

# **Ofcom Broadcast Bulletin**

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## 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 28 February 2011 and covers all programmes broadcast on or after 28 February 2011. The Broadcasting Code can be found at:  
<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>.

Note: Programmes broadcast prior to 28 February 2011 are covered by the version of the Code that was in force at the date of 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 9.16 and 9.17 of the Code for television broadcasters);
  - '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.

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

## Standards cases

### In Breach

#### Music Video: Rihanna - "S&M"

WTF TV, 10 March 2011, 11:25

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#### Introduction

WTF TV is a music channel that primarily broadcasts music videos of mainstream chart music, including pop and R&B/Urban, and classic music videos from the last 30 years. The channel also broadcasts music based programmes and countdown shows. The channel uses a video jukebox format, whereby viewers can select videos by texting the video selection number to a number displayed on screen. The channel is owned and operated by TV Two Limited ("the Licensee" or "TV Two").

WTF TV broadcast a music video by the R&B/pop singer Rihanna for the song "S&M", at 11:25 on 10 March. The video contained themes of sexual bondage, dominance and sadomasochism, including images of Rihanna: being dragged into a room of press journalists and cameras; her body and face being restrained behind cellophane; walking a man – who is the well known gossip blogger Perez Hilton - on a leash like a dog and whipping him; whipping a man dressed as a journalist with his hands and feet tied up with gaffer tape; in sexualised positions with blow-up dolls; lying on the floor on her chest with her hands and feet tied up with rope behind her back in positions of sexualised restraint; dressed up in various rubber and latex fetish outfits; and eating a banana and licking an ice cream encrusted with jewels in a sexually suggestive manner. The video also included images of people dressed as press journalists with bondage-style 'ball gags' in, or gaffer tape across, their mouths. There were very brief images of the word "slut" written on Rihanna's dress and a press journalist's notepad.

The song in the music video included the following lyrics:

*"Feels so good being bad (Oh oh oh oh oh)  
There's no way I'm turning back (Oh oh oh oh oh)  
Now the pain is for pleasure cause nothing could measure (Oh oh oh oh oh)...*

*Cause I may be bad, but I'm perfectly good at it  
Sex in the air, I don't care, I love the smell of it  
Sticks and stones may break my bones  
But chains and whips excite me...*

*Oh, I love the feeling you bring to me, oh, you turn me on  
It's exactly what I've been yearning for, give it to me strong  
And meet me in my boudoir, make my body say ah ah ah  
I like it-like it"*

Ofcom received a complaint that the music video was "completely unsuitable for daytime" broadcast.

Ofcom considered whether this music video raised issues under Rule 1.3 of the Code. This states that:

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

We asked TV Two to comment on how this music video complied with this rule.

## **Response**

TV Two stated that “the song of the music video in question has currently sold more than 12 million copies worldwide and recently remained in top position for 2 weeks in the UK Top 40 Chart”.

It added that “the broadcasting of pop music videos is a well established genre... [and] the nature of the genre is that from time to time certain performers artistically like to shock and challenge existing standards”. It stated that “the reality is that such challenges are likely to shock unknowing parents rather than the younger, street-wise consumer of the material”.

TV Two stated that “regular devotees of this specialist music channel would be well aware of the irony involved in this video. The artist is acting out a fantasy version of – and reaction to - recent events in her life as reported in the tabloid press”. It added that “WTF fans, along with fans of this music generally, have been eagerly awaiting this video, which has had very wide exposure across the media. The cartoon-like, over-the-top sequences contained no element of encouragement to copy, and the tongue-in-cheek artistic approach would not be unexpected by the audience”.

With particular regard to Rule 1.3, the Licensee said that “Rihanna is a popular artist and... the video S&M does not contain images of dominant/submissive practices in a pornographic style. It reflects an artistic and soft interpretation of a reversal of roles in which Rihanna overpowers men. It is artistic and not dark or seedy”.

TV Two added that the “video reflects the real life drama of the artist who recently experienced well documented domestic violence from a partner. It is well within the expectations of a viewer watching a pop music video channel. Any representation of humiliation or distress is acceptable within the context of the video being a pastiche of violence against women in which women actually come off best”. It continued, however, that “in hindsight we perhaps should have considered the implication of the title since this is clearly the point of much concern and is likely to be an issue with those not conversant with the channel, who may be prompted to react over the title and its press coverage rather than having first viewed the video itself”.

With regard to the image of Rihanna held behind a sheet of cellophane-like material, the Licensee said that “children are aware of fantasy and are exposed to many such images during daytime television. For example regular daytime repeats of James Bond containing fantasy violence torture and murder... Within the challenging pop music genre they do not send out messages for mimicry or influence”. TV Two added that audience data suggests that no children were watching the channel at that time.

## **Decision**

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to require the application, in the case of all television and radio services of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material.

Ofcom also has a duty to set such 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”.

These standards are contained in the Code. Broadcasters are required to comply with the rules in Section One of the Code to ensure that children are protected.

In performing its duties, Ofcom must have regard to the need for standards to be applied “in the manner that best guarantees an appropriate level of freedom of expression”<sup>1</sup>. The Code is drafted in accordance with Article 10 of the European Convention of Human Rights, as incorporated in the Human Rights Act 1998, which is the right of a broadcaster to impart information and ideas and the right of the audience to receive them without unnecessary interference by public authority.

In reaching a decision in this case, Ofcom acknowledged the paramount importance attached to freedom of expression in the broadcasting environment. In particular, broadcasters must be permitted to enjoy the creative freedom to explore controversial and challenging issues and ideas, and the public must be free to view and listen to those issues and ideas, without unnecessary interference. The Code sets out clear principles and rules which allow broadcasters freedom for creativity, and audiences freedom to exercise viewing and listening choices, while securing the wider requirements in the Act.

Ofcom has also had regard to the fact that music videos are an artistic and creative medium, which can and do sometimes contain challenging content which some may find offensive. However, while music videos must have room for innovation and creativity, Ofcom does have a statutory duty with regard to all programmes, including music videos (whatever the genre), to ensure that under eighteens are protected.

### Suitability for children

Ofcom had to consider first whether this broadcast material was unsuitable for children. We took into consideration that while the video included themes of bondage, sexual dominance and sadomasochism, as described above, such themes and corresponding images were presented in a surreal, colourful and sometimes humorous manner, rather than representing strong fetish material or depicting real or realistic sadomasochistic practices. We also noted that TV Two argued that the “video reflects the real life drama of the artist who recently experienced well documented domestic violence from a partner”, and that the broadcaster considered these images to be “cartoon-like, over-the-top sequences” which were “artistic and not dark or seedy”.

However, Ofcom considered that some of the images included in the video had a significant sexual fetish, bondage and sadomasochistic nature. The video included images of Rihanna: with her body and face being restrained behind cellophane; walking a man on a leash like a dog and whipping him; whipping a man dressed as a journalist with his hands and feet tied up with gaffer tape; adopting sexualised positions with blow-up dolls; lying on the floor on her chest with her hands and feet tied up with rope behind her backs in positions of sexualised restraint; dressed up in various rubber and latex fetish outfits; and eating a banana and licking an ice cream encrusted with jewels in a sexually suggestive manner. The video also included images of people dressed as press journalists with bondage-style ‘ball gags’ in, or gaffer tape across, their mouths.

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<sup>1</sup> Section 3(4)(g) of the Act

In addition, Ofcom considered that in tandem with the images in this video, the lyrics of the song clearly and repeatedly focused on sex, bondage and sadomasochistic sexual practices as a theme. For example:

*“Cause I may be bad, but I'm perfectly good at it, Sex in the air, I don't care, I love the smell of it, Sticks and stones may break my bones, But chains and whips excite me”<sup>2</sup>;*

and

*“Oh, I love the feeling you bring to me, oh, you turn me on, It's exactly what I've been yearning for, give it to me strong”.*

In Ofcom's view, the cumulative effect of the images described above and the sexual lyrics of the song resulted in the video conveying a powerful, sexualised fetish theme. Further, in Ofcom's view, some of the behaviour in the video (such as images of Rihanna – and in particular her body and face – being restrained by a large cellophane sheet, and shots of people with their mouths gagged with gaffer tape or 'ball gags') could have potentially dangerous consequences if imitated by children.

Given the above, it is Ofcom's view that the content of this particular music video was not suitable for children. Ofcom therefore went on to consider whether this material was appropriately scheduled so as to provide adequate protection to children from viewing this unsuitable material.

#### Appropriate scheduling

While it is Ofcom's view that the material did not contain any sexually explicit images, the theme and images were nevertheless highly sexualised for the reasons set out above. Further, it is our view that this particular video contained more sexualised images and lyrics, in particular shots of people wearing 'ball gags' and images of people being whipped and tied up, than would normally be expected in a pop/R&B music video broadcast before the watershed.

Ofcom was conscious that WTF TV does not appear to attract a large child audience. This was indicated by audience figures obtained by Ofcom which found that for the month of March 2011 audience share for WTF TV was zero. Therefore there is no indication that significant numbers of viewers, including children, were watching at the time in question. However, we also took into account that Rihanna is a very well known and popular singer who has a widespread appeal to children, including younger children, and this particular music video received a large amount of press attention and interest before being broadcast. Further, we noted that WTF TV did not place a time restriction on this particular music video. Therefore it would have been broadcast at various times throughout the day (not just at 11:25) when children, especially younger children, are available to watch television, some unaccompanied by an adult. Ofcom noted the fact that, during daytime and before the watershed, other music channels only broadcast an edited version of this video.

In light of the above factors, it is Ofcom's view that given the sexualised nature of the content and theme, and the at times inappropriate and potentially dangerous and imitable behaviour shown in this video, this material exceeded the likely expectations of the audience for this channel during daytime. For all these reasons, the Licensee

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<sup>2</sup> This chorus was repeated five times during the video.



did not apply appropriate scheduling restrictions to this video so as to provide adequate protection to prevent children from viewing this material.

We therefore concluded that the material breached Rule 1.3.

Ofcom will shortly be issuing new guidance about the acceptability of material in music videos broadcast before the watershed. We will also be requesting that broadcasters who transmit such programming attend a meeting at Ofcom to discuss the compliance of such material.

In view of our concerns about the material under consideration in this case, Ofcom is requiring the compliance licensee to attend a meeting to discuss the approach taken to ensuring that the programme complied with the requirements of the Code.

### **Breach of Rule 1.3**

## In Breach

### Various 'adult' material

*Red Hot Mums, 8 January 2011, 22:20 to 22:30*

*Red Hot Mums, 8 January 2011, 23:20 to 23:30*

*Red Hot Mums, 9 January 2011, 00:20 to 00:30*

*Red Hot Mums, 9 January 2011, 22:20 to 22:30*

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### Introduction

Red Hot Mums is a pay-per-view channel which broadcasts adult content on Sky channel 905. It broadcasts most of its content subject to mandatory restricted access protections. The licensee is RHF Productions Ltd ("RHF" or the "Licensee").

A viewer complained that strong sex material was transmitted without mandatory restricted access for ten minutes on the night of 8 January 2011 at 23:20. The complainant questioned whether material of this sort should be available without controls. In light of the complaint, Ofcom wrote to RHF and asked if any other strong sex material was transmitted without mandatory restricted access protections.

After investigation the broadcaster confirmed that another ten-minute sequence had been broadcast without encryption on the night of 8 January 2011 and that two ten-minute transmissions had been wrongly broadcast without mandatory restricted access protections the following night. The broadcaster supplied recordings of all of the material concerned.

