

# **Ofcom Broadcast Bulletin**

**Issue number 186  
18 July 2011**

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## Introduction

Under the Communications Act 2003, Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives<sup>1</sup>, Ofcom must include these standards in a code or codes. These are listed below.

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

- a) Ofcom's Broadcasting Code ("the Code"), which, can be found at: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>.
- b) the Code on the Scheduling of Television Advertising ("COSTA") which contains rules on how much advertising and teleshopping may be scheduled in programmes, how many breaks are allowed and when they may be taken. 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);
  - '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>2</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> The relevant legislation is set out in detail in Annex 1 of the Code.

<sup>2</sup> BCAP and ASA continue to regulate conventional teleshopping content and spot advertising for these types of services where it is permitted.

## Note to Broadcasters

### Proposed pilot period: on air references to websites directly linked to 'apps' for paid-for viewer participation and interaction

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Ofcom recently issued new guidance that the use of 'apps' (applications downloaded to smartphones and related devices) to charge the audience for participation or interaction is an acceptable form of premium-rated telephony service for the purposes of Rule 9.26.

The guidance is available here:

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

We have received enquiries about whether broadcasters could also refer on air to website interfaces that are directly associated with apps being used for those purposes.

Ofcom recognises that evolving technologies in this area offer consumers benefits in terms of cross-platform use and ease of access. We consider that it may therefore be appropriate for Ofcom to conduct a formal review of the scope and application of Rule 9.26 in the near future.

To inform whether such a review is appropriate, we are proposing to open a pilot period, as of 22 August 2011, for one year. **We are now seeking any comments from stakeholders or interested parties, before we proceed to start the pilot period. Details on how to submit and the deadline for doing so, are set out further below.**

#### **What would be allowed during the proposed pilot period?**

We proposed that, during the pilot period, where an app is referred to on air as a means of paid-for viewer participation or interaction under Rule 9.26, it will also be acceptable for the broadcaster to include on air references to **directly linked website interfaces or webpages** as an alternative route by which the viewer can pay for the participation or interaction.

On air references to viewers being able to pay for participation or interaction in programmes via self-standing websites that are not directly linked to apps for these purposes are **not** permitted by Rule 9.26, nor would they be as part of the pilot period. Likewise, references to other independently existing payment methods (e.g. credit or debit cards or other money transfer means) would not currently comply with Rule 9.26, and would **not** be permitted during the pilot period.

To mitigate any potential risk of compliance failures in the conduct of audience competitions or votes during the pilot period, we propose to apply an important safeguard: during the pilot, licensees who refer on air to website interfaces or webpages directly linked to apps as routes for paid-for participation or interaction would **only be able to do so where there are also PRS entry routes**, and third party verification (as required by the Ofcom licence condition) would therefore apply across all routes.

Referring to directly linked websites and webpages may be likely to involve on air references to particular brands, products and services. During the proposed pilot period, licensees would therefore need to exercise particular care to limit such references appropriately to ensure that no issues of promotion or undue prominence arise.

If the pilot period goes ahead, Ofcom would assess its impact and associated issues, and on completion of the year-long pilot, we would seek to reach a view on whether it is appropriate to conduct a more wide-ranging formal review of this area of the Code and its application.

### **Next steps**

Any licensees or other stakeholders who now wish to submit comments on the proposed pilot period should send them by email to John Stables ([john.stables@ofcom.org.uk](mailto:john.stables@ofcom.org.uk)) **no later than 1 August 2011**.

Having considered any comments received, Ofcom will then decide whether to proceed with the proposed pilot period.

We will announce our decision in the Broadcast Bulletin on **22 August 2011**.

## Standards cases

### In Breach

#### Office Girls,

*Sport XXX Girls (Channel 967), 5 April 2011, 22:00*

*Sport XXX Girls (Channel 967), 6 April 2011, 22:00 to 23:00*

*Sport XXX Girls (Channel 967), 10 April 2011, 21:00 to 22:50*

*Sport XXX Girls (Channel 967), 13 April 2011, 21:00 to 22:00*

*Sport XXX Girls (Channel 967), 14 April 2011, 00:00 to 01:00*

#### 40+ Readers Wives

*Essex Babes (Channel 954), 5 April 2011, 22:00 to 23:00*

*Essex Babes (Channel 954), 7 April 2011, 22:00 to 23:00*

*Essex Babes (Channel 954), 10 April 2011, 22:00 to 23:00*

#### Sport XXX1

*Northern Birds (Channel 955), 8 April 2011, 22:00 to 00:00*

*Northern Birds (Channel 955), 10 April 2011, 22:00 to 00:00*

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### Introduction

*Office Girls*, *40+ Readers Wives* and *Sport XXX1* are segments of interactive adult sex chat advertisement content broadcast on the licensed services *Sport XXX Girls*, *Northern Birds* and *Essex Babes*. These services are broadcast on Sky Channels 967, 954 and 955 respectively. The services are freely available without mandatory restricted access and are situated in the 'adult' section of the Sky electronic programme guide ("EPG"). Viewers are invited to contact onscreen presenters via premium rate telephony services ("PRS"). The female presenters dress and behave in a sexually provocative way while encouraging viewers to contact the PRS numbers.

The licences for *Sport XXX Girls*, *Northern Birds* and *Essex Babes* are all held by Satellite Entertainment Limited ("SEL" or "the Licensee"). SEL is therefore responsible for the compliance of the *Office Girls*, *40+ Reader Wives* and *Sport XXX Girls* content broadcast on its services.

Ofcom received a number of complaints about the content listed above. The complainants were concerned about the level of sexual content which they considered was capable of causing offence.

#### *Office Girls*, *Sport XXX Girls*, 5 April 2011, 22:00 to 23:00

The female presenter was wearing a black thong, black fishnet stockings and a white bra. During the broadcast she adopted various sexual positions. While positioned lying on a desk on her side with her legs wide open to camera, she revealed her outer genital area. In this position she thrust forwards to camera and bunched her thong tightly against her genitals to reveal her labia. The presenter was also positioned with her buttocks to camera. While in this position she thrust her buttocks to show anal detail. The images broadcast were prolonged.



40+ Readers Wives, Essex Babes, 5 April 2011, 22:00 to 23:00

The presenter was wearing a pink thong, white halter neck vest top and white stockings and adopted two sexual positions: on her back with her legs wide open to camera and on all fours with her buttocks to camera. Whilst positioned on her back with her legs wide open to camera, she rubbed her genital area and her visible outer labia. When positioned on all fours with her buttocks to camera, she slapped her bottom and thrust her buttocks. Throughout, while adopting these sexual positions, her anal and labial areas were clearly visible. The images broadcast were prolonged.

Office Girls, Sport XXX Girls, 6 April 2011, 22:00 to 23:00

The female presenter wore a white blouse, over a bra, with suspenders, stockings and pink thong. She was shown bent over a desk, vigorously thrusting her buttocks to camera. At times she rubbed her buttocks and anal area with oil and her anal and genital area were visible. The presenter also opened her legs wide to camera revealing her labial area. In this position she bunched her thong to simulate masturbation and there were extreme close-up and prolonged images of her genital area.

40+ Readers Wives, Essex Babes, 7 April 2011, 22:00 to 23:00

The presenter wore a pink bra and thong and a white mesh basque. She was positioned with her legs wide apart with her labia visible and she bunched her thong tightly against her genital area and simulated masturbation. While in this position she rubbed oil into her genital area, massaged her outer labia and there were extremely close up and prolonged images of the genital area. The presenter was also positioned with her buttocks thrusting towards the camera. In this position she reached her hands between her legs and massaged her visible labia and genital area and pulled her thong tightly against her genitals to simulate masturbation.

Sport XXX1, Northern Birds, 8 April 2011, 22:00 to 00:00

Between 22:00 and 23:00, the presenter wore a black outfit with pink stockings and black thong. She was positioned with her legs wide open to camera revealing her labia and while in this position she rubbed and stroked her genital area. The presenter was also positioned with her buttocks to camera revealing anal and labial detail. The images of her genital area were extremely close up and prolonged. Between 23:00 and 00:00, the same presenter wore a different outfit. She wore a bright yellow one piece costume which consisted of a thin strip of fabric between her legs that did not cover her outer labia. She positioned herself with her legs wide open to camera and squirted white cream between her legs and rubbed it into her genital area and upper thighs. She also positioned herself with her buttocks to camera revealing significant anal and genital detail. The images of genital and anal detail were extremely close up, filling the entire screen, and they were prolonged.

