live	15/10/2010	ITV1	Generally accepted standards	1
Planet's Funniest Animals	19/10/2010	ITV2	Offensive language	1
Predator	26/09/2010	E4	Violence and dangerous behaviour	1
Press Preview	19/10/2010	Sky News	Generally accepted standards	1
Psychic Interactive	01/09/2010	Psychic TV	Participation TV - Harm	1
Richard Herring's Objective	21/10/2010	BBC Radio 4	Generally accepted standards	1
River Cottage	17/10/2008	More4	Offensive language	1
River Cottage Every Day	21/10/2010	Channel 4	Race discrimination/offence	1
Rory and Paddy's Even Greater British Adventure	25/10/2010	Five	Animal welfare	1
Rude Tube	13/10/2010	Channel 4	Animal welfare	1
Saw III	22/10/2010	Channel 4	Violence and dangerous behaviour	1
Sky News	09/10/2010	Sky News	Due accuracy	4
Sky News	14/10/2010	Sky News	Due accuracy	1
Sky News	18/10/2010	Sky News	Generally accepted standards	1
Sky News	26/10/2010	Sky News	Nudity	1
Slipknot (Sic)nesses DVD Preview	26/09/2010	Scuzz TV	Offensive language	1
Smallville	05/10/2010	E4	Generally accepted standards	1
Strictly Come Dancing	23/10/2010	BBC 1	Sexual material	1
Sunday Morning Live	17/10/2010	BBC 1	Generally accepted standards	1
Taggart	03/10/2010	STV	Violence and dangerous behaviour	1

The Apprentice	10/10/2010	BBC 1	Race discrimination/offence	1
The Apprentice: You're Fired!	20/10/2010	BBC 2	Offensive language	1
The Best Of Slipknot	26/09/2010	Scuzz TV	Violence and dangerous behaviour	1
The Inbetweeners	11/10/2010	E4	Animal welfare	9
The Inbetweeners	11/10/2010	E4	Generally accepted standards	3
The Inbetweeners	11/10/2010	E4	Disability discrimination/offence	1
The Late Show	30/10/2010	Heart 106 FM	Materially misleading	1
The Pillars of the Earth	16/10/2010	Channel 4	Offensive language	3
The Spending Review	20/10/2010	BBC 2	Race discrimination/offence	1
The Taking Of Prince Harry (trailer)	19/10/2010	Channel 4	Generally accepted standards	1
The World's Fastest Indian	17/10/2010	BBC 2	Offensive language	1
The World's Strictest Parents	25/10/2010	BBC 3	Disability discrimination/offence	1
The Wright Stuff	18/10/2010	Five	Race discrimination/offence	1
The X Factor	16/10/2010	ITV1	Generally accepted standards	96
The X Factor	09/10/2010	ITV1	Generally accepted standards	1
The X Factor	10/10/2010	ITV1	Sexual material	1
The X Factor	16/10/2010	ITV1	COSTA	6
The X Factor	16/10/2010	ITV1	Sexual material	1
The X Factor	17/10/2010	ITV1	Generally accepted standards	6
The X Factor	17/10/2010	ITV1	Violence and dangerous behaviour	2
The X Factor	17/10/2010	ITV1	Sexual orientation discrimination/offence	1
The X Factor	23/10/2010	ITV1	Generally accepted standards	56
The X Factor	24/10/2010	ITV1	Advertising/editorial separation	3
The X Factor	24/10/2010	ITV1	Materially misleading	1
The X Factor	31/10/2010	ITV1	Generally accepted standards	1
The X Factor	31/10/2010	ITV1	Offensive language	1
The X Factor	02/10/2010	ITV1	Generally accepted standards	1
This Morning	18/08/2010	ITV1	Offensive language	6
This Morning	19/10/2010	ITV1	Generally accepted standards	1
This Morning	21/10/2010	ITV1	Race discrimination/offence	1
True Blood	21/10/2010	Channel 4	Violence and dangerous behaviour	1
Two And A Half Men (trailer)	15/10/2010	Comedy Central	Offensive language	2
Whites	19/10/2010	BBC 2	Disability discrimination/offence	3