The recordings variously contained portrayals of intercourse, fellatio, cunnilingus and the use of sex aids but the sexual activities featured were either simulated or not shown with explicit detail. Clear shots of female genitals were included. Strong sexual language, including sexual swear words, also featured heavily in much of the material.

Ofcom therefore considered whether these programmes raised issues against Rules 1.18, 2.1 and 2.3 of the Code. These state that:

Rule 1.18: "Adult sex material' - material that contains images and/or language of a strong sexual nature which is broadcast for the primary purpose of sexual arousal or stimulation - must not be broadcast at any time other than between 2200 and 0530 on premium subscription services and pay per view/night services which operate with mandatory restricted access.

In addition, measures must be in place to ensure that the subscriber is an adult.

Meaning of "mandatory restricted access":

Mandatory restricted access means there is a PIN protected system (or other equivalent protection) which cannot be removed by the user, that restricts access solely to those authorised to view.

(NB Ofcom noted that the material complained about was not equivalent to the British Board of Film Classification R18-rating,

because it did not feature explicit works of consenting sex or strong fetish material involving adults. R18 equivalent material must not be broadcast at any time: see Rule 1.17).”

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

Rule 2.3 “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context (see meaning of "context" below). Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender, race, religion, beliefs and sexual orientation). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence.”

In addition, the two sequences from 9 January 2011 contained a number of spot advertisements for sex chat phone services and pornographic products.

Spot advertisements are regulated under the BCAP Advertising Code (the “BCAP Code”)<sup>1</sup>. Ofcom therefore also considered whether these programmes raised issues against the following Rules of the BCAP Code:

Rule 23.2.1 “**Television only** – Advertising for telecommunications-based sexual entertainment services is only acceptable on...encrypted elements of adult entertainment channels...”

Rule 30.3 “**Television only** – Advertisements for products coming within the recognised character of pornography are permitted behind mandatory restricted access on adult entertainment channels only.”

We asked RHF to comment formally on how the four broadcasts complied with the rules set out above<sup>2</sup>.

## Response

RHF said that the broadcast without encryption of the four sequences of ‘adult’ material had been the result of human error. This mistake was caused by the incorrect switching of a live feed to the wrong pre-recorded feed on a server. Consequently, four of the scheduled unencrypted periods for this channel, which under normal circumstances would have broadcast compliant material, contained ‘adult’ material instead. A trainee employee had been responsible for switching the feeds and had done so incorrectly. But, the broadcaster said, “in line with our

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<sup>1</sup> The BCAP Code is available at: <http://bcap.org.uk/The-Codes/BCAP-Code.aspx>

<sup>2</sup> Although the Advertising Standards Authority (ASA) is normally responsible for applying the BCAP Code in respect of spot advertising, Ofcom sought and obtained agreement from the ASA to consider these advertisements under the BCAP Code, since it was investigating the programme material in any event. The BCAP Code is ultimately Ofcom’s statutory responsibility.

compliance procedures there were two other experienced transmission employees who, in our view, should ordinarily have identified the error (despite such an error never having occurred before).”

The Licensee told us that the employees concerned were suspended and an investigatory meeting held. Following further investigation the two experienced members of staff received formal written warnings.

RHF considered that the material transmitted unencrypted had been ‘adult sex material’ and that Rules 1.18, 2.1 and 2.3 of the Code had been breached. The broadcaster also considered that in respect of the 9 January sequences BCAP Rules 23.2.1 and 30.3 had been breached.

The broadcaster argued that a number of mitigating factors should be taken in account. The size, composition and expectation of the potential audience operated to minimise any potential harm and offence, RHF told us, and, further, the channel is located in the ‘adult’ section of the electronic programme guide. The unencrypted transmissions all happened after the 9pm ‘watershed’.

RHF reiterated that this was the first time that such a problem had ever arisen in its transmission department. In view of these breaches, however, it had introduced a new procedure in relation to the switching of feeds which includes two trained transmission staff members performing, checking and signing off the switch together. This would, the broadcaster said, “...have prevented this regrettable breach in compliance.”

## **Decision**

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to require the application, in the case of all television and radio services of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material.

Ofcom also has a duty to set such 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”; “generally accepted standards” are applied so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material; and that advertising “which may be misleading, harmful or offensive” is prevented.

These standards are contained in the Code and the BCAP Code. 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 2.1 of the Code to ensure that broadcasters must apply generally accepted standards so as to provide adequate protection for members of the public from harmful and/or offensive material. Ofcom’s television licensees are required to comply with the rules in sections 23 and 30 of the BCAP Code to prevent advertising which may be harmful or offensive.

Ofcom assessed the material included in the programmes in relation to Rules 1.18, 2.1 and 2.3 of the Code; and Rules 23.2.1 and 30.3 of the BCAP Code.

It was clear to Ofcom – and was admitted by the Licensee - that the content complained of was ‘adult sex material’. This was because it contained images of a

strong sexual nature broadcast for the primary purpose of sexual arousal or stimulation (see Rule 1.18).

Ofcom viewed the breaches as serious. It is a necessary part of providing an 'adult' service that such material is only provided with mandatory restricted access plus the additional check on a subscriber's age (Rule 1.18). Such services should therefore be accessible only to adults who specifically choose to receive them. Therefore, to allow a total of forty minutes of 'adult sex material' to be broadcast without any restrictions was a very significant breach of this Rule.

The very purpose of Rule 1.18 is to ensure that pornographic material with the greatest likelihood of causing offence is only made available to those aged 18 or over who have chosen to view it. The failure to ensure that 'adult sex material' would not be shown without mandatory restricted access, as happened here four times on two separate evenings, is a clear failure to apply generally accepted standards. Therefore, Rules 2.1 and 2.3 were also breached.

As regards Rules 23.2.1 and 30.3 of the BCAP Code, Ofcom noted that the spot advertisements were for telecommunications-based sexual entertainment services and other pornographic products (and so came within the recognised character of pornography), and were not encrypted. These BCAP Rules were therefore also contravened, as was admitted by RHF.

However, Ofcom noted this was the first time that the Licensee had made transmission errors of this sort had occurred with RHF and we noted the arguments presented in mitigation. In light of this, Ofcom stopped short of referring this case for consideration of the imposition of a statutory sanction.

However, as with all breaches of the Code and BCAP Code, these will be held on file, forming part of the Licensee's compliance history. Ofcom is putting the Licensee on notice that, should it repeat similar breaches in the future, we will proceed to consider the imposition of statutory sanctions.

**Red Hot Mums, 8 January 2011, 22:20 to 22:30  
Breach of Code Rules 1.18, 2.1 and 2.3**

**Red Hot Mums, 8 January 2011, 23:20 to 23:30  
Breach of Code Rules 1.18, 2.1 and 2.3**

**Red Hot Mums, 9 January 2011, 00:20 to 00:30  
Breach of Code Rules 1.18, 2.1 and 2.3; and of BCAP Code Rules 23.2.1 and 30.3**

**Red Hot Mums, 9 January 2011, 22:20 to 22:30  
Breach of Code Rules 1.18, 2.1 and 2.3; and of BCAP Code Rules 23.2.1 and 30.3**

## In Breach

### ITV News

*ITV1, 14 February 2011, 18:30*

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#### Introduction

The ITV News bulletin at 18:30 included a news item reporting on the forthcoming wedding of Prince William and Kate Middleton and the announcement that Prince Harry will perform the role of 'Best Man'. The pre-recorded package included a clip of Prince William and Prince Harry at a photo call which showed flash photography.

Ofcom received a complaint from a viewer who was concerned about the flashing images broadcast during the news report and the distress these images could potentially cause to viewers with photosensitive epilepsy ("PSE"). The complainant was particularly concerned that the report contained no warning before or during its broadcast.

Certain types of flashing images present a danger of triggering seizures in viewers who are susceptible to PSE. Rule 2.12 of the Code therefore requires that:

"Television broadcasters must take precautions to maintain a low level of risk to viewers who have photosensitive epilepsy. Where it is not reasonably practicable to follow the Ofcom guidance (see the Ofcom website), and where broadcasters can demonstrate that the broadcasting of flashing lights and/or patterns is editorially justified, viewers should be given an adequate verbal and also, if appropriate, text warning at the start of the programme or programme item".

Ofcom carried out a technical assessment of the flashing images in this news report and found one potentially problematic sequence lasting just under 4 seconds. Ofcom therefore wrote to ITV Broadcasting Limited ("ITV"), who complied the programme on behalf of the ITV Network for ITV1, and asked it to explain how this material complied with Rule 2.12.

#### Response

ITN produce the ITV News programme for ITV1. ITV stated that "the footage in issue in this report was checked by ITN before transmission. This check did not reveal any breach of the levels set out in Ofcom's guidance, and therefore ITN did not consider that further editing of the material or an on screen verbal warning was required in this case".

ITV said the ITN PSE testing equipment is regularly checked, and ITN had no reason to believe it was not working properly. It went on to state that ITN's present testing device "is analogue, but ITN are in the process of installing a new High Definition Digital Monitor shortly. Following receipt of the complaint, ITN has re-tested the same footage using the same equipment, and again it did not register a breach".

ITV considered that there was sufficient editorial justification to include the material in question, given the public interest in the subject of the report. Given that a test was carried out by ITN, and that due consideration was given to the issue of PSE, ITV therefore believed that ITN took reasonable steps to maintain a low level of risk to viewers with PSE in this case, and that the broadcast complied with Rule 2.12.

## Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to require the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material<sup>1</sup>.

Ofcom has a duty to set such standards for the content of programmes as appear to it best calculated to secure the standards objectives, one of which is that “generally accepted standards” are applied so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material<sup>2</sup>.

These standards are contained in the Code. Broadcasters are required under Rule 2.12 of the Code to ensure that adequate precautions are taken to maintain a low level of risk to viewers who have photosensitive epilepsy. Given the significant potential harm that can result in viewers with PSE who are exposed to flashing images, Rule 2.12 makes clear that Ofcom expects broadcasters to maintain a low level of risk in this regard. Further, Ofcom’s Guidance in this area<sup>3</sup> (and the annexed Guidance Note on flashing images which is based on scientific research), are intended to limit the incidence of seizures. The guidance states that “a warning should only be used in place of the guidelines, if editorially justified”.

Ofcom tested this news item on ITV News programme against its published Guidance concerning PSE. It found that the sequence involving the flash photography of Prince William and Prince Harry contained approximately four seconds of flashing where the brightness transitions (‘flashes’) exceeded the “intensity” limits as set out in the Guidance. On one occasion the sequence contained flashing at a rate of approximately seven flashes in one second (the limit in Ofcom’s Guidance being no more than three flashes per second).

Ofcom notes that technical checks had been carried out by ITN on the material prior to transmission. While Ofcom appreciates that the use of automated analogue test equipment may be the preferred method by which some broadcasters seek to assure compliance with the PSE guidelines, some equipment may have limitations and display different levels of accuracy when measuring different types of flashing image sequence. Ofcom therefore considers that, regardless of which device a broadcaster uses, it must ensure that it accurately assesses its output against PSE standards. In this case ITN failed to correctly identify the material as problematic in advance of transmission.

There may be circumstances where it is editorially justified to broadcast material that does not comply with the appropriate PSE standards (for example, in a live news report or where there is other sufficient editorial justification for including the material). In these circumstances, it is essential that appropriate warnings are given to assist viewers with PSE to avoid instances of flashing images that the broadcaster cannot reasonably control.