Sport XXX1, Northern Birds, 10 April 2011, 22:00 to 00:00

The female presenter wore a black thong, fishnet hold-up stockings and boots. Her thong was removed so that she was naked apart from her stockings and boots. She positioned herself on her back with her legs wide apart and placed her hand, and at a later stage, a pink cloth, to cover her genital area and anal area. Later still, she was naked. While nude, she placed a cupped hand over her genitals and she used her hand to press against the genital area so as to simulate masturbation.

Office Girls, Sport XXX Girls, 10 April 2011, 21:00 to 22:50

The presenter wore a pink thong and bra and a black and white patterned dress which was pulled up over the thong. She was positioned lying on a desk with her legs wide open to camera and also standing with one leg on the desk. In these positions she thrust forward to mime sexual intercourse and stroked her thighs and genital area. Her labia were visible and at times close up and prolonged images of her genital area were broadcast.

The presenter removed her thong at 22:25 and pulled up her dress to reveal her pubic area, although no genital detail was visible. She proceeded to spank and rub her buttocks vigorously against the wall until they were red. The presenter also pulled down her thong to below her pubic area and this was filmed close up and for a prolonged period. The presenter also thrust her buttocks to camera revealing anal and labial detail. This was filmed close up and for a prolonged period.

Office Girls, SportXXX Girls, 13 April 2011, 21:00 to 22:00

The presenter was wearing a black and white bra, black thong and white leg warmers. She adopted various sexual positions including: sitting on a chair with her legs wide open to camera, and; placing one leg onto the desk and thrusting her hips forward so as to mime sexual intercourse. In both these positions her outer labia were visible and she rubbed and massaged her upper thighs and labia area. The images broadcast were prolonged.

Office Girls, Sport XXX Girls, 14 April 2011, 00:00 to 01:00

The presenter was wearing a black one piece outfit with a thong and long pink socks. During the broadcast she removed the top of the outfit to reveal her breasts. Throughout she adopted various sexual positions including: lying on her back and thrusting forwards on a desk, opening her legs wide open to camera and thrusting her buttocks to camera revealing outer genital and anal detail. In these positions the presenter repeatedly: massaged and rubbed her genital area; bunched her thong tightly and pulled it so as to simulate masturbation; and grabbed at her buttock cheeks. The images broadcast were prolonged.

Request for comments

Ofcom considered that these broadcasts raised a number of issues under the BCAP Code which merited investigation, as set out below:

Ofcom asked SEL to provide comments as to how the following broadcasts complied with BCAP Code Rule 4.2:

- *Office Girls, Sport XXX Girls, 5 April 2011, 22:00*
- *40+ Readers Wives, Essex Babes, 5 April 2011, 22:00 to 23:00*
- *Office Girls, Sport XXX Girls, 6 April 2011, 22:00 to 23:00*
- *40+ Readers Wives, Essex Babes, 7 April 2011, 22:00 to 23:00*
- *Sport XXX1, Northern Birds, 8 April 2011, 22:00 to 00:00*
- *Sport XXX1, Northern Birds, 10 April 2011, 22:00 to 00:00*
- *Office Girls, SportXXX Girls, 10 April 2011, 21:00 to 22:00*
- *40+ Readers Wives, Essex Babes, 10 April 2011, 22:00 to 23:00*
- *Office Girls, SportXXX Girls, 13 April 2011, 21:00 to 22:00*
- *Office Girls, Sport XXX Girls, 14 April 2011, 00:00 to 01:00*

BCAP Code Rule 4.2 states:

“Advertisements must not cause serious or widespread offence against generally accepted moral, social or cultural standards.”

Ofcom asked SEL to provide comments as to how the following broadcasts complied with BCAP Code Rule 32.3:

- Office Girls, SportXXX Girls, 10 April 2011, 21:00 to 22:00
- Office Girls, SportXXX Girls, 13 April 2011, 21:00 to 22:00

BCAP Code Rule 32.3 states:

“Relevant timing restrictions must be applied to advertisements that, through their content, might harm or distress children of particular ages or that are otherwise unsuitable for them.”

Finally, Condition 11 of the Television Licensable Content Service (TLCS) licence states:

“... the Licensee shall:

adopt procedures acceptable to Ofcom for the retention and production of recordings in sound and vision of any programme which is the subject matter of a Standards Complaint”<sup>1</sup>

The TLCS Guidance Notes for Licence Applicants (Paragraph 76), with regards to “procedures acceptable to Ofcom”, go on to set out that:

“recordings must be of a standard and in a format which allows Ofcom to view the material as broadcast.”<sup>2</sup>

Given that the recordings were not in Ofcom’s view of broadcast quality, Ofcom also sought comments from the Licensee relating to the quality of the recordings with respect to the requirements set out in the TLCS Guidance Notes and requested that the Licensee provide further recordings of all the material referred to in this finding in a format which Ofcom considered to be of broadcast quality.

## **Response**

The Licensee did not submit any comments to Ofcom with respect to the material broadcast and BCAP Code Rules 4.2 or 32.3 or the quality of the recordings by the deadline set by Ofcom. Ofcom extended the deadline but the Licensee again did not respond.

Ofcom therefore proceeded to make a decision regarding the content in the absence of formal representations by the Licensee.

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<sup>1</sup> [http://licensing.ofcom.org.uk/binaries/tv/tlcs\\_licence.pdf](http://licensing.ofcom.org.uk/binaries/tv/tlcs_licence.pdf)

<sup>2</sup> [http://licensing.ofcom.org.uk/binaries/tv/tlcs\\_guidance.pdf](http://licensing.ofcom.org.uk/binaries/tv/tlcs_guidance.pdf)

## Decision

Under the Communications Act 2003, 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>3</sup>. Ofcom has a duty to set such standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that “the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented”.<sup>4</sup> This standards objective is contained in the BCAP Code.

The BCAP Code contains rules which permit ‘adult chat’ services to be advertised (and so broadcast) within prescribed times and on free-to-air channels that are specifically licensed by Ofcom for that purpose. When setting and applying standards in the BCAP Code to provide adequate protection to members of the public from serious or widespread offence, Ofcom must have regard to the need for standards to be applied in a manner that best guarantees an appropriate level of freedom of expression in accordance with Article 10 of the European Convention of Human Rights, as incorporated in the Human Rights Act 1998. However, broadcasters should note that the advertising content of ‘adult chat’ services has much less latitude than is typically available to editorial material in respect of context and narrative. A primary intent of advertising is to sell products and services, and consideration of acceptable standards will take that context into account.

Rule 4.2 of the BCAP Code provides that:

“Advertisements must not cause serious or widespread offence against generally accepted moral, social or cultural standards.”

Rule 32.3 of the BCAP Code states:

“Relevant timing restrictions must be applied to advertisements that, through their content, might harm or distress children of particular ages or that are otherwise unsuitable for them.”

Appropriate timing restrictions are judged according to factors such as: the nature of the content; the likely number of children in the audience; the likely age of those children; the time of the broadcast; the position of the channel in the relevant electronic programme guide (e.g. the ‘adult’ section); any warnings; and mandatory restricted access. It should be noted that the watershed starts at 21:00 and broadcast advertising material unsuitable for children should not, in general, be shown before 21:00 or after 05:30.

On 28 January 2011 Ofcom published detailed guidance on the advertising of telecommunications-based sexual entertainment services and PRS daytime chat services<sup>5</sup>. This clearly sets out what Ofcom considers to be acceptable to broadcast on these services, both pre- and post-watershed.

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

<sup>4</sup> Section 319(2)(h) of the Act

<sup>5</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/bcap-guidance.pdf>

For example this guidance explicitly states that adult chat broadcasters should:

- at no time broadcast invasive shots of presenters' bodies. Ofcom cautions against physically intrusive, intimate shots of any duration; and against less intrusive shots that may become unacceptable by virtue of their being prolonged;
- at no time broadcast anal, labial or genital areas or broadcast images of presenters touching their genital or anal areas either with their hand or an object;
- ensure that presenters' clothing adequately covers their anal, labial or genital areas. They should also avoid adjusting their clothing (including clutching or bunching) which results in anal, labial or genital areas being exposed;
- at no time include shots of presenters spitting onto their or others' bodies, or include shots of presenters using other liquids, such as oil and lotions, on their genital or anal areas; or
- at no time broadcast shots of presenters using liquids of a sort or in a way which suggests the liquid is ejaculate.

Ofcom has also made clear in published decisions what sort of material is unsuitable to be broadcast in adult chat programmes without mandatory restricted access<sup>6</sup>.

Ofcom considered the following broadcasts in respect of BCAP Code Rule 4.2:

- *Office Girls*, SportXXX Girls, 5 April 2011, 22:00
- *40+ Readers Wives*, Essex Babes, 5 April 2011, 22:00 to 23:00
- *Office Girls*, Sport XXX Girls, 6 April 2011, 22:00 to 23:00
- *40+ Readers Wives*, Essex Babes, 7 April 2011, 22:00 to 23:00
- *Sport XXX1*, Northern Birds, 8 April 2011, 22:00 to 00:00
- *Sport XXX1*, Northern Birds, 10 April 2011, 22:00 to 00:00
- *Office Girls*, SportXXX Girls, 10 April 2011, 21:00 to 22:00
- *40+ Readers Wives*, Essex Babes, 10 April 2011, 22:00 to 23:00
- *Office Girls*, SportXXX Girls, 13 April 2011, 21:00 to 22:00
- *Office Girls*, Sport XXX Girls, 14 April 2011, 00:00 to 01:00

Ofcom also considered the following broadcasts with respect to BCAP Code Rule 32.3:

- *Office Girls*, SportXXX Girls, 10 April 2011, 21:00 to 22:00
- *Office Girls*, SportXXX Girls, 13 April 2011, 21:00 to 22:00

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<sup>6</sup> For example:

- Northern Birds & Live XXX Babes:  
<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb185/>
- Red Light 1, Red Light 2, Red Light 3:  
[http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb\\_185/](http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb_185/)
- Elite Nights, Elite TV and Elite TV 2:  
<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb179/>
- Bluebird TV: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb174/>
- Dirty Talk Live: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb171/>

In Ofcom's view the sexual images included in all these broadcasts were strong and capable of causing offence (although as indicated below some were relatively stronger than others). In all cases the content included material that is clearly inconsistent with Ofcom's January 2011 guidance. For example:

- prolonged images of the presenters' genital areas because they adopted sexualised positions such as opening their legs to camera. Ofcom particularly noted the broadcasts on Channel 967 on 6 April 2011 (22:00 to 23:00) and 10 April 2011 (21:00 to 22:50) and Channel 955 on 8 April 2011 (23:00 to 00:00) where the images broadcast were extremely intrusive and prolonged with the presenters' inadequately covered genital and anal areas filling the entire screen;
- presenters touching their genital areas with their hands. In particular: on Channel 954 on 5 April 2011 (22:00 to 23:00) and; on Channel 955 on 8 April 2011 (22:00 to 00:00) the presenters rubbed their genital areas and visible outer labia and on Channel 955 on 10 April 2011 (22:00 to 00:00) the presenter was naked and shown with her hand cupped and applying pressure against her genital area. In addition all of the presenters revealed varying degrees of anal, labial and genital detail as they adopted exposed sexual positions such as thrusting buttocks and opening their legs wide to camera;
- the presenters' clothing inadequately covered their anal, labia and genital areas and a number of the presenters bunched and clutched their underwear which resulted in genital, labial and anal detail being exposed. Most notably, the presenter on Channel 955 on 8 April 2011 (23:00 to 00:00) wore a tiny strip of yellow fabric which only partly covered her vaginal area, so allowing her outer labia to be clearly visible. In addition, the presenters on Channel 967 on 6 April 2011 (22:00 to 23:00) and on 13 April 2011 (21:00 to 22:00) bunched their thongs so tightly against their genitals that their outer labia were exposed and genital contours clearly visible;
- several presenters used oil during their advertising segments, which was rubbed into genital and labial areas. In particular, the presenter on Channel 954 on 7 April 2011 (22:00 to 23:00) rubbed oil into her genital area and the presenter on Channel 967 on 6 April 2011 (22:00 to 23:00) massaged her buttocks and anal area with oil revealing anal detail; and
- the presenter on Channel 955 on 8 April 2011 (23:00 to 00:00) squirted white cream between her wide open legs so as to suggest the liquid was ejaculate and massaged this into her exposed labia and genital area.

The examples highlighted above include images that are not permitted in adult chat broadcast advertisements that are freely available without mandatory restricted access. Ofcom noted that in conjunction with these images the presenters performed various other actions including: stroking their bodies; gyrating their hips; massaging oil and cream into their breasts and genital areas; and mimicking sexual intercourse.

The combination of these images and action resulted in strong sexual material. Ofcom then reviewed the material broadcast with reference to the specific rules of the BCAP Code.

Rule 4.2 (Advertisements must not cause serious or widespread offence against generally accepted moral, social or cultural standards)

Ofcom went on to consider whether each of the following broadcasts were in breach of Rule 4.2:

- *Office Girls*, SportXXX Girls, 5 April 2011, 22:00
- *40+ Readers Wives*, Essex Babes, 5 April 2011, 22:00 to 23:00
- *Office Girls*, Sport XXX Girls, 6 April 2011, 22:00 to 23:00
- *40+ Readers Wives*, Essex Babes, 7 April 2011, 22:00 to 23:00
- *Sport XXX1*, Northern Birds, 8 April 2011, 22:00 to 00:00
- *Sport XXX1*, Northern Birds, 10 April 2011, 22:00 to 00:00
- *Office Girls*, SportXXX Girls, 10 April 2011, 21:00 to 22:00
- *40+ Readers Wives*, Essex Babes, 10 April 2011, 22:00 to 23:00
- *Office Girls*, SportXXX Girls, 13 April 2011, 21:00 to 22:00
- *Office Girls*, Sport XXX Girls, 14 April 2011, 00:00 to 01:00

In Ofcom's view the sexual images included in these broadcasts for the reasons set out above were strong and capable of causing serious and widespread offence. In all cases the broadcasts included material that is explicitly prohibited under Ofcom's guidance, also as set out above. All these broadcasts therefore contained material which raised issues under BCAP Code Rule 4.2. Ofcom was particularly concerned about the content shown on *Northern Birds* on Sport XXX1 on 8 April 2011 between 23:00 to 00:00. This contained material of a very strong sexual nature and repeated graphic and intrusive images of genital detail. For example, during this broadcast the female presenter was wearing a very thin strip of fabric which covered her vaginal opening only. This allowed extensive outer genital detail to be exposed as she lay with her legs open to camera. Whilst positioned on her back, she squirted cream all over her genitals in a way to suggest the liquid was ejaculate and massaged it into her exposed genital area.

Under BCAP Code Rule 4.2 in order to assess whether serious or widespread offence was caused against generally accepted standards, Ofcom took into account whether suitable scheduling restrictions were applied to all this content. Ofcom noted that this material was broadcast well after the watershed and that viewers generally expect on all channels that stronger material will be shown after the 21:00 watershed, within context. Ofcom also took account of the fact that the channels are positioned in the 'adult' section of the Sky EPG and that viewers tend to expect the broadcast of stronger sexual material on channels in this section of the EPG than on other channels in other sections.

However, in the cases detailed above, given the content included prolonged and frequent scenes of a strong sexual nature, the location of the channel in the adult section of the EPG was not sufficient to ensure serious or widespread offence against generally accepted standards was not caused. This was regardless of the fact the content was shown between the hours of 22:00 and 01:00. Ofcom was also concerned at the degree of offence likely to be caused to viewers who might come across this material unawares.

Taking into account the factors above, Ofcom has concluded that the scheduling restrictions were not sufficient so as to ensure that serious or widespread offence against generally accepted standards was not caused. Specifically, this material should not have been broadcast within the context of adult chat advertisements that was freely available without mandatory restricted access. As already stated, Ofcom

was particularly concerned about the strength of the content shown on *Northern Birds* on Sport XXX1 on 8 April 2011 between 23:00 to 00:00.

Therefore Ofcom concluded that this material breached Rule 4.2 of the BCAP Code.