Ofcom therefore considered whether there had been sufficient editorial justification for the broadcast of this material. In this case, we noted that the material in question

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<sup>1</sup> Section 3(2)(e) of the Act

<sup>2</sup> Section 319(2)(f) of the Act

<sup>3</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/812612/section2.pdf>

was pre-recorded, but we considered that there was nevertheless editorial justification for including this footage in the report because of the widespread public interest in the forthcoming royal wedding.

In these circumstances, it would have been appropriate to have included this footage providing that appropriate warnings were given to viewers, as required by Rule 2.12. Ofcom considers that warnings of this type may assist viewers with PSE to avoid instances of flashing images that the broadcaster cannot reasonably control.

In this case however ITN failed to correctly identify a potential problem with the flashing imagery in this material and therefore did not provide any warning to viewers. The broadcast of this material, without an appropriate warning, was therefore in breach of Rule 2.12 of the Code.

Ofcom notes that this is the second<sup>4</sup> recent occasion on which analogue testing equipment has failed to identify problematic material. We strongly advise broadcasters to ensure that material which contains flashing images is adequately tested against Ofcom's published Guidance.

### **Breach of Rule 2.12**

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<sup>4</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb178/obb178.pdf>



## In Breach

### Zor ka Zatka sponsorship credits

*NDTV Imagine, 1 February 2011, constantly until 18:00*

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#### Introduction

NDTV Imagine is a Hindi general entertainment channel.

Ofcom received a complaint that during a programme broadcast on this date, a box was shown in the top left-hand corner of the screen. This contained a trail for a new programme *Zor ka Zatka* which was shown on a continuous loop. Outside of this box the branding for two of *Zor ka Zatka*'s sponsors was displayed alongside the graphic of a clock counting down the time until the programme was due to be broadcast.

Following receipt of the material, it was apparent to Ofcom that the trail and these graphics were shown across all of the output on NDTV Imagine – including advertising breaks – up until the time that *Zor ka Zatka* was shown at 18:00 that day.

Ofcom considered that this material raised issues under Rules 9.14 and 10.3<sup>1</sup> of the Code:

Rule 9.14: “Where a programme trail contains a reference to the sponsor of the programme, the sponsor reference must be brief and secondary”; and

Rule 10.3: “Products and services must not be promoted in programmes.”

We therefore sought comments from the broadcaster in respect of these rules.

#### Response

The broadcaster acknowledged the appearance of the branding for the two sponsors during “programme time” was against Ofcom’s rules. It said the material was assessed by a member of its compliance team “who interpreted Ofcom’s regulations incorrectly.” NDTV Imagine said “the normal procedure would have been to refer the matter to a senior member of our team and compliance manager.”

NDTV Imagine said the inclusion of branding “was not discussed or agreed between (the broadcaster), its agents and the sponsors...(and) should not have been embedded in the content.”

The broadcaster also said “there was no arrangement or financial gain agreed or received for featuring the countdown” but it had been intended to reflect that *Zor ka Zatka* was a “major acquisition for the channel.”

#### Decision

Two of the key principles of Sections Nine and Ten (Television) of the (December 2010) Code are respectively, to ensure sponsorship messages are separate from programmes; and to ensure programmes are not distorted for commercial purposes.

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<sup>1</sup> The (December 2010) Code that was in force at the time of the broadcast.

#### Rule 9.14

In this instance, a trail for the programme *Zor ka Zarka* was shown in a continuous loop in an on-screen box across NDTV Imagine's output. Outside of this box was a clock counting down the time until *Zor ka Zarka* was to be broadcast; the title of this new programme; and branding for the two sponsors. Therefore sponsorship credits for *Zor ka Zarka* were on-screen continuously across all output on the channel. This was clearly not "brief and secondary" as required by Rule 9.14 of the Code and was in breach of this rule.

#### Rule 10.3

There was clearly no editorial justification for the appearance of the sponsors' branding across this output. Ofcom therefore concluded that, in the absence of any editorial justification, and in view of the prominence given to the sponsor's branding as a result of being displayed continuously the broadcast of this branding amounted to a promotion of the sponsors' businesses in programming, in breach of Rule 10.3.

We note the broadcaster's explanation that this occurred as a result of human error and was not a condition of the sponsorship arrangement, therefore no commercial gain resulted from the broadcast of this material. However, this was a significant mistake as the sponsorship credits were shown across many hours of programme time. We would expect a mistake of this nature to have been identified by compliance staff at the channel at the time the material was broadcast, rather than as a result of an Ofcom investigation.

Ofcom is therefore concerned about whether NDTV Imagine has effective compliance procedures in place. This is the fourth time that Ofcom has recorded breaches against NDTV Imagine for content which has not complied with different rules in Sections Nine and/or Ten of the Code<sup>2</sup>. Ofcom therefore puts NDTV Imagine on notice that it expects the broadcaster to improve its compliance in this area. Should any similar compliance issues occur, Ofcom is likely to consider the imposition of statutory sanctions.

#### **Breaches of Rules 9.14 and 10.3**

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<sup>2</sup> See Broadcast Bulletin 157 published on 10 May 2010 at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb157/>

See Broadcast Bulletin 146 published on 23 November 2009 at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb146/>

See Broadcast Bulletin 137 published on 6 July 2009 at <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb137/>

## In Breach

### QI

Dave, 22 February 2011, 14:00

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#### Introduction

QI is a comedy quiz show hosted by Stephen Fry. It is scheduled regularly across the day and evening on Dave, a channel which broadcasts comedy and entertainment programming to a largely adult audience. The licence for Dave is held by UK Gold Services Limited ("UK Gold Services").

A viewer complained that when the programme was shown at 14:00 it included Stephen Fry clearly using the term "*Oh fuck off*" and, in a separate exchange, panellist Jeremy Clarkson saying "*No he fucking isn't*" despite unsuccessful attempts to obscure these words. The viewer believed this language was inappropriate to be used at this time of day.

Ofcom therefore considered whether this programme raised issues under Rule 1.14 of the Code. This states that:

"The most offensive language must not be broadcast before the watershed (in the case of television)..."

We asked UK Gold Services how the programme complied with this Rule.

#### Response

UK Gold Services accepted the language broadcast was not fully obscured and apologised for any offence caused. UK Gold Services conceded the "bleeping of the language was not up to the usual standard" carried out by the licensee.

The broadcaster said a freelance worker from one of its compliance agencies had identified that the inadequately redacted offensive language in the original BBC version of the programme needed to be 'bleeped' further, but this person had failed to update the relevant compliance database. As a result, the editor was unaware of the need for further edits and the wrong version was broadcast.

UK Gold Services recognised such errors were "unacceptable" and it has improved its compliance procedures as a result. Changes to the compliance database now allow freelance compliance staff to highlight potential issues which editors can access directly.

The broadcaster added that while it accepted the words should not have been broadcast, because the language had been partially bleeped the full phrasing was not audible; and that the programme was shown on a channel aimed at an adult audience and therefore "the offence caused was minimal."

#### Decision

Under the Communications Act 2003 ("the Act"), Ofcom has a statutory duty to require the application, in the case of all television and radio services of standards

that provide adequate protection to members of the public from the inclusion of offensive and harmful material.

Ofcom also has a duty to set such 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”.

These standards are contained in the Code. Broadcasters are required to comply with the rules in Section One of the Code to ensure that children are protected.

Rule 1.14 states that the most offensive language must not be broadcast before the watershed. Ofcom research on offensive language<sup>1</sup> clearly notes that the word “fuck” and its derivatives are considered by audiences to be very offensive. Such language is unacceptable before the watershed, whatever the audience profile of the channel.

We note UK Gold Services said the full phrasing of the offensive language was not audible. However, the use of both words clearly began with an ‘f’, and an unmistakable ‘ck’ and ‘cking’ followed after the ‘bleep’. This would have left viewers in no doubt in Ofcom’s view that ‘fuck’ and ‘fucking’ had been used.

Broadcasting the words “*fuck*” and “*fucking*” in *QI*, although partially masked, was clearly at odds with the requirements of Rule 1.14.

We welcome improvements to the compliance procedures introduced by UK Gold Services. However, human error does not justify the broadcast of the most offensive language before the watershed and we are therefore recording a breach of the Code.

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

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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>)

## Resolved

### Chris Evans Breakfast Show

*BBC Radio 2, 28 January 2011, 08:50*

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#### Introduction

During a live interview with Sir Elton John, the presenter, Chris Evans, told an anecdote about the musician Jools Holland. Chris Evans said that Jools Holland *“says the first thing he does when he gets up in the morning is he’s got to go and play the piano, to reconnect himself with it.”* Sir Elton John responded to this: *“Oh fucking hell”*.

Ofcom received one complaint that this language was inappropriate for this time of day. Ofcom therefore considered whether this programme raised issues under Rule 1.14 of the Code. This states that:

“The most offensive language must not be broadcast...when children are particularly likely to be listening (in the case of radio)”.

We asked the BBC how the programming complied with this Rule.

#### Response

The BBC accepted this language was inappropriate and apologised for any offence caused.

The broadcaster said immediately after the offensive language was aired at around 08:50, both Chris Evans and Sir Elton John apologised. The BBC noted that while the 09:00 news was on air, the producer of the *Chris Evans Breakfast Show* explained to Sir Elton that it was “particularly important” not to use inappropriate language as children may be listening. The producer asked the presenter to make a further apology, and Sir Elton also said he wished to apologise again. Following the 09:00 news, Chris Evans said *“And now an apology from Sir Elton John,”* and Sir Elton continued *“Well I’m really, really sorry I said that naughty word”*. The BBC said the verbal apology was then reinforced by playing Sir Elton John’s song *“Sorry Seems to be the Hardest Word”*.

The broadcaster said the language “was a spontaneous outburst, borne out of irritation rather than malice or an intention to cause offence.” It said the producers of the *Chris Evans Breakfast Show* had e-mailed Sir Elton John’s management team before the interview to remind them the programme was live and the singer should not swear. The BBC said on the singer’s arrival at the studios, the producers spoke to Sir Elton’s management team to underline this policy.

Since this incident, the BBC said as well as sending a “warning e-mail” to the party responsible for booking the guests, all interviewees will be spoken to directly “to re-emphasise the importance of not using offensive language.”

#### Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to require the application, in the case of all television and radio services of standards

that provide adequate protection to members of the public from the inclusion of offensive and harmful material.

Ofcom also has a duty to set such 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”.

These standards are contained in the Code. Broadcasters are required to comply with the rules in Section One of the Code to ensure that children are protected.

Rule 1.14 states that the most offensive language must not be broadcast on radio at a time when children are particularly likely to be listening. Ofcom research on offensive language<sup>1</sup> clearly notes that the word “fuck” and its derivatives are considered by audiences to be very offensive. The use of the term “fucking hell” is therefore unacceptable on radio at any time when children are particularly likely to be listening.

Radio 2 is a popular music and comedy network with a fairly wide range of listeners, including some children. A number of adults in particular listen to the channel with children when on the ‘school run’ in the morning. In Ofcom’s view, the time when Sir Elton John made his offensive remark (around 08:50) was therefore within the period that should be regarded as one “when children are particularly likely to be listening” to Radio 2.

Ofcom then assessed whether there were any contextual factors and any actions taken by the broadcaster which might have limited the potential for offence.