Rule 32.3 (Relevant timing restrictions must be applied to advertisements that are unsuitable for children)

Ofcom then considered the following broadcasts in respect of BCAP Code Rule 32.3 because strong, sexual material was transmitted in the period immediately following 21:00:

- *Office Girls*, (Channel 967), 10 April 2011, 21:00 to 22:50
- *Office Girls*, (Channel 967), 13 April 2011, 21:00 to 22:00

The Guidance states: “After 9pm any move towards stronger – but still very restrained – material containing sexual imagery should be gradual and progressive.” Ofcom has also made clear in numerous previous published findings that stronger material should appear later in the schedule and that the transition to more adult material should not be unduly abrupt at the 21:00 watershed<sup>7</sup>.

In applying BCAP Code Rule 32.3 Ofcom had first to decide if the broadcast material was unsuitable for children. With regards to these two broadcasts on 2011, Ofcom noted that on a number of occasions between 21:00 and 21:30 the female presenters, in the content immediately above adopted sexually provocative positions - for example, lying on their back with their legs wide open to camera, sometimes for prolonged periods. During the broadcasts Ofcom noted the presenters regularly opened their legs wide open to camera, stroked and touched their genital areas, thrust their hips to mime sexual intercourse and revealed outer genital detail.

In Ofcom’s view, the revealing clothing, sexual positions and actions of the presenters were intended to be sexually provocative in nature. In light of this behaviour and imagery, Ofcom concluded that under BCAP Code Rule 32.3, this material was clearly unsuitable for children.

Ofcom then considered under BCAP Code Rule 32.3 whether relevant timing or scheduling restrictions had been applied by SEL to these broadcasts. Ofcom took account of the fact that the channels are in the 'adult' section of the Sky EPG. However this content was broadcast on a channel without mandatory restricted access in the period immediately after the 21:00 watershed, when some children may have been available to view, some unaccompanied by an adult. Ofcom also had regard to the likely expectations of the audience for programmes broadcast at this time of day on a channel in the “adult” section of the EPG without mandatory restricted access directly after the 21:00 watershed. In Ofcom’s opinion, viewers (and

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<sup>7</sup> For example:

- Red Light Central, Extreme, 23 February 2011, 21:00 to 21:50 (<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb182/obb182.pdf>)
- Free Blue 1 Babeworld.tv, 9 July 2010, 21:00 to 21:30 (<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb168/issue168.pdf>)
- *Sport XXX Babes*, 16 May 2010, 21:00 to 21:30 (<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb164/issue164.pdf>)



in particular parents) would not expect such material to be broadcast so soon after 21:00. Further, the broadcast of such relatively strong sexualised content was inappropriate to advertise adult sex chat so soon after the 21:00 watershed.

These broadcasts were therefore in breach of BCAP Code Rule 32.3.

With regard to these cases, Ofcom was additionally concerned that the Licensee did not provide Ofcom with any comments to explain how the material complied with the BCAP Code and published Guidance, nor did it inform Ofcom of any steps taken to improve compliance. This was of a particular concern given the amount of material broadcast and recorded in this finding which raised issues under the BCAP Code. In all these cases Ofcom was very concerned about the strength of the material broadcast, particularly in light of the recent published findings of material complied by SEL and the publication of the Guidance (and related meeting at Ofcom with all daytime and adult sex chat licensees).<sup>8</sup>

In addition, Ofcom sought comments regarding the quality of the recordings supplied to the regulator by the Licensee. Condition 11 of the Television Licensable Content Service (TLCS) licence requires that the Licensee shall “adopt procedures acceptable to Ofcom for the retention and production of recordings in sound and vision of any programme which is the subject matter of a Standards Complaint” (see footnote 2). The TLCS Guidance Notes for Licence Applicants (Paragraph 76) in turn set out that these recordings must be “of a standard and in a format which allows Ofcom to view the material as broadcast” (see footnote 3). In response to Ofcom raising these matters with the licensee, SEL stated it would look into the issue of the quality of the recordings supplied as a matter of urgency. SEL however failed by the deadline set to provide any further recordings to Ofcom that Ofcom considered were of broadcast quality and also no provided no explanation as to the reason for this failure. Consequently, the Licensee is also in breach of Condition 11 of its Licence for failing to have acceptable procedures in place to provide recordings of broadcast quality.

Ofcom has stated that it will not tolerate serious and/or repeated breaches of the BCAP Code in this area by services operating in the sector of daytime and adult chat and will not hesitate to take robust enforcement action where necessary. In the breach finding against SEL published in Broadcast Bulletin 185 (see footnote 8), Ofcom warned SEL that we would not expect further breaches of the BCAP Code to occur again. In light of the serious and repeated Code breaches recorded in this finding SEL is put on notice that these present contraventions of the BCAP Code are being considered by Ofcom for statutory sanction.

***Office Girls, SportXXX Girls, 5 April 2011, 22:00: Breach of BCAP Rule 4.2 & Licence Condition 11***

***40+ Readers Wives, Essex Babes, 5 April 2011, 22:00 to 23:00: Breach of BCAP Rule 4.2 & Licence Condition 11***

***Office Girls, Sport XXX Girls, 6 April 2011, 22:00 to 23:00: Breach of BCAP Rule 4.2 & Licence Condition 11***

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<sup>8</sup> Northern Birds & Live XXX Babes: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb185/>, 4 July 2011

***40+ Readers Wives, Essex Babes, 7 April 2011, 22:00 to 23:00: Breach of BCAP Rule 4.2 & Licence Condition 11***

***Sport XXX1, Northern Birds, 8 April 2011, 22:00 to 00:00: Breach of BCAP Rule 4.2 & Licence Condition 11***

***Sport XXX1, Northern Birds, 10 April 2011, 22:00 to 00:00: Breach of BCAP Rule 4.2 & Licence Condition 11***

***Office Girls, SportXXX Girls, 10 April 2011, 21:00 to 22:00: Breach of BCAP Rules 4.2 & 32.3 & Licence Condition 11***

***40+ Readers Wives, Essex Babes, 10 April 2011, 22:00 to 23:00: Breach of BCAP Rule 4.2 & Licence Condition 11***

***Office Girls, SportXXX Girls, 13 April 2011, 21:00 to 22:00: Breach of BCAP Rules 4.2 & 32.3 & Licence Condition 11***

***Office Girls, Sport XXX Girls, 14 April 2011, 00:00 to 01:00: Breach of BCAP Rule 4.2 & Licence Condition 11***

## In Breach

### Psychic Sally: On the Road

*Sky Livingit, 17 April 2011, 20:00*

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#### Introduction

*Psychic Sally: On the Road* is an entertainment series chronicling self-proclaimed psychic Sally Morgan's tour of the UK. The programme features clips from her live performances, private psychic readings and behind-the-scenes footage from her tour.

During this programme, Sally conducted a private reading for a young woman, Mandy, who was introduced in the voiceover as "a mum to be" who was "desperate for answers from her dead mother." During the reading, Sally and Mandy talked about how Mandy had found out after her mother's death that she had a sister who had been adopted. They also discussed Mandy's mother's illnesses and subsequent death. This was interspersed with an interview with Mandy held after the reading in which she gave her reaction to Sally's comments.

During the reading, Sally discussed Mandy's mother's illnesses and advised:

*"There is nothing within you, genetically, that you need to panic about healthwise".*

During the later interview, Mandy said, in response to this:

*"My mum was a very poorly lady. She had a lot of heart problems and she was diabetic. My doctor also treated my mum and he's always very conscious of getting me in yearly for checks and so far it's always been brilliant so hopefully I can go on now without any worries that anything's going to be passed on".*

Ofcom considered this material raised issues that warranted investigation under Rule 2.8 of the Code which states:

Rule 2.8 "Demonstrations of the exorcism, the occult, the paranormal, divination, or practices related to any of these (where such demonstration purport to be real or are for entertainment purposes) must not contain life-changing advice directed at individuals."

The Code defines "life-changing advice" in this context as "direct advice for individuals upon which they could reasonably act or rely on about health, finance, employment or relationships."

We therefore sought comments from British Sky Broadcasting Ltd ("Sky") under this rule.

#### Response

Sky explained the "programme was compiled by Virgin Media as part of their compliance process of the Living channels before compliance functions were taken over by Sky on January 1<sup>st</sup> 2011" but that since the broadcast of this programme, it had completed its own review of this series.