Ofcom noted that the interview with Sir Elton was to be live and that the BBC gave guidance in advance to the singer’s management team about the need to refrain from using offensive language. The broadcaster did not however underline this guidance directly to Sir Elton before the interview took place. Ofcom welcomes the BBC’s decision to speak directly to interviewees in the future to help avoid them using offensive language in live interviews.

In addition to noting this new measure to improve compliance, Ofcom acknowledges that Sir Elton’s remarks appear to have been a “spontaneous outburst” made with no intention to offend, and that any offence caused was mitigated by the apologies offered by Chris Evans and Sir Elton both immediately after the incident and after the 09:00 news. In view of the steps taken by both the broadcaster and Sir Elton John to remedy the error, Ofcom considers the matter resolved.

## **Resolved**

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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>)

## Resolved

### The Real Housewives of Orange County

ITV2, 11 February 2011, 07:15

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#### Introduction

*The Real Housewives of Orange County* is a reality programme focussing on the lives of wealthy families in California. During a trailer at the end of this episode, which highlighted content in a forthcoming instalment, a clip was shown of a man pouring water over another man. In the next sequence, the same two men were shown in a brief physical confrontation pushing each other, and one man shouted at the other, “Get off me you faggot.”

Ofcom received one complaint that such language was offensive to be shown at that time of day when children could be watching.

Ofcom therefore considered whether this programme raised issues under Rule 1.16 of the Code. This states that:

“Offensive language must not be broadcast before the watershed (in the case of television) ... unless it is justified by context.”

Ofcom therefore wrote to ITV Broadcasting Limited (“ITV”), who complied the programme on behalf of ITV2, for its comments on how this material complied with Rule 1.16.

#### Response

ITV said the term “faggot” is more widely used in the United States than in Britain, and it “accepted that viewers in the UK tend to find the term offensive when used as a term of abuse.” The broadcaster added that, while the context of the quarrel broadcast was not “a deliberate attempt to use discriminatory language against a gay person in an offensive manner”, it considered the word should not be included in an early morning broadcast.

The broadcaster said that while compliance on the programme was being carried out an instruction was given to remove the word. However, ITV said the “instruction was not acted upon immediately” and the episode was broadcast without the required editing.

ITV apologised for any offence caused by this incident and said this particular episode will not be repeated until a further edit has been made.

ITV said the mistake resulted from “a combination of human errors” and that it has reviewed its procedures to avoid a similar incident. The broadcaster said “faggot” is not rated under Ofcom’s research as the most offensive language; the programme has no particular interest to children; and the term did not cause widespread offence.

#### Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to require the application, in the case of all television and radio services of standards

that provide adequate protection to members of the public from the inclusion of offensive and harmful material.

Ofcom also has a duty to set such standards for the content of programmes as appear to it best calculated to secure the standards objectives, including that that “persons under the age of eighteen are protected”. These standards are contained in the Code. Broadcasters are required to comply with the rules in Section One of the Code to ensure that people under eighteen are protected.

Rule 1.16 states that “Offensive language must not be broadcast before the watershed (in the case of television) ... unless it is justified by the context.”

Ofcom research on offensive language<sup>1</sup> notes that “faggot” is a derogatory term used to refer to gay people and is likely to be used as an insult, increasing the potential for any offence to be caused. The research does not suggest however that the word is regarded as an example of the most offensive language. In this instance, the sequence showed a physical confrontation between two young men when one said “*Get off of me you faggot.*” The word “faggot” was only used once but as part of a mildly aggressive exchange. It was clearly intended to be derogatory and was therefore likely to be considered offensive by many viewers.

Ofcom next considered if the use of the word was justified by the context in which it was presented. ITV pointed out that the word “faggot” is used more widely in the United States than in Britain; and in this case the word was used as part of a trailer for a reality programme depicting a mild quarrel between two men. It was not used in a discriminatory or offensive way against gay people. Ofcom notes that this programme was not likely to appeal to children and was not shown around any children’s programmes. Ofcom however considers that, even though the word is more widely used and is perhaps considered less offensive in the United States, the word is widely regarded as offensive and derogatory in Britain. The word was used in the context of a mild quarrel between two men, but Ofcom does not consider that this justified its use. The word was broadcast: in a trailer for a forthcoming episode and so the full context of the quarrel would not have been clear to viewers; without any preceding warning; and on a Friday morning at 07:15 during term time when a number of children watch this free-to-air entertainment channel. Its use was therefore not justified by the context.

Nonetheless, Ofcom notes ITV’s acknowledgement that it does not believe this word was suitable for broadcast in the early morning, and the various measures the broadcaster took to comply this programme before transmission. ITV had intended to remove the word but, twice, as a result of human error this language remained in the programme. Ofcom also had regard to the facts that the programme was not likely to appeal to children and was not shown around any children’s programmes. We also considered that ITV had recognised the potential for offence by identifying and editing out the other instances of this language across subsequent episodes. In the circumstances, Ofcom is of the view that ITV has taken appropriate steps to remedy this error and we consider the matter resolved.

## Resolved

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<sup>1</sup> Audience attitudes towards offensive language on television and radio, August 2010, p111 (<http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>)



## Advertising Scheduling Cases

### In Breach

#### Advertising minutage

*UTV, 13 March 2011, 11:56*

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#### Introduction

Rule 4 of the Code on the Scheduling of Television Advertising (“COSTA”) states:

“...time devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes. In addition:

- a) on public service channels time devoted to television advertising and teleshopping spots must not exceed 12 minutes. In addition:
  - i) an average of 7 minutes per hour for every hour of transmission time across the broadcasting day; and
  - ii) subject to (i) above, an average of 8 minutes an hour between 6pm and 11pm”.

Rule 14 of COSTA states:

“Breaks during programmes on public service channels may not exceed 3 minutes 50 seconds, of which advertisements may not exceed 3 minutes 30 seconds.”

UTV notified Ofcom that during a centre break at 11:56 on 13 March 2011, it had transmitted three minutes 50 seconds of advertising (20 seconds more than is permitted).

This extra 20 seconds of advertising fell in the 12:00 clock hour and resulted in UTV transmitting 12 minutes and 20 seconds of advertising in that clock hour (20 seconds more than is permitted).

#### Response

UTV explained that at 11:26 a scheduled commercial break of one minute and 30 seconds was transmitted.

At 11:38, three minutes and 30 seconds of advertising was scheduled to be transmitted. However, instead of transmitting the scheduled advertisements, UTV transmitted in error only one minute and 20 seconds of the scheduled advertisements, and in addition, re-transmitted the 11:26 commercial break (one minute and 30 seconds). In other words, rather than transmitting the three minutes and 30 seconds of the advertisements which were scheduled for the 11:38 break, only one minute and 20 seconds of the scheduled advertisements had been transmitted. This meant that two minutes and ten seconds of the scheduled advertisements for the 11:38 break had not been transmitted at this time.

Therefore, during the 11:56 break, the Transmission Controller decided to re-insert 20 seconds worth of the advertisements which should have been transmitted during

the 11:38 break, despite the transmission schedule stating that the break must conclude by 12:00. This meant that:

- the 11:56 break was three minutes and 50 seconds (20 seconds more than is permitted); and
- the 12:00 clock hour was 12 minutes and 20 seconds (20 seconds more than is permitted).

UTV said that due to this human error, it had not transmitted one minute and 50 seconds of those advertisements which were scheduled to be transmitted in the 11:00 clock hour and therefore gained no commercial benefit from the error.

It explained that it takes this type of incident very seriously and a full investigation is underway to find out how this error occurred.

UTV submitted that it had recently briefed its Transmission Controllers and issued them with a copy of COSTA. It said that it had also issued all Transmission Controllers with reminder procedures which must be followed when issues occur to prevent errors of this nature. In addition, UTV said that training updates are underway to ensure errors of this nature are avoided.

UTV informed Ofcom that it is in the process of upgrading its current transmission system to an automated system. The upgrade will be completed by the last quarter of 2011. The new system will flag any potential breaches of COSTA to the Transmission Controller. UTV submitted that the investment in this system should ensure that its transmission procedures are more robust and reduce the potential for human error therefore minimising the likelihood of these types of incidents occurring in the future.

## Decision

At 11:56 on 13 March 2011, UTV had transmitted a centre break containing three minutes and 50 seconds of advertising (20 seconds more than is permitted). This was in breach of Rule 14 of COSTA.

This extra 20 seconds of advertising fell in the 12:00 clock hour and resulted in UTV transmitting 12 minutes and 20 seconds of advertising in that clock hour (20 seconds more than is permitted). This caused a breach of Rule 4 of COSTA.

Ofcom noted that in this case, a single error by a member of staff at UTV had caused a breach of two separate rules. However, Ofcom is concerned that this failure followed three recently recorded breaches of a similar nature:

- 6 October 2010: breach of Rule 14 of COSTA for transmitting 10 seconds more advertising in a centre break than is permitted<sup>1</sup>.
- 20 November 2010: breach of Rule 4(a)(ii) of COSTA for transmitting 30 seconds more advertising than permitted during peak<sup>2</sup>.

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/817960/issue173.pdf>

<sup>2</sup> <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb180/>

- 6 February 2011: breach of Rule 4(a)(i) of COSTA for transmitting 10 seconds more advertising than permitted in a single hour<sup>3</sup>.

Ofcom welcomes UTV's assurances that it is in the process of upgrading to an automated transmission system, which should ensure that its transmission procedures are more robust. However, Ofcom remains concerned that the procedures UTV has put in place as an interim measure have, to date, proved to be insufficient to prevent overruns from occurring.

Ofcom has therefore required UTV to provide detailed information about any improvements to its compliance processes and further training it has put in place to minimise the likelihood of overruns occurring during the period before the completion of the upgrade to its transmission system.

### **Breaches of Rules 4 and 14 of COSTA**

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<sup>3</sup> See footnote 2.

## Fairness and Privacy Cases

### Upheld

#### Complaint by Miss B

*The Ugly Face of Beauty, Channel 4, 20 July 2010*

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**Summary:** Ofcom has upheld this complaint of unwarranted infringement of privacy in the programme as broadcast.

The programme examined the cosmetic surgery industry and included contributions from people who had undergone various types of cosmetic surgery and who had had negative experiences. One such contributor was Miss B who had agreed to participate in the programme anonymously. Although she was shown in silhouette in the programme, her first name was shown in caption and a post-operative photograph of Miss B's facial profile was included.

Miss B complained that her privacy was unwarrantably infringed in the programme as broadcast in that her identity was disclosed without her consent.

In summary, Ofcom found that:

Miss B had a legitimate expectation of privacy in that she had been assured by the programme makers that her contribution would be anonymous and her identity would not be disclosed in the programme. However, Miss B was identified in the programme. Although Ofcom recognised that there was a public interest in the programme's examination of the cosmetic surgery industry, it did not, in the particular circumstances of this case, outweigh Miss B's right to privacy. Therefore, Ofcom found that Miss B's privacy was unwarrantably infringed in the programme as broadcast.

#### Introduction

On 20 July 2010, Channel 4 broadcast an edition of its series *The Ugly Face of Beauty*, which examined the cosmetic surgery industry and provided advice to those considering undergoing surgery.

This particular edition focused on the procedure known as the "tummy tuck" and included contributions from people who had undergone the surgical procedure. It also included contributions from other people who had undergone other types of cosmetic surgery, such as breast implants and liposuction. During the programme, the presenter stated that one-in-five patients admitted to being less happy with their bodies after cosmetic surgery. This was followed by a number of short case studies in which people who had had cosmetic surgery told their story. One such contributor was the complainant, Miss B.