Sky said that it had applied a “consistent and strict editorial policy” to all episodes of *Psychic Sally: On the Road* by editing out material where Sally makes “observations pertaining to the health or wealth of participants, predicts the future or offers life changing in advice in her performances.” Sky added that Sally occasionally “mentions medical conditions in her ‘readings’” but takes the view that these do not constitute life changing advice if “the participant confirms that they are aware of any condition and are seeking independent medical advice.”

The broadcaster said that it regarded the matter as “a borderline case” as “[a]t no point did the participant say that she is going to cease the medical care she is receiving or make any other changes in her behaviour as a result of Sally’s ‘reading’.” However, Sky said that it has taken the decision to “edit this section out...of any future transmissions [of the programme], to ensure viewers are not of the opinion that this medical or life-changing advice.”

## Decision

Under the Communications Act 2003, Ofcom has a duty to set such standards for broadcast content as appear to it best calculated to secure the standards objectives, including that 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.

The Code makes clear that particular care is required around programming featuring exorcism, the occult or paranormal practices to protect both participants and viewers from potentially harmful material. A demonstration of the paranormal (in this case, a psychic) could result in participants (or indeed, viewers) acting on information in a way that could be harmful to them. Therefore Rule 2.8 of the Code requires that programmes containing demonstrations of psychic practices must not contain-life changing advice directed at individuals.

The Code defines “life changing advice” as “direct advice for individuals upon which they could reasonably act or rely on about health, finance, employment or relationships.”

Ofcom noted that during the private reading, having discussed Mandy’s mother’s illness and subsequent death, Sally made a direct and categorical statement about Mandy’s genetic health:

*“There is nothing within you, genetically, that you need to panic about healthwise”.*

Ofcom acknowledged that Mandy did not indicate that she was going to cease medical care or change her behaviour. However, Ofcom considered that Mandy had interpreted Sally’s comment as a statement of fact, given that, responding to it in her interview, she said:

*“...I can go on now without any worries that anything’s going to be passed on”.*

In Ofcom’s view, the direct and certain nature of the advice and its delivery could have resulted in her reasonably acting or relying on Sally’s assertion.

Ofcom therefore considered this to constitute “life changing advice” directed at an individual, in breach of Rule 2.8 of the Code.

Ofcom notes Sky’s assurances regarding its compliance review of this series. We do not expect any recurrence of this issue.

**Breach of Rule 2.8**

## In Breach

### Hell's Kitchen USA

ITV2, 18 April 2011, 21:00

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#### Introduction

*Hell's Kitchen USA* is the American version of the UK reality-style cooking contest which features members of the public working in a highly pressurised restaurant environment under the guidance of Gordon Ramsay. Each programme has a duration of 60 minutes. The eventual winner of the series is given the opportunity to run their own kitchen in a top restaurant.

Ofcom received one complaint about the frequency of the word "fuck" (or a derivative) in the programme. The complainant considered this to be inappropriate for a programme broadcast directly after the watershed. Ofcom noted that there were 47 instances of the use of this expletive in the programme. Eighteen of these were within in the first programme segment after the 21:00 watershed which lasted 11 minutes.

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

- Rule 1.6: "The transition to more adult material must not be unduly abrupt at the watershed...For television, the strongest material should appear later in the schedule."
- Rule 2.3 "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context."

We therefore sought comments under these rules from ITV Broadcasting Limited ("ITV"), who complied the programme on behalf of the ITV Network for ITV1.

#### Response

ITV said that "the essence of the show is to place them in a deliberately high-pressured environment, where conflict with each other and Chef Ramsey is commonplace" and that "the word "fuck" and its derivatives are used regularly not only by Gordon but also by many of the contestants, as a standard part of their vocabulary and mode of expression."

The broadcaster argued that "viewers are very well accustomed to high levels of strong language being a universal feature of programmes featuring Gordon Ramsey" and that this "is a character trait for which he is particularly well known". ITV said it had received very few complaints about strong language in this programme since its inception in 2005 (this episode being the climax of the eighth series) and that its experience is that repeated strong language in these programmes does not cause widespread complaint as it might do in other programmes, and ITV2 viewers were particularly accustomed to the levels of strong language in this programme.

It therefore took the view that "viewers come to a Gordon Ramsey programme with a particular and unusually high expectation and greater than usual acceptance of repeated and very strong language." ITV also made reference to ITV2's audience

demographic which it said “was skewed towards younger adults” who “generally tend to find the strongest language less offensive (according to Ofcom’s own research<sup>1</sup>).”

The broadcaster said the programme was preceded by *Kerry Katona: The Next Chapter* which is “not aimed at or of particular interest to children”, and an “explicit warning announcement that there was very strong language from the start”. This, in its view, “gave clear and sufficient information...that this programme was suitable only for adults.”

ITV said that the “opening sequence of the programme is always an extended montage of moments of high drama, and comment from competitors to introduce the characters to viewers” and that it “carefully considered the use of strong language in the first part of the programme after 21.00.” It concluded that the language reflected the characters and relationships within the teams and with Chef Ramsey, and was neither unusual for the programme format nor excessive or gratuitous” and that “editing the strongest language in the first part of the programme would potentially blunt the editorial force of the opening of the programme to the detriment of regular viewers who enjoy it”. ITV took the view that viewers are less likely to be offended when the language reflected heartfelt emotion rather than deliberate attempts to be offensive, and that after several series, there would be few viewers who would come to the programme unaware of its typical content, or would wish to watch if they were offended by strong language.

While ITV acknowledged that “18 instances of “fuck” in the opening segment of 11 minutes is a relatively high number in relation to most programmes,” it did not think it was “lacking in editorial justification in the very specific context of this programme”. However, it said that “on reflection that it was probably on the borderline of acceptability” and it “will consider this issue of strong language close to the watershed further, should we broadcast a further series of the programme.”

## **Decision**

Under the Communications Act 2003, Ofcom 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” and 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.

### Rule 2.3

As regards Rule 2.3 of the Code, Ofcom considered first whether the repeated swearing in this programme was potentially offensive; and, if so, whether the offence was justified by the context. Context includes for example: the editorial content of the programme, the service on which it is broadcast, the time of broadcast, and the extent to which the nature of the content can brought to the attention of the potential audience.

Ofcom’s research on offensive language<sup>1</sup> indicates that the word “fuck” and its derivatives are examples of the most offensive language. The content of the programme therefore clearly had the potential to offend viewers.

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

Regarding context, Ofcom considered first the editorial content of the programme and the likely size, composition and expectations of the audience. Ofcom acknowledged that ITV2 is aimed at young adults who (ITV's research suggests) are less likely to be offended by the most offensive language than other age groups. We also noted that Gordon Ramsay has a well established reputation in broadcasts such as *Hell's Kitchen USA* for using the most offensive language and that, as a result, the audience might expect some examples of the most offensive language in his programmes. We noted the continuity announcement before the programme advising viewers of "very strong language from the start" and that the programme started at 21:00. Ofcom took into account these factors and ITV's explanation that the purpose of the "extended montage [of challenging scenes with very strong language]" at the start of the programme was to reflect the various characters participating.

However, this context was not, in Ofcom's view, sufficient to justify the potential offence caused. There were 18 instances of the most offensive language included in the first 11 minutes of the programme broadcast immediately after the 21:00 watershed. This was a significant concentration of the most offensive language and had the potential to cause considerable offence to viewers, especially those who may come across it unawares. Further, this amount of very strong swearing concentrated immediately after the 21:00 watershed in Ofcom's opinion would not have been in keeping with viewers' expectations – partly because the warning given to viewers before the programme began was inadequate to prepare them for this amount of very strong language at this time.

We noted ITV's acknowledgement that 18 instances of the most offensive language in the first 11 minutes of the programme was "relatively high" and its decision to consider the issue further concerning any future broadcasts of the series. Nonetheless, we concluded that the broadcaster did not apply generally accepted and therefore breached Rule 2.3 of the Code.

#### Rule 1.6

Ofcom was concerned that a very significant portion of instances of the strongest language (18 out of the total of 47) happened between 21:00 and 21:11. Irrespective of the target audience of the preceding programme or of ITV2 in general, Ofcom considered it was likely that children would still have been watching this programme segment given its close proximity to the watershed. Audience figures in fact show that 38,000 children under the age of fifteen did in fact watch this programme (6.6 per cent of the audience). Therefore, Ofcom concluded that this amounted to an unduly abrupt transition to more adult, post-watershed material and Rule 1.6 of the Code was breached.