Miss B, who had undergone a face lift and liposuction, stated in the programme that:

*"Nobody told me about complications. I took it for granted that there would be aftercare. It was left down to myself to have my stitches out which I had to do on the NHS – and they weren't very pleased. I don't regret having the surgery; I simply regret having chosen the people to do it that I chose".*

Miss B was shown in silhouette and her voice was electronically altered during her contribution. However, the caption showing Miss B's first name and "*face lift and liposuction*" was shown at the beginning of her contribution and post-operation photographs of her buttocks and the left side profile of her face were shown, albeit briefly. This photograph of her face was also shown during the programme's opening sequences.

Miss B complained to Ofcom that her privacy was unwarrantably infringed in the programme as broadcast.

## **The Complaint**

### **Ms B's case**

In summary, Miss B complained that her privacy was unwarrantably infringed in the programme as broadcast in that her identity was revealed by the disclosure, without her consent, of her first name and a photograph of her face that had not been altered in any way.

Miss B said that she had agreed to contribute to the programme on the basis that she would remain anonymous and that she had signed an agreement with the programme makers to that effect. Miss B said that, although she was shown in silhouette and her voice disguised, the use of her real name and the photograph of the side of her face confirmed her identity.

### **Channel 4's case**

In summary and in response to Miss B's complaint, Channel 4 said that it accepted that Miss B agreed to participate in the programme on the basis that her identity would be obscured.

It said that the photograph of her face included in the broadcast was one of a number of photographs which were provided to the programme makers by Miss B. Channel 4 said that Miss B had advised the programme makers that some of the photographs could not be used in the programme, but that others, including the photograph of her face that actually appeared in the programme, could be used. It said that Miss B had taken the view that her identity could not be revealed by the photograph because the damage caused by her cosmetic surgery (which the photograph depicted) made her unrecognisable.

Channel 4 said that Miss B had told the programme makers that she was keen to be involved and for her photographs to be used, but that she was anxious to ensure that her interview for the programme would be filmed and edited in such a way that her identity would be concealed. As the programme makers understood it, Channel 4 said that Miss B saw no tension between her expressed desire to remain anonymous and the publication of the photographs she had provided, as she thought that she was not recognisable in those photographs.

Channel 4 said that before broadcast, the programme was reviewed by the programme makers' lawyer as well as a senior member of Channel 4's legal and compliance team. It said that both reviewers had questioned why it was permissible to include the unobscured photograph in the programme, which appeared to be contrary to the purpose of obscuring Miss B in the interview footage. However, Channel 4 said that the programme makers confirmed to it that Miss B had said that the photograph could be broadcast because she did not feel that she was identifiable

in it. Channel 4 said that the photograph was allowed to remain in the programme as broadcast because it understood that Miss B had given her permission for the photograph to be included in the programme.

Channel 4 said that the use of Miss B's first name in the programme would not, without the presence of the photograph, identify her to viewers. It said that the first names of all other contributors were used in the programme and that the use of Miss B's conformed to the editorial technique adopted.

### **Ms B's comments**

In summary and in response to Channel 4's statement, Miss B said that she had not sent the programme makers a set of photographs from which some could be used in the programme. Miss B also said that at no time did she tell the programme makers that the photographs of her did not look anything like her anymore and at no time did she give her permission for the photographs to be used.

Miss B said that Channel 4's argument for using her first name in the programme was that it followed the editorial technique adopted for it. However, she said that since she was the only contributor to the programme who had requested anonymity, she could not see any justification in using her name in the programme.

### **Channel 4's response**

In summary and in response to Miss B's comments, Channel 4 said that the programme makers had confirmed to it that Ms B had provided various photographs to them and that these had been divided into two groups: those which Ms B thought identified her and those which she thought did not. Channel 4 said that this was also confirmed by the amendment made by Ms B to the release form. The amendment, which Channel 4 said was written in Miss B's own handwriting, stated:

"I agree to no photos where I am recognisable to be used as irreconisable [sic] photos are acceptable".

Channel 4 said that there would have been no point to this amendment unless there was a class of photographs provided by Ms B in which she thought she was "irreconisable". The photograph which appeared in the programme was one which Ms B had indicated she thought was one in which she was "irreconisable". It was, therefore, used with her express consent.

Channel 4 said that the use of Miss B's first name would be insufficient to identify Ms B but for the use of the photograph (which had been categorised by Ms B as one in which she was "irreconisable"). It said that her anonymity could not be breached by the use of her first name alone.

### **Miss B's further comments**

Miss B said that she had not made the handwritten amendment to the consent form and that she thought the amendment was made after she had signed the agreement.

### **Channel 4's further comments**

Channel 4 acknowledged that it had made an administrative error in its earlier submissions and that the amendment to the consent form was made by one of the programme making team and not by Miss B. However, Channel 4 said that the

amendment was made at Miss B's instigation and was made before she signed the form.

## 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 both from unfair treatment in programmes included in such services and unwarranted infringements of privacy resulting from activities carried on for the purposes of such programmes.

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 a recording of the programme as broadcast, a transcript of it and written submissions from both parties.

In Ofcom's view, the individual's right to privacy has to be balanced against the competing rights 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 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 Ofcom's Broadcasting Code ("the Code"), which states that any infringement of privacy in programmes or in connection with obtaining material included in programmes must be warranted. Ofcom also had regard to 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 is warranted.

Ofcom considered Miss B's complaint that her privacy was unwarrantably infringed in the programme as broadcast in that her identity was revealed by the disclosure of her first name and an unobscured photograph of her face without her consent.

In considering whether or not there had been an unwarranted infringement of Miss B's privacy in the programme as broadcast, Ofcom first considered the extent to which Miss B could have had a legitimately expected that her identity would not be revealed or disclosed in the programme.

Ofcom noted the following email exchange on 17 September 2009 between the programme makers and Channel 4's compliance lawyer:

Channel 4's lawyer:	"The lady we show in silhouette [Miss B]. Does she know that she may be identifiable to some in the photo we show of her with bruising?"
Programme makers:	"The lady has let us have photos where she says she doesn't look anything like her anymore and is happy for us to use them."

Having examined the written submissions of the parties to this complaint, it was clear to Ofcom that there was a conflict between the programme makers' recollection and that of Miss B as to whether post-operative photographs of her could or could not be used in the programme. It was also noted that there was an absence of any contemporaneous notes of any conversations that took place between them on this issue. However, Ofcom took note of the email exchanges between Miss B and the programme makers prior to the interview that addressed the issue of her anonymity. In particular, Ofcom noted that in an email dated 1 June 2009, the programme makers had thanked Miss B:

“for agreeing to do an **anonymous** [Ofcom's emphasis] interview for our cosmetic surgery programme”.

Ofcom also took note of other documentary material provided to it. In particular, it noted that an agreement between the programme makers and Miss B contained an additional handwritten clause that stated: “This interview is anonymous”. It also noted that a handwritten clause had been added to a licence agreement between the programme makers and Miss B that stated: “I agree to no photos where I am recognisable to be used as irrecognisable [sic] photos are acceptable”.

Ofcom took the view that the above clauses and the email from the programme makers dated 1 June 2009 left little doubt that Miss B wished her contribution to be anonymous and did not want her identity to be disclosed in the programme.

Ofcom took the view that from the email and other documentary material referred to above demonstrated that the programme makers had understood that Miss B wanted to remain anonymous and that by filming her in silhouette and disguising her voice would have given her an additional assurance that steps were being taken to ensure that her identity would not be disclosed in the programme as broadcast. Ofcom considered that it was clear that the steps to be taken to ensure Miss B's anonymity were fundamental to her decision to participate in the programme.

Taking all the above factors into account, Ofcom considered that Miss B had a legitimate expectation of privacy and that her contribution to the programme would be anonymous and that her identity would not be revealed or disclosed in the programme as broadcast without her consent.

Having found that Miss B had a legitimate expectation of privacy, Ofcom considered whether or not the programme as broadcast conformed to that expectation. Ofcom noted that Miss B was shown being interviewed in silhouette in the programme and her voice was disguised. The programme also included an unobscured, post-operative photograph of Miss B's face in profile and captioned her contribution with her first name. Ofcom recognised that taken alone, the use of her first name would not have necessarily have made Miss B identifiable in the programme. However, the effect of the use of her name and the use of the photograph of her profile along with her being shown in silhouette resulted in Miss B being identifiable in the programme as broadcast.

Ofcom went on to consider the broadcaster's competing right to freedom of expression and the public interest in examining the cosmetic surgery industry and the viewer's right to receive information and ideas without unnecessary interference. Ofcom considered whether, in the circumstances, there was a sufficient public interest to justify disclosing Miss B's identity in the programme without her consent.



While Ofcom noted that Channel 4 did not advance a public interest justification in its submissions for disclosing Ms B's identity, Ofcom considered that there was a degree of public interest in examining the cosmetic surgery industry and, in particular, the potential risks that can accompany cosmetic surgical procedures. Ofcom recognised that the inclusion of contributions from individuals who had undergone cosmetic surgery was an important and effective way of communicating to viewers the potential risks involved. However, Ofcom considered that information relating to Miss B's identity was disclosed in the programme without her consent and contrary to her agreement with the programme makers that her contribution would be anonymous. Ofcom concluded that the broadcaster's right to freedom of expression to include Miss B's contribution in the manner it was did not outweigh her right to privacy.

In these circumstances, Ofcom was satisfied that, on balance, the broadcaster's right to freedom of expression did not outweigh her right to privacy and that the public interest in examining the cosmetic surgery industry did not justify the intrusion into Miss B's private life. Ofcom therefore found that Miss B's privacy was unwarrantably infringed in the programme as broadcast.

**Accordingly, Ofcom has upheld Miss B's complaint that her privacy was unwarrantably infringed in the programme as broadcast.**

## Not Upheld

### Complaint by Ms Denise Francis

*The Wire, The Hillz FM, 15 March 2010*

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**Summary:** Ofcom has not upheld this complaint of unfair treatment and unwarranted infringement of privacy in the programme as broadcast.

This programme (which was a repeat of a broadcast four days earlier) included a sequence of comments that appeared to be directed at Ms Denise Francis, a former presenter and volunteer at The Hillz FM community radio station. The comments were made by a presenter, Mr Gino Shankle (alias “DX9”), who referred to Ms Francis by her radio alias “Delicious” and made remarks that alluded to her dismissal from co-presenting the programme with him.

Ms Francis complained to Ofcom that she was treated unfairly and that her privacy was unwarrantably infringed in the broadcast of the programme, and the repeat broadcast, in that she was identified as the subject of Mr Shankle’s comments which were “malicious and degrading”.

Ofcom found the following:

- Ofcom recognised the personally hurtful (to Ms Francis) nature of Mr Shankle’s comments; however, it considered that they were unlikely to affect viewers’ understanding of Ms Francis in a way that was unfair to her.
- Ofcom considered that the use of Ms Francis’ radio alias would have made her identifiable to some listeners. However, Ofcom took the view that the use of her alias in the context of comments that, although personally hurtful (to Ms Francis), did not disclose any information that could reasonably be regarded as being of a particularly private nature or attracting a degree of privacy. Therefore, Ofcom concluded that Ms Francis did not have a legitimate expectation of privacy in the broadcast of the programme.

#### Introduction

On 15 March 2010, Watch Limited, the Ofcom licensee, broadcast on its station “The Hillz FM” (a community radio station which transmits to the Coventry and Warwickshire area) a repeat edition of *The Wire*. The programme was presented by Mr Gino Shankle, also known by his alias “DX9”. The programme was originally broadcast on 11 March 2010.

During the broadcast Mr Shankle made a series of comments in the programme that lasted for approximately 12 minutes that the complainant, Ms Denise Francis, believed referred to her. The first of these comments asked listeners to:

*“Just listen to this jingle and find out what’s missing”.*

A jingle was played which informed listeners that they are listening to *“The Wire with DX9”*. Mr Shankle repeatedly asked what was missing from the jingle and repeatedly played it to the background of his own laughing. After playing the jingle another time, Mr Shankle stated:

*“Holed up in my house trying to start stuff, and do crazy things. Listen to this, let me do it again”.*

At this point, the jingle was played again with the comment: *“DX9 on the programme”*. Mr Shankle then said *“Bye Delicious”* (“Delicious” being Ms Francis’ asserted alias) whilst laughing. Music was then played during which Mr Shankle made the following comments:

*“That’s what I’m talking about. Go and have your fun girl cause we know the truth”.*

*“There’s a limit to everything baby and you reached your limit. Got anything to say?”* [station’s telephone number is read out].

*“This is it baby, like the Michael Jackson thing. He ain’t going on stage no more”.*

*“Sweet dreams, baby. Sweet dreams”.*

By way of background to the complaint, Ms Francis, had been a volunteer co-presenter with Mr Shankle on previous editions of the programme. She said that the jingle played in the programme had been created for her by Freddie MacGregor, a well-known reggae artist, for the programme and that her alias “Delicious” was edited from the jingle. Ms Francis said that her working relationship with Mr Shankle had deteriorated over time and that she had eventually been “forced out” by the radio station. She said that Mr Shankle’s comments made in the programme referred to her and to her dismissal.

Ms Francis has complained to Ofcom that she was treated unfairly in the programme as broadcast and that her privacy was unwarrantably infringed in the making and broadcast of the programme.

## **The Complaint**

### **Ms Francis’ case**

#### Unfair treatment

In summary, Ms Francis complained that she was treated unfairly in the programme as broadcast in that:

- a) She was the subject of malicious and degrading remarks by Mr Shankle in the programme who used it as a forum to publicly “attack” her. In particular, Ms Francis complained that:
  - Mr Shankle’s continued playing of the edited version of the jingle was aimed at causing offence to her. Her alias “Delicious” had been edited out of the jingle and the words *“DX9 run the programme”* were edited in.
  - Mr Shankle’s reference to being *“Holed up in my house trying to start stuff, and do crazy things”* was, she assumed, a reference to her seeking assistance from the broadcaster’s management about Mr Shankle’s behaviour towards her and that he had not liked it.

- Mr Shankle's other remarks and choice of music played was directed at her and her dismissal from co-presenting the programme.

### Privacy

In summary, Ms Francis complained that her privacy was unwarrantably infringed in the broadcast of the programme in that:

- b) Mr Shankle's use of Ms Francis' alias "*Delicious*" in the programme identified her to listeners as the subject of his comments.

### **Watch Limited's case**

#### Unfair treatment

In summary, and in response to the Ms Francis' complaint of unfair treatment in the programme as broadcast, Band Hatton Solicitors ("Band Hatton") responded on behalf of Watch Limited. In particular, Band Hatton said that:

- a) Watch Limited denied that any of the remarks made by Mr Shankle were directed at Ms Francis and, in any event, the remarks made were neither malicious nor degrading in their content in a pure or a literal sense.

In respect of the playing of the jingle, Band Hatton said that Watch Limited did not understand how it could be deemed offensive in any way. Furthermore, it was factually correct for Mr Shankle to say on the programme that "*DX9 on the programme*" as his alias was "*DX9*" and he was in control of his programme.

In relation to Mr Shankle's comments "*holed up in my house trying to start stuff and do doing crazy things*", Band Hatton said that the comments had nothing to do with and was not connected in any way to Ms Francis. It said that Watch Limited said that the comment was made by Mr Shankle in the form of "American Slang" about songs he had played during the programme and that Mr Shankle had a reputation for making "off the cuff" and seemingly irrelevant remarks about the records he has played, or events, in general.

Band Hatton said that the comment "*Bye Delicious*" was a simple truth in that Mr Shankle was saying goodbye to Ms Francis whose association with the station had come to an end. It said that the other comments made by Mr Shankle (and set out in the Introduction above) were references to songs that he had played on that and previous programmes. Band Hatton said that the comment, "*sweet dreams baby, sweet dreams*" was a specific reference to a locally produced version of 'The Eurythmics' classic song by a local artist called Shiloh.

### Privacy

In summary, and response to the Ms Francis' complaint of unwarranted infringement of privacy in the programme as broadcast Band Hatton said that:

- a) Watch Limited disagreed that any privacy was infringed unwarrantably or otherwise. During the time Miss Francis' time worked for the station, her radio alias was "Delicious". Band Hatton said that Watch Limited failed to see how privacy would have been infringed when knowledge of her alias had been in the public domain for some time. In relation to the comments made by Mr Shankle in the programme, again, Watch Limited denied that any of the comments could be

described as malicious or degrading in any way and that at worst they could be described as being flippant or possibly sarcastic.

## 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 a recording of the relevant part of the programme as broadcast (provided to Ofcom by the complainant)<sup>1</sup> and written submissions and supporting material from both parties.

### Unfair treatment

When determining complaints of unfair treatment, Ofcom considers whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of the Code. In this case it also considered whether the portrayal of Ms Francis was consistent with the broadcasters' obligation to ensure that material facts have not been presented in a way that was unfair to her (as outline in Practice 7.9 of the Code).

- a) Ofcom considered the complaint that Ms Francis was subject to malicious and degrading remarks by Mr Shankle who used it as a forum to publicly "attack" her in the programme.

In deciding Ms Francis' complaint of unfair treatment, Ofcom first considered whether or not the comments made by Mr Shankle in the programme were, in fact, directed at Ms Francis or if listeners would have been able to ascertain from the comments that it was Ms Francis to whom he referred. While Ofcom had regard to the instances particularised by Ms Francis in her complaint, Ofcom considered it to be appropriate to consider the comments made by Mr Shankle in the programme (and the context in which they were made) in their entirety rather than considering each one separately.

Ofcom acknowledged that there was a conflict of evidence between the complainant and the broadcaster about the whether or not the comments made by Mr Shankle in the programme were directed at Ms Francis. In this particular case, Ofcom noted the submission by Band Hatton made on behalf of the broadcaster which stated that Mr Shankle's comments were, largely, references to songs played on the programme. The only reference admitted to be made about Ms Francis was "*Bye Delicious*", which, according to Band Hatton's

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<sup>1</sup> Due to a technical failure, the broadcaster was unable to provide Ofcom with a recording of the programme as broadcast. A recording provided by the complainant was relied upon instead.

submission, was a “simple truth” in that Mr Shankle was saying goodbye to her because she had left the station by that point.

Having listened carefully to the relevant part of the programme, Ofcom was not convinced that Mr Shankle’s comments were unconnected to Ms Francis and the fact that she was no longer co-presenting the programme. From the nature and tone of Mr Shankle’s remarks, and the sequence in which they were made, it was clear to Ofcom that his comments were directed at Ms Francis and that they were said in the context of her dismissal from the radio station and from co-presenting on the programme.

In Ofcom’s view, Mr Shankle’s comments would have hurt and upset Ms Francis. It also considered that it was inappropriate for Mr Shankle to use his position as the presenter of the programme to make such comments about Ms Francis and her dismissal. However, despite the personally hurtful nature of his comments to Ms Francis, Ofcom considered that they were unlikely to materially affect listeners’ understanding of Ms Francis, or the circumstances in which she left the radio station, in a way that was unfair to her.

Ofcom was concerned that the presenter made comments of a personally hurtful nature to Ms Francis, and for the broadcaster to repeat the broadcast of the programme unedited. However, Ofcom concluded, having taken the above factors into account, that it was satisfied that no unfairness to Ms Francis had resulted from the inclusion of the comments, in themselves, in the programme (and the repeat broadcast).

Ofcom therefore has not upheld this Ms Francis’ complaint of unfair treatment in the programme as broadcast.

### Privacy

- b) Ofcom considered the complaint that the use of Ms Francis’s radio alias “*Delicious*” in the programme identified her to listeners as the subject of Mr Shankle’s comments.

In Ofcom’s view, the individual’s right to privacy has to be balanced against the competing rights 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 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 Ofcom’s Broadcasting Code (“the Code”), which states that any infringement of privacy in programmes or in connection with obtaining material included in programmes must be warranted.

In considering whether or not Ms Francis’ privacy was unwarrantably infringed in the programme as broadcast, Ofcom first considered the extent to which she could have legitimately expected that her identity would not be revealed or disclosed to listeners.

Ofcom noted the comments made by Mr Shankle in the programme (as set out in the Introduction above) and, in particular, Ofcom noted Mr Shankle’s direct reference to Ms Francis: “*Bye, Delicious*”. Ofcom had already satisfied itself (see

head a) of the Decision above) that Mr Shankle's comments were directed at Ms Francis and made in the context of her dismissal from co-presenting the programme.

Ofcom then considered the character of the information that was revealed or disclosed in the programme and the context in which it was disclosed. In Ofcom's view, a person's name or identity is not, in itself, information that necessarily attracts a significant expectation of privacy, though the context in which a person is named or rendered identifiable could afford them a legitimate expectation of privacy. In this particular case, Ofcom acknowledged that Ms Francis' real name was not mentioned by Mr Shankle in his comments and that only her radio alias was referred to once. Although Ms Francis was referred to by her radio alias, Ofcom took the view that her identity would have been known by her colleagues at the radio station, and it was likely that some listeners (e.g. family and personal acquaintances) would have known that "Delicious" was Ms Francis. Ofcom considered, therefore, that Ms Francis would have been identifiable from Mr Shankle's reference in the programme to her radio alias.

Returning to the comments made by Mr Shankle that were actually broadcast and whether they disclosed any private information about Ms Francis, in Ofcom's view it is unlikely that listeners (without prior knowledge of the circumstances of Ms Francis' dismissal from the programme) to have understood that Ms Francis was no longer co-presenting and the circumstances. While Ofcom recognised the personally hurtful (to Ms Francis) nature of Mr Shankle's comments, Ofcom considered however that they did not, in themselves, disclose any information that could be regarded as particularly private in nature or attracting a degree of privacy. Ofcom therefore concluded that Ms Francis did not have an expectation of privacy in regard to the use of her radio alias in the context of comments made by Mr Shankle that did not, in themselves, disclose or reveal anything of a private nature about her.

Given Ofcom's view that no information had been disclosed of a particularly private nature, Ofcom considered that Ms Francis had no legitimate expectation of privacy in relation to the reference by Mr Shankle to her radio alias in the programme. Therefore, Ofcom concluded that it was not necessary for it to go on to consider whether any intrusion into Ms Francis' private life was warranted.

Ofcom therefore found that there was no unwarranted infringement of Ms Francis' privacy in the programme as broadcast and has not upheld this element of her complaint.