#### **Breaches of Rules 1.6 and 2.3**



## In Breach

### Take It or Leave It

Challenge, 14 May 2011, 15:00

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#### Introduction

Challenge is a general entertainment channel targeted at viewers aged 16 to 44. The licence for the channel is held by Living TV Group, which is owned by British Sky Broadcasting Ltd (“Sky”).

*Take It or Leave It* is a game show. In this instance, the programme was a repeat broadcast. It included a broadcast competition, which, although closed, was presented ‘as live’ and included the promotion of premium rate phone and text entry routes.

A viewer contacted Ofcom, having noted that a web link shown on screen for details of the competition was no longer accessible. However, there was no indication in the programme as to whether the broadcast competition was current or closed.

Sky confirmed that the competition was closed at the time of broadcast.

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

Rule 2.13 “Broadcast competitions ... must be conducted fairly.”; and

Rule 2.14 “Broadcasters must ensure that viewers and listeners are not materially misled about any broadcast competition...”

We therefore asked Sky for comments under these rules.

#### Response

Sky said that some episodes of its repeat series of *Take It or Leave It* included broadcast competitions. It added that the labelling of each episode had been inconsistent. While some episodes were labelled, ‘With Comp’, and others labelled ‘Clean’, this particular episode had no labelling, “was the only transmission ready version” available and was assumed to have had no competition in it.

The broadcaster said this error was discovered during the morning following the broadcast, when it “immediately edited the tape to remove the competition call to action from future broadcasts” and “reviewed all episodes of the three series of “Take It or Leave It” to ensure that all other shows [were] free of outdated competition details.”

Sky confirmed that the premium rate entry routes for the competition were not in service at the time of broadcast and that no entrant would have been charged at a premium rate for attempting to enter. The broadcaster therefore considered that no viewers would have been harmed or inconvenienced by the inclusion of the competition in the programme.

Nevertheless, it apologised for any confusion caused by its error.

In response to further questioning, Sky confirmed that standard text charges would have applied to any viewer who had attempted to enter by text and was on a 'pay as you go' tariff. The broadcaster added that it had received no complaint from any viewer who had attempted to enter by text.

## **Decision**

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure specific standards objectives, one of which is "that generally accepted standards are 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 offensive and harmful material."

Ofcom therefore requires, among other things, that broadcast competitions are conducted fairly (Rule 2.13 of the Code) and that broadcasters ensure that audiences are not materially misled about them (Rule 2.14).

In recent years, Ofcom has recorded numerous breaches of its rules relating to audience competitions. Ofcom has made it clear that it expects all broadcasters to exercise particular caution when inviting audiences to enter broadcast competitions, especially where they are required to pay a premium rate to participate. In repeat broadcasts, broadcasters may decide to replace previously run competitions with new ones. It is therefore particularly important that viewers know whether a competition is current.

We noted that this competition had been promoted in error and Sky's confirmation that anyone who had attempted to enter it by phone or text would not have been charged at premium rate, as the relevant lines were closed.

Nevertheless, we also noted the possibility that standard 'pay as you go' charges could have applied to some viewers who had attempted to enter by text.

Sky had failed to ensure viewers were aware that they could not enter the broadcast competition promoted in a repeat broadcast of *Take It or Leave It*. The promoted competition was not therefore conducted fairly (as it had already closed), in breach of Rule 2.13 of the Code.

Furthermore, although any costs for attempted entry were likely to have been low and to have applied to only a few viewers, if any (i.e. those on 'pay as you go' tariffs who had attempted to enter by text), the broadcaster had nevertheless failed to ensure that its viewers were not materially misled about the competition, in breach of Rule 2.14.

Ofcom therefore welcomed Sky's apology and the action it had taken to avoid recurrence.

## **Breaches of Rules 2.13 and 2.14**

## **Ofcom's monitoring of compliance with the Code on the scheduling of television advertising (COSTA)**

### **Introduction to COSTA findings**

Under Section 319(1) of the Communications Act 2003 ("the Act"), Ofcom has a statutory duty to set standards for television and radio content which it considers are best calculated to secure a number of standards objectives. One of these objectives is that "the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with" (Section 319(2)(i)).

One of the fundamental principles of European broadcasting regulation is that the specific character of European television should be safeguarded and that the interests of consumers as television viewers are fully and properly protected. Articles 20 and 23 of the Audiovisual Media Services (AVMS) Directive therefore set out strict limits on the amount and scheduling of television advertising.

Ofcom has transposed these requirements by means of key rules in COSTA, which is available here: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/advert-code/>

The key purpose of the rules in COSTA is to ensure the integrity of programming and restrict the amount of advertising in broadcasting to less than 20% of a given clock hour.

COSTA also contains rules that derive from specific UK advertising requirements, including, for example, those that apply to public service broadcasters in the UK and are intended to preserve the nature of their public service programming.

Ofcom undertakes routine monitoring of broadcasters' compliance with COSTA. There are two key purposes of this monitoring: firstly, to ensure that Ofcom implements effectively the relevant requirements of the AVMS Directive. Failure to do so has the potential to result in the European Commission commencing infraction proceedings against the UK Government. Secondly, limitations under COSTA on the amount and scheduling of advertising involve inherent controls on broadcasters' commercial revenue. A broadcaster which exceeds these requirements is therefore potentially at an unfair commercial advantage compared to those which comply with COSTA.

Ofcom has recently stepped up its monitoring of COSTA. The following findings result from an intensive monitoring exercise which took place recently.

Broadcasters should note that Ofcom is continuing to monitor all licensees for COSTA compliance. Ofcom understands that there can be mitigating circumstances where genuine technical, scheduling, or playout errors have occurred that affect a broadcaster's compliance with COSTA. Where appropriate, Ofcom is willing to resolve such cases. However, broadcasters should note that where serious and/or repeated COSTA breaches occur, we will not hesitate to pursue the matter further.

Any broadcaster which has a query relating to COSTA or its application should contact Maria Donde in Ofcom's Standards team ([maria.donde@ofcom.org.uk](mailto:maria.donde@ofcom.org.uk)).

## In Breach

### Advertising break patterns

*CBS Action, CBS Drama, CBS Reality, Horror Channel and Extreme Sports, 16 February to 15 April 2011, various dates and times*

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#### Introduction

Rule 17 of the Code on the Scheduling of Television Advertising (“COSTA”) stipulates the maximum number of advertising breaks programmes may contain:

Scheduled duration of programme (on non-PSB channels)	Number of breaks
< 26 minutes	One
26 – 45 minutes	Two
46 – 65 minutes	Three
66 – 85 minutes	Four
86 – 105 minutes	Five
106 – 125 minutes*	Six

\*for every additional 20 minutes of programming, a further break is permitted.

Amongst others, Rule 16 of COSTA lists the following exceptions, (amongst others) to the restrictions on the insertion of advertising breaks:

- a) “films and news programmes may only include one advertising break or teleshopping break for each scheduled period of at least 30 minutes”; and
- f) “in programmes of live events, more breaks may be taken than are indicated...provided that:
  - i) the timing of the event and its constituent parts are outside the control of the programme provider; and
  - ii) there would not be sufficient time within the number of permitted breaks which are also natural breaks to schedule the permitted amount of advertising.

During monitoring, Ofcom identified significant COSTA compliance failures on a number of licensed services, which are owned and operated by Chello Zone, between 16 February and 15 April 2011.

- CBS Action broadcast 92 films which contained more than the permitted number of internal breaks, permitted by Rule 16(a);
- CBS Drama broadcast 16 films which contained more than the permitted number of internal breaks permitted by Rule 16(a);
- Horror Channel broadcast 22 films which contained more than the permitted number of internal breaks, permitted by Rule 16(a); and

- Extreme Sports broadcast 82 programmes<sup>1</sup> which contained more than the permitted number of internal breaks permitted by Rule 17.

We sought Chello Zone's formal comments on the above incidents under Rules 16(a) and 17 of COSTA respectively.

## Response

Regarding the case of CBS Action, CBS Drama and Horror Channel, Chello Zone conceded that the broadcasts "did not comply with the COSTA code" because "[a] programme, rather than [a] movie, break pattern had been applied when these titles were versioned."