**Accordingly, Ofcom has not upheld Ms Francis' complaint of unfair treatment and unwarranted infringement of privacy in the programme as broadcast.**

## Other Programmes Not in Breach

Up to 18 April 2011

Programme	Transmission Date	Broadcaster	Categories	Number of complaints
"More Music Variety" slogan	n/a	Heart FM	Materially misleading	1
10 O'Clock Live	24/03/2011	Channel 4	Generally accepted standards	1
10 O'Clock Live	07/04/2011	Channel 4	Religious/Beliefs discrimination/offence	3
10 O'Clock Live	07/04/2011	Channel 4	Generally accepted standards	3
118 118's sponsorship of ITV Movies	17/03/2011	ITV2	Violence and dangerous behaviour	1
16 & Pregnant	31/03/2011	MTV	Animal welfare	1
4thought.tv	06/04/2011	Channel 4	Animal welfare	1
5 News Weekend	09/04/2011	Channel 5	Advertising scheduling	1
90210 (trailer)	28/03/2011	E4	Sexual material	1
A Different Breed	06/04/2011	Sky1	Animal welfare	1
A Referendum Broadcast on Behalf of the No Campaign	11/04/2011	ITV1	Due impartiality/bias	1
A Referendum Broadcast on Behalf of the No Campaign	11/04/2011	ITV1	Generally accepted standards	1
A Referendum Broadcast on Behalf of the Yes Campaign	12/04/2011	ITV1	Crime	1
Act Your Age	30/04/2011	BBC Radio 4	Generally accepted standards	1
Afternoon Report	07/04/2011	Sky Sports News	Generally accepted standards	1
Ahlulbayt TV	29/01/2011	Ahlulbayt TV	Sexual orientation discrimination/offence	1
Antiques Road Trip	07/02/2011	BBC 2	Materially misleading	1
Aviva's sponsorship of ITV Drama Premiers	n/a	ITV1	Gender discrimination/offence	2
BBC News	10/04/2011	BBC 1	Information/warnings	1
Being N-Dubz (trailer)	07/04/2011	Channel 4	Offensive language	1
Benidorm	25/03/2011	ITV1	Animal welfare	2
Benidorm	25/03/2011	ITV1	Disability discrimination/offence	1
Brainiac: Science Abuse	02/04/2011	Pick TV	Drugs, smoking, solvents or alcohol	1
Brainiac: Science Abuse	12/04/2011	Pick TV	Sexual material	1
Brainiac: Science Abuse	14/04/2011	Pick TV	Sexual material	1
Britain's Got More Talent	16/04/2011	ITV2	Offensive language	1
Britain's Got Talent	16/04/2011	ITV1	Materially misleading	2
Cabaret	21/03/2011	BBC 2	Generally accepted standards	1
Campus	05/04/2011	Channel 4	Offensive language	2
Campus (trailer)	11/04/2011	Channel 4	Sexual material	1



Capital Breakfast With Johnny and Lisa	18/03/2011	Capital Radio	Generally accepted standards	1
Casualty	19/02/2011	BBC 1	Disability discrimination/offence	1
Celebrity Juice	28/03/2011	ITV2	Offensive language	1
Celebrity Who Wants to be a Millionaire?	02/04/2011	ITV1	Participation TV	1
Celebrity Who Wants to be a Millionaire?	02/04/2011	ITV1	Competitions	2
Champions League Football	05/04/2011	Sky Sports 2	Generally accepted standards	3
Channel 4 News	26/03/2011	Channel 4	Due impartiality/bias	1
Channel 4 News	12/04/2011	Channel 4	Violence and dangerous behaviour	1
Channel 4 News	16/04/2011	Channel 4	Due accuracy	1
Channel 4 News	15/07/2010	Channel 4	Due impartiality/bias	1
Channel 4 Pigeon ident	02/03/2011	Channel 4	Animal welfare	1
Channel Promotion	01/04/2011	Comedy Central	Hypnotic and other techniques	1
Channel Promotion	27/03/2011	Comedy Central	Hypnotic and other techniques	1
Channel Promotion	04/04/2011	Comedy Central	Hypnotic and other techniques	1
Channel Promotions	n/a	Comedy Central	Hypnotic and other techniques	2
Chase & Status "Time"	28/03/2011	BBC Radio 1	Offensive language	1
Civilization: Is the West History?	03/04/2011	Channel 4	Due impartiality/bias	1
Club Reps	24/03/2011	Pick TV	Sexual orientation discrimination/offence	1
Come Dine with Me	03/04/2011	Channel 4	Generally accepted standards	2
Come Dine With Me	08/04/2011	Discovery Real Time +1	Animal welfare	1
Come Dine With Me	12/04/2011	More4	Scheduling	1
Comic Relief 2011	18/03/2011	BBC 1	Disability discrimination/offence	2
Comic Relief 2011	18/03/2011	BBC 1	Animal welfare	1
Comic Relief 2011	18/03/2011	BBC 2	Offensive language	2
Competition	28/03/2011	Absolute Radio	Competitions	1
Continuity	21/03/2011	E4	Flashing images/risk to viewers who have PSE	1
Continuity announcement	26/03/2011	Channel 4	Religious/Beliefs discrimination/offence	1
Coronation Street	14/04/2011	ITV1	Product placement	1
Coronation Street	25/03/2011	ITV1	Disability discrimination/offence	1
Coronation Street	28/03/2011	ITV1	Disability discrimination/offence	1
Coronation Street	11/04/2011	ITV1	Violence and dangerous behaviour	3
Coronation Street	14/04/2011	ITV1	Disability discrimination/offence	3
Coronation Street	11/04/2011	ITV1	Race	1

			discrimination/offence	
Coronation Street	14/04/2011	ITV1	Drugs, smoking, solvents or alcohol	1
Crimes That Shook Britain	17/04/2011	Crime Investigation Network	Materially misleading	1
Dad's Having a Baby: A Bodys shock Special (trailer)	03/04/2011	Channel 4	Generally accepted standards	1
Dad's Having a Baby: A Bodys shock Special (trailer)	06/04/2011	Channel 4	Generally accepted standards	1
Dad's Having a Baby: A Bodys shock Special (trailer)	n/a	Channel 4	Generally accepted standards	1
Dancing on Ice	23/01/2011	ITV1	Generally accepted standards	4
Dancing on Ice	27/02/2011	ITV1	Advertising minutage	1
Daybreak	06/04/2011	ITV1	Race discrimination/offence	1
Daybreak	15/04/2011	ITV1	Generally accepted standards	1
Daybreak	14/04/2011	ITV1	Generally accepted standards	1
Deal or No Deal	17/04/2011	Channel 4	Generally accepted standards	1
Dirty Rotten Scoundrels	27/03/2011	BBC 2	Offensive language	2
Dirty Sexy Funny: Olivia Lee	03/04/2011	Comedy Central	Generally accepted standards	1
Dirty Sexy Funny: Olivia Lee	11/04/2011	Comedy Central	Sexual orientation discrimination/offence	1
Dirty Sexy Funny: Olivia Lee (trailer)	27/03/2011	Comedy Central	Generally accepted standards	1
Dirty Sexy Funny: Olivia Lee (trailer)	n/a	Comedy Central	Generally accepted standards	1
Dispatches	14/03/2011	Channel 4	Due impartiality/bias	2
Dispatches	04/04/2011	Channel 4	Due impartiality/bias	1
Doctors	12/04/2011	BBC 1	Disability discrimination/offence	1
Down The Line	29/03/2011	BBC Radio 4	Offensive language	1
EastEnders	15/04/2011	BBC 1	Under 18s in programmes	2
EastEnders	04/04/2011	BBC 1	Drugs, smoking, solvents or alcohol	1
Election broadcast for and against AV referendum		BBC, ITV, Channel 4	Due accuracy	1
Elite Nights	18/03/2011	Elite TV2	Participation TV - Offence	1
Embarrassing Bodies	01/04/2011	Channel 4	Nudity	1
Entourage	24/03/2011	Sky Atlantic	Offensive language	1
Eye of the Needle	19/03/2011	MGM HD	Scheduling	1
Fehm-e-deen	01/03/2011	Takbeer TV	Premium rate services	2
Fern	06/04/2011	Channel 4	Generally accepted standards	4
Fern	07/04/2011	Channel 4	Violence and dangerous behaviour	1
Glenn Martin DDS	12/04/2011	Sky1	Violence and dangerous behaviour	1

Great British Hairdresser	04/04/2011	E4	Generally accepted standards	1
Harry Hill's TV Burp	26/03/2011	ITV1	Sexual material	1
Have I Got News for You	15/04/2011	BBC 1	Race discrimination/offence	1
Hell's Kitchen USA	11/04/2011	ITV2	Generally accepted standards	1
Heston's Fairytale Feast	28/03/2011	Channel 4	Animal welfare	1
Hollyoaks	18/03/2011	Channel 4	Product placement	1
Hollyoaks	24/03/2011	Channel 4	Violence and dangerous behaviour	1
Hollyoaks	28/03/2011	Channel 4	Generally accepted standards	1
Hollyoaks	28/03/2011	Channel 4	Materially misleading	1
Hollyoaks	23/03/2011	E4	Violence and dangerous behaviour	1
Hollyoaks	19/03/2011	E4+1	Nudity	1
Hollyoaks Omnibus	10/04/2011	Channel 4	Generally accepted standards	1
International Football	29/03/2011	ITV1	Sexual orientation discrimination/offence	1
International Football	27/03/2011	ITV1	Disability discrimination/offence	1
ITV News	15/03/2011	ITV1	Product placement	1
ITV News	26/03/2011	ITV1	Generally accepted standards	1
ITV News	13/04/2011	ITV1	Violence and dangerous behaviour	1
ITV News	28/03/2011	ITV1	Generally accepted standards	1
Jamie's Dream School	16/03/2011	Channel 4	Crime	1
Jersey Shore (trailer)	31/03/2011	MTV	Race discrimination/offence	1
Jersey Shore (trailer)	05/04/2011	MTV	Race discrimination/offence	1
Jersey Shore (trailer)	15/04/2011	VH1	Race discrimination/offence	1
Joop's sponsorship of Law and Order	n/a	FX	Sexual material	2
Junior Doctors	24/02/2011	BBC Three	Offensive language	1
Justice (trailer)	01/04/2011	BBC News Channel	Race discrimination/offence	1
Ke\$ha "Tik Tok"	18/04/2011	BBC Radio 1	Drugs, smoking, solvents or alcohol	1
Ken Livingstone	26/03/2011	LBC 97.3FM	Elections/Referendums	1
Kitni Mohabbat Hai (trailer)	08/03/2011	Imagine Dil Se	Sexual material	1
Lady Gaga "Born this Way"	05/03/2011	Viva	Sexual material	1
Lady Gaga "Born this Way"	13/03/2011	Viva	Sexual material	1
Law and Order	01/04/2011	Channel 5	Violence and dangerous behaviour	1
Law and Order: UK	28/03/2011	ITV1	Under 18s in programmes	1
Legally Blonde	06/04/2011	BBC 3	Offensive language	1
Lewis	03/04/2011	ITV1	Product placement	1