In the case of Extreme Sports, Chello Zone said that upon communication from Ofcom, it "realised that where the COSTA code states 'programmes of live events' this does not include recordings of live events."

Chello Zone said that, to remedy the situation, it "provided our [its] editors with specific instructions, training and guidance, to ensure that the correct COSTA compliant break pattern is applied to the editing of cinematographic and TV movie titles" and added that its "scheduling team...reviewed the break pattern applied to recordings of live events and applied a break pattern which complies fully with the COSTA code in all future broadcasts."

## Decision

Ofcom found that the scheduling of advertising on the channels had resulted in breaches of Rule 16(a) of COSTA (in the cases of CBS Action, CBS Drama and Horror Channel) or Rule 17 of COSTA (in the case of Extreme Sports).

Ofcom was extremely concerned at the high number of breaches (212) that had occurred in a two month period across four of the licensed services owned and operated by Chello Zone. Further, we noted Chello Zone's admission that this significant amount of non-compliance, across these four channels, had resulted from a lack of understanding and knowledge of the relevant rules.

During its monitoring, Ofcom also identified issues relating to advertising minutage on Chello Zone services (see following finding).

Additionally, Ofcom noted that it had previously recorded breaches of Rule 4 of COSTA (relating to advertising minutage) by Chello Zone channels CBS Reality and Food Network in Broadcast Bulletins 169<sup>2</sup> and 179<sup>3</sup>.

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<sup>1</sup> Rules 16(f) and 16(g) of COSTA allow the broadcast of live events to feature more internal advertising breaks than indicated in Rule 17. However, in this case these programmes contained recordings of sports events and as such were not permitted to feature more than the number of internal breaks stipulated in Rule 17.

<sup>2</sup> Ofcom Broadcast Bulletin 169 <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb169>

<sup>3</sup> Ofcom Broadcast Bulletin 179 <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb179>

While we note Chello Zone's assurances that it has now improved its procedures for ensuring COSTA compliance, Ofcom has serious concerns about these recent breaches and is therefore requiring Chello Zone to attend a meeting at Ofcom to provide formal assurances about its compliance procedures, and to demonstrate that it understands its obligations under its Ofcom licences. Ofcom is also considering whether to take further regulatory action.

### **Breaches of Rules 16(a) and 17 of COSTA**

## In Breach

### Advertising minutage

*Food Network, 15 April 2011, 20:00*

*CBS Drama, 25 April 2011, various times*

*CBS Reality and CBS Action, 15 May 2011, various times*

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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”

During monitoring, Ofcom identified that the channel Food Network transmitted eight seconds more advertising at 00:00 on 15 April 2011 than permitted. Food Network is complied by Chellozone Holdings Ltd (“Chello Zone”) on behalf of the Ofcom licensee Lightdragon Ltd. Chello Zone also owns and operates CBS Drama, CBS Reality and CBS Action (along with other channels).

Separately, Chello Zone notified Ofcom that on 25 April 2011 its channel CBS Drama broadcast advertising in excess of 12 minutes in three clock hours: 17:00, 19:00 and 21:00; when the limit was exceeded by one minute and 43 seconds, 15 seconds and 21 seconds, respectively.

Subsequently, Chello Zone notified Ofcom of further potential breaches of Rule 4 of COSTA. On 15 May 2011, in clock hour 22:00, CBS Reality transmitted one minute and 51 seconds more than permitted and on CBS Action, clock hours 23:00 and 00:00 contained 16 and 34 more seconds than permitted, respectively.

Ofcom sought comments on all these incidents from Chello Zone with regard to Rule 4 of COSTA.

### Response

Chello Zone said that a late addition was made to Food Network’s schedule on 5 April. Part of the amended schedule was an on-screen menu, displayed for 20 seconds and accompanying voiceover of 19 seconds duration. However, the revised schedule counted the voiceover as a separate item and so the on-screen menu and voiceover were broadcast after one another rather than simultaneously as intended. This oversight “‘pushed’ the schedule ahead by 19 seconds, eventually causing the 8 second commercial over-run in the 24:00 hour.”

Chello Zone explained that the incidents on the 25 April were a result of a “human error”. It said that an operative of Arqiva, its transmission service provider, mistakenly inserted “30 seconds of promotional material into a scheduled 15 second slot.” This promotional material was broadcast 13 times during the course of the day. It said that as the actions of Arqiva “was not communicated to the playout operator it caused commercials scheduled in the previous clock hour to fall into subsequent hours.” Chello Zone said that the “actions of the operator is [was] contrary to all operating procedures” it has in place in Arqiva and that following the incident, all staff who had any dealings in this area were re-trained.

The broadcaster explained that at 19:47 on 15 May, Arqiva experienced a “severe” power outage causing transmissions to fail on all of its channels. It added that “although programming resumed...at approximately 20:20 an ‘as scheduled’ service did not immediately return to all...channels.” This meant that actual transmission times differed from scheduled times by up to 31 minutes and caused scheduled advertising slots to drift into subsequent hours. Chello Zone confirmed that Arqiva “sincerely regret the incident” which, it added was “completely outside its control”.

Chello Zone has met with Arqiva to discuss the implementation of a system that automatically identifies potential commercial minutage breaches and continuously alerts staff until the issue is addressed.

### **Decision**

Ofcom found that the amount of advertising broadcast in each of these instances was in breach of Rule 4 of COSTA.

Ofcom noted Chello Zone’s explanation and the measures undertaken to ensure issues were highlighted promptly. It also accepted that many of these incidents arose from circumstances beyond its control.

However, Ofcom reminded Chello Zone that it is responsible for these channels’ compliance and considered seven instances within a 20 day period, irrespective of the cause, to be significant. Additionally, Ofcom was concerned that, in Broadcast Bulletins 169<sup>1</sup> and 179<sup>2</sup>, Ofcom had previously recorded breaches of Rule 4 of COSTA relating to CBS Reality and Food Network. Finally, the previous finding in this bulletin also contains details of 212 breaches of COSTA rules regarding break patterns by Chello Zone’s channels.

While we note Chello Zone’s assurances that it has now improved its procedures for ensuring COSTA compliance, Ofcom therefore has serious concerns about these recent breaches and is therefore requiring Chello Zone to attend a meeting at Ofcom to provide formal assurances about its compliance procedures, and to demonstrate that it understands its obligations under its Ofcom licences. Ofcom is also considering whether to take further regulatory action.

### **Chello Zone Holdings Ltd (for CBS Reality, CBS Action, CBS Drama) – Breaches of Rule 4 of COSTA**

### **Lightdragon Ltd (for Food Network) – Breach of Rule 4 of COSTA**

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<sup>1</sup> Ofcom Broadcast Bulletin 169: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb169>

<sup>2</sup> Ofcom Broadcast Bulletin 179: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb179>



## In Breach

### Advertising break patterns

*Pop Girl, 16 February to 15 April 2011, various dates and times*

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#### Introduction

Rule 16(b) of the Code on the Scheduling of Television Advertising (“COSTA”) states that:

“children’s programmes (other than schools programmes) with a scheduled duration of 30 minutes or less may not include an advertising or teleshopping break. Such programmes with a scheduled duration of longer than 30 minutes may have one break for each scheduled period of at least 30 minutes. Breaks are not permitted within schools programmes, but may be scheduled between programmes”

During monitoring, Ofcom identified the following COSTA compliance failures in and around programmes broadcast on children’s channel Pop Girl, between 16 February and 15 April 2011.

- i) On 43 occasions, the 60 minute broadcast of *The Next Star*, a children’s talent contest contained three centre breaks – one more than permitted for a children’s programme of this scheduled duration by Rule 16(b) of COSTA; and
- ii) On three occasions, the 55 minute broadcast of *Pop Party Top 20 Music Videos* contained four centre breaks – three more than permitted for a children’s programme of this scheduled duration by Rule 16(b) of COSTA.

Ofcom sought comments from CSC Media Group Ltd, which owns and operates the licensed service Pop Girl, in relation to these incidents.

#### Response

CSC Media explained that 99% of its children’s programming is “just over 30 minutes scheduled duration or less” and accordingly, its “schedule templates are set up for 30 minutes or less”. It added that because *Next Star* was “a brand new show for Popgirl and *Pop Party Top 20 Music Videos* is “usually a 15 min programme”, these programmes were added into the relevant templates incorrectly.