Limmy's Show	17/02/2011	BBC 2 Scotland	Transgender discrimination/offence	1
Little Princess	06/03/2011	Channel 5	Harm	2
Live at Five	02/03/2011	Sky News	Due accuracy	1
Live at the Apollo	09/04/2011	BBC 1	Generally accepted standards	1
Live Football Special	02/04/2011	Sky Sports 2	Offensive language	39
London Tonight	28/03/2011	ITV1 London	Generally accepted standards	1
Lookaround	04/04/2011	ITV1 Border (Scottish)	Due accuracy	1
Loose Women	29/03/2011	ITV1	Race discrimination/offence	1
Loose Women	07/04/2011	ITV1	Offensive language	1
Louie Spence's Showbusiness	30/03/2011	Sky1	Religious/Beliefs discrimination/offence	1
Mamma Mia!	09/04/2011	ITV1	Offensive language	4
Martina Cole's The Runaway	31/03/2011	Sky1	Generally accepted standards	1
Martina Cole's The Runaway	07/04/2011	Sky1	Offensive language	1
Match of the Day	02/04/2011	BBC 1	Offensive language	1
Match of the Day	09/04/2011	BBC 1	Offensive language	1
Meridian Tonight	30/03/2011	ITV1 Meridian	Due accuracy	1
Mid Day Munch competition	09/03/2011	Radio Hartlepool	Competitions	1
Midsomer Murders	22/03/2011	ITV1	Violence and dangerous behaviour	1
Midsomer Murders	22/03/2011	ITV1	Sexual material	1
Midsomer Murders	23/03/2011	ITV1	Generally accepted standards	1
Midsomer Murders	30/03/2011	ITV1	Offensive language	1
Midsomer Murders	30/03/2011	ITV1	Sexual material	1
Midsomer Murders	01/04/2011	ITV1	Violence and dangerous behaviour	1
Midsomer Murders	26/03/2011	ITV3	Religious/Beliefs discrimination/offence	1
Mock the Week...Again	30/03/2011	BBC 2	Offensive language	1
My Brother the Islamist	04/04/2011	BBC 3	Generally accepted standards	1
News	26/03/2011	BBC / Sky News	Due impartiality/bias	1
News	14/04/2011	Press TV	Due impartiality/bias	1
News		Real Radio North West	Generally accepted standards	1
Nick Ferrari	28/03/2011	LBC 97.3FM	Due impartiality/bias	1
OK! TV	28/03/2011	Channel 5	Undue prominence	1
OK! TV	13/04/2011	Channel 5	Race discrimination/offence	1
OMG! With Peaches Geldof	06/03/2011	ITV2	Generally accepted standards	4
OMG! With Peaches Geldof	08/03/2011	ITV2	Generally accepted standards	2
OMG! With Peaches Geldof	02/03/2011	ITV2	Generally accepted	1

			standards	
OMG! With Peaches Geldof	09/03/2011	ITV2	Generally accepted standards	1
OMG! With Peaches Geldof	15/03/2011	ITV2	Offensive language	1
OMG! With Peaches Geldof	05/04/2011	ITV2	Generally accepted standards	1
Paranormal Activity 2 (trailer)	26/03/2011	Sky Living	Scheduling	2
Paranormal Activity 2 (trailer)	28/03/2011	Sky1	Scheduling	4
Paranormal Activity 2 (trailer)	n/a	Sky Channels	Scheduling	1
Party Election Broadcast by the Conservative Party	05/04/2011	BBC 1	Elections/Referendums	1
Party Election Broadcast by the Scottish National Party	05/04/2011	BBC 1 Scotland	Elections/Referendums	1
Pete Waterman on Smooth	n/a	Smooth Radio	Generally accepted standards	1
Press Preview	06/04/2011	Sky News	Generally accepted standards	38
Press Preview	05/04/2011	Sky News	Gender discrimination/offence	1
Programme	28/02/2011	Peace FM community station	Sexual orientation discrimination/offence	1
Programme trailer	25/02/2011	Sky1	Religious/Beliefs discrimination/offence	1
Programming	n/a	Gateway 97.8 (Basildon)	Elections/Referendums	1
Psychic TV	07/04/2011	Big Deal	Participation TV - Misleadingness	1
Psychic TV	n/a	Big Deal	Religious/Beliefs discrimination/offence	1
Quitwithhelp.co.uk's sponsorship of The Chase	18/03/2011	ITV1	Generally accepted standards	1
Real Crime: The Tesco Bomber	11/04/2011	ITV1	Crime	1
Referendum: No Campaign	11/04/2011	Channel 4	Due accuracy	1
Referendum: Yes Campaign	12/04/2011	BBC / ITV / Channel 4 / Channel 5	Due accuracy	1
Referendum: Yes Campaign	12/04/2011	BBC / ITV / Channel 4 / Channel 5	Due accuracy	1
Referendum: Yes Campaign	12/04/2011	Channel 4	Due accuracy	1
Referendum: Yes Campaign	12/04/2011	Channel 4	Due accuracy	1
REM: Perfect Square / Road Movie	23/03/2011	Sky Arts 1	Offensive language	1
Richard Keys and Andy Gray	29/03/2011	Talksport	Generally accepted standards	22
Rihanna "S&M"	04/03/2011	Capital Radio	Sexual material	1
Rihanna "S&M"	07/03/2011	Capital Radio	Sexual material	1
Rihanna "S&M"	08/03/2011	The Mouth	Sexual material	1
Rihanna "S&M"	various	Various radio stations	Sexual material	3

Rihanna "S&M"	04/04/2011	CFM	Sexual material	1
River Cottage Every Day	03/04/2011	More4	Offensive language	1
Rocky	24/03/2011	ITV4	Advertising scheduling	1
Russell Howard's Good News	06/04/2011	BBC 3	Generally accepted standards	1
Russell Howard's Good News	01/04/2011	BBC 3	Race discrimination/offence	1
Russell Howard's Good News	14/04/2011	BBC 3	Religious/Beliefs discrimination/offence	2
Saturday Kitchen	09/04/2011	BBC 1	Materially misleading	10
Saturday Play	02/04/2011	BBC Radio 4	Offensive language	1
Scenes From a Teenage Killing	25/01/2011	BBC 4	Generally accepted standards	1
Scott Mills	29/03/2011	BBC Radio 1	Harm	1
Send in the Dogs	24/03/2011	ITV4	Violence and dangerous behaviour	1
Sex Lessons	10/03/2011	Channel 5	Sexual material	1
Short Circuit	17/04/2011	Channel 5	Violence and dangerous behaviour	1
Six Nations Rugby Union	19/03/2011	BBC 1	Undue prominence	1
Sky Movies (promotion)	07/03/2011	Sky Living	Generally accepted standards	1
Sky News	26/03/2011	Sky News	Due impartiality/bias	1
Sky News	27/03/2011	Sky News	Generally accepted standards	1
Sky News	28/03/2011	Sky News	Animal welfare	1
Sky News	30/03/2011	Sky News	Due accuracy	1
Sky News	30/03/2011	Sky News	Race discrimination/offence	1
Sky News	04/04/2011	Sky News	Generally accepted standards	1
Spartacus: Gods of the Arena	01/04/2011	Sky1	Sexual material	1
Spartacus: Gods of the Arena	04/04/2011	Sky1	Offensive language	1
Stand Up for the Week	02/04/2011	Channel 4	Generally accepted standards	1
Station jingle	04/04/2011	Absolute 80s	Materially misleading	1
Super League	08/04/2011	Sky Sports 2	Nudity	1
Supersize Versus Superskinny Kids	23/03/2011	Channel 4	Generally accepted standards	1
Taking On Tyson	03/04/2011	Discovery	Offensive language	1
The Alan Titchmarsh Show	01/04/2011	ITV1	Sexual material	1
The Alan Titchmarsh Show	15/04/2011	ITV1	Generally accepted standards	1
The Alan Titchmarsh Show	04/04/2011	ITV1	Generally accepted standards	1
The Crimson Petal and the White	06/04/2011	BBC 2	Sexual material	1
The Crimson Petal and the White	13/04/2011	BBC 2	Sexual material	1
The Cube	17/04/2011	ITV1	Competitions	2
The Day After Tomorrow	16/04/2011	Channel 4	Transgender discrimination/offence	1

The Gadget Show	14/03/2011	Channel 5	Advertising/editorial distinction	1
The Grand National	09/04/2011	BBC 1	Generally accepted standards	11
The Great Rift: Africa's Wild Heart	04/04/2011	BBC 2	Generally accepted standards	1
The Jeremy Kyle Show	30/03/2011	ITV1	Generally accepted standards	1
The Jeremy Kyle Show	01/04/2011	ITV1	Generally accepted standards	1
The Lock Up	11/03/2011	BBC Three	Offensive language	1
The Model Agency	06/04/2011	Channel 4	Transgender discrimination/offence	1
The One Show	25/03/2011	BBC 1	Offensive language	1
The One Show	07/04/2011	BBC 1	Religious/Beliefs discrimination/offence	1
The One Show	22/03/2011	BBC 1	Generally accepted standards	1
The Only Way is Essex	05/04/2011	ITV2	Generally accepted standards	1
The Only Way is Essex (trailer)	06/04/2011	ITV2	Nudity	1
The Promise	20/02/2011	Channel 4	Religious/Beliefs discrimination/offence	6
The Promise	13/02/2011	Channel 4	Religious/Beliefs discrimination/offence	3
The Promise	27/02/2011	Channel 4	Religious/Beliefs discrimination/offence	33
The Promise	7-27/2/11	Channel 4	Materially misleading	2
The Reckoning (trailer)	11/04/2011	ITV1	Violence and dangerous behaviour	1
The Reckoning (trailer)	08/04/2011	ITV1	Violence and dangerous behaviour	1
The Restoration Man	31/03/2011	Channel 4	Offensive language	2
The Walking Dead (trailer)	25/03/2011	Channel 5	Scheduling	1
The Worlds Strictest Parents	20/03/2011	BBC Three	Offensive language	1
The Wright Stuff	21/03/2011	Channel 5	Religious/Beliefs discrimination/offence	1
The Wright Stuff	01/04/2011	Channel 5	Due impartiality/bias	1
The Wright Stuff	04/04/2011	Channel 5	Sexual orientation discrimination/offence	1
The Wright Stuff	04/04/2011	Channel 5	Disability discrimination/offence	1
The Wright Stuff	14/04/2011	Channel 5	Generally accepted standards	113
The Wright Stuff	06/04/2011	Channel 5	Generally accepted standards	1
This Is England	09/04/2011	Film 4	Generally accepted standards	1
This Morning	30/03/2011	ITV1	Sexual material	2
This Morning	11/04/2011	ITV1	Competitions	1
This Morning	08/04/2011	ITV1	Gender discrimination/offence	1
This Morning	08/04/2011	ITV1	Generally accepted standards	1

This Morning	11/04/2011	ITV1	Materially misleading	1
This Morning	14/04/2011	ITV1	Sexual orientation discrimination/offence	1
This Morning	14/04/2011	ITV1	Generally accepted standards	1
Tonight	10/03/2011	ITV1 Yorkshire	Due impartiality/bias	1
Top Gear	27/03/2011	BBC 2	Offensive language	1
Top Gear	27/03/2011	BBC 2	Sexual material	1
UEFA Champions League	06/04/2011	ITV1	Offensive language	9
UEFA Champions League	06/04/2011	ITV1	Generally accepted standards	1
Victoria Derbyshire	02/03/2011	BBC Radio 5 Live	Generally accepted standards	1
Waking the Dead	13/03/2011	BBC 1	Religious/Beliefs discrimination/offence	1
Waltz with Bashir (trailer)	27/03/2011	More4	Nudity	4
Waterloo Road	16/03/2011	BBC 1	Generally accepted standards	3
When Piers Met Andrew Lloyd Webber	09/04/2011	ITV1	Generally accepted standards	1
Young Guns	27/03/2011	Channel 5	Advertising scheduling	1