The broadcaster said that upon receiving Ofcom’s correspondence about the matter (on 15 April 2011), it “made emergency changes to the breaks around *Next Star* to bring them back into compliance.” It also checked its library so that programmes longer than the normal 30 minutes were identified and correctly labelled, and met with its scheduling department to educate them to the COSTA implications to longer children’s programming. CSC Media added that it was confident that instances like this will be avoided in the future.

#### Decision

Ofcom found that the scheduling of advertising breaks in and around *The Next Star* and *Pop Party Top 20 Music Videos* breached Rule 16(b) of COSTA.

Ofcom noted CSC Media's explanation of how these programmes came to contain more advertising breaks than permitted and the swift action it undertook to ensure future broadcasts complied with COSTA.

However, Ofcom observed that we had already, in Broadcast Bulletin 158<sup>1</sup>, recorded a significant number of breaches of COSTA rules relating to both advertising scheduling and minutage on CSC Media licensed services; a number of these also related to children's channels. We noted that, following these incidents, CSC Media had assured Ofcom that it had retrained its staff on the need to comply with COSTA and had confirmed that all of its children's channels had migrated to new scheduling patterns.

Ofcom was therefore very concerned to identify once again a significant number (46) of breaches of COSTA on this licensee's services. For that reason, we are requiring CSC Media to attend a meeting with Ofcom to discuss compliance in this area and provide further assurances regarding its compliance procedures.

### **Breaches of Rule 16(b) of COSTA**

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<sup>1</sup> Ofcom Broadcast Bulletin 158 - <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb158/Issue158.pdf>

## In Breach

### Advertising minutage and break patterns

*Sun Music, 4 April 2011, 18:00 to 23:00*

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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.”

Rule 17 of the Code on the Scheduling of Television Advertising (“COSTA”) stipulates the maximum number of advertising breaks programmes may contain:

Scheduled duration of programme (on non-PSB channels)	Number of breaks
< 26 minutes	One
26 – 45 minutes	Two
46 – 65 minutes	Three
66 – 85 minutes	Four
86 – 105 minutes	Five
106 – 125 minutes*	Six

\*for every additional 20 minutes of programming, a further break is permitted.

During monitoring, Ofcom identified significant COSTA compliance failures on Sun Music, a music channel broadcasting Tamil music to countries such as India, Malaysia and Dubai.

On 4 April 2011, Sun Music broadcast advertising exceeding the amount permitted by Rule 4 of COSTA as follows:

- In the 18:00 clock hour, in excess of 24 minutes of advertising;
- In the 19:00 clock hour, in excess of 24 minutes of advertising;
- In the 20:00 clock hour, in excess of 18 minutes of advertising;
- In the 21:00 clock hour, approximately 18 minutes of advertising; and
- In the 22:00 clock hour, approximately 20 minutes of advertising

On the same date, Sun Music also broadcast one programme, Siri Siri, which included seven internal breaks, exceeding the number of breaks permitted by Rule 17 of COSTA for a programme with a scheduled duration of 120 minutes.

We sought formal comments from Sun TV Network Europe Ltd (“Sun TV”), which operates and holds the broadcasting licence for Sun Music, in relation to these incidents under Rules 4 and 17 of COSTA respectively.

#### Response

Sun TV acknowledged the breaches outlined above and said that it treated this issue as a matter of great concern.

Sun TV gave as an explanation for these compliance failures both human and technical errors, and attributed the problems to new software upgrades at the Sun Music and scheduling problems with the time delay machines installed in India. The licensee also explained that the feed for Sun Music is telecast directly from India, and they did not have control over this feed in the UK.

Sun TV said that they were in the process of installing new scheduling software and increasing the number of technical staff, and have circulated instructions to all staff to avoid recurrences of COSTA breaches.

### **Decision**

Ofcom found that Sun Music was in breach of Rules 4 and 17 of COSTA.

Ofcom noted that Sun TV had taken steps to rectify its compliance procedure to avoid breaches of COSTA in the future. However, Ofcom was extremely concerned about the extent of the breaches that it identified in this instance, particularly – in relation to Rule 4 of COSTA – noting that Sun Music broadcast as much as twice the permitted amount of advertising in some of the clock hours that we monitored.

Ofcom is therefore continuing to monitor Sun Music's output carefully in the future and may consider further regulatory action.

### **Breaches of Rules 4 and 17 of COSTA**

## In Breach

### Advertising Minutage

*More4, 13 March 2011, 13:00*

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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”.

During monitoring, Ofcom noted that More4 had broadcast in excess of 13 minutes of advertising in one clock hour, that is, one minute and six seconds more than permitted by Rule 4 of COSTA.

We therefore asked Channel 4, which owns and operates More4, for its formal comments on this incident under Rule 4.

#### Response

Channel 4 explained that the surrounding programme, Dfs Crufts, was scheduled as a live show on More4 at 19:00 on 12 March 2011, played from the NEC Birmingham. The production company had been given full break minutage restrictions by More4 Planning. The show was two hours long, and played without any COSTA breach.

The programme was then scheduled for repeat the following morning, at 11:03 on 13 March 2011 on More4. The live show was recorded during transmission, and then processed as a delivered programme for playout on the morning of 13 March.

Channel 4 investigated in detail the events of 13 March, and in summary, it concluded that the mistake occurred as the result of human error by the Playout Director for More4 on duty on that day, rather than as a consequence of a procedural deficiency. Channel 4 pointed out that carefully prepared formal procedures have always been in place for all of the channels operated by Channel 4, including More4, to ensure smooth collaboration between channel staff and staff at Red Bee Media, the company contracted by Channel 4 to play out programming and advertising in accordance with the relevant regulatory codes.

Channel 4 fully recognised that the mistake should not have occurred and said that it was developing further and continuing training of Red Bee staff on this specific type of issue to ensure that such breaches do not recur in the future.

#### Decision

Ofcom found that the amount of advertising broadcast on More4 was in a breach of Rule 4 of COSTA.

Ofcom noted that Channel 4 explained that the incident was the result of human error. We also took into account Channel 4’s assurance of further and continued training for Red Bee staff in this area to prevent further breaches.

However, Ofcom also noted that it has previously recorded several breaches of Rule 4 of COSTA by Channel 4 (most recently in Bulletin 158<sup>1</sup>). In light of Channel 4's latest assurances, Ofcom does not expect any further recurrences of these incidents in the future.

### **Breach of Rule 4 of COSTA**

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<sup>1</sup> See Ofcom Broadcast Bulletin 158  
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb158/Issue158.pdf>

## In Breach

### Advertising minutage

*UTV, 4 May 2011, 18:00 to 23:00 and 4 June 2011, 16:00 to 17:00*

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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”.

#### 4 May 2011

UTV informed Ofcom, and gave its formal comments under Rule 4(a) of COSTA, that between 18:00 and 23:00 on 4 May 2011, it transmitted 41 minutes and ten seconds of advertising (one minute and ten seconds more than is permitted).

#### 4 June 2011

UTV informed Ofcom, and gave its formal comments under Rule 4 of COSTA, that between 16:00 and 17:00 on 4 June 2011, it transmitted 14 minutes of advertising (two minutes more than is permitted).

#### Response

##### 4 May 2011

UTV explained that this error occurred as a result of a series of scheduling errors at the time of transmission, stemming from an under-run of 1 minute and 20 seconds in a regional news bulletin scheduled at 22:28:55. The Transmission Controller on duty took immediate action to correct the under-run by inserting promotions to fill the remaining time from the playlist/commercial server – this in turn resulted in the commercial break, which had been scheduled for transmission at 23:05, being transmitted at 22:50 instead.

This caused the peak time allowance to be exceeded by one minute and 10 seconds.

One minute and 10 seconds of advertisements was deleted from the break at 23:05 to make up for the fact that one minute and ten seconds of advertisements had already been transmitted in error at 22:50. UTV explained that this meant that it had gained no commercial benefit from the error.

As UTV had explained during the investigation of previous COSTA breaches<sup>1</sup>, it has put in place detailed procedures and has recently completed training sessions with all Transmission staff to ensure that COSTA errors do not occur.

However, UTV submitted that on this occasion the Transmission Controller was under extreme pressure due to the tight timescale on the previous under-run and transmitted the wrong break. UTV said that all Transmission Controllers have been advised to go to a UTV logo slide if this happens but due to human error this did not happen on this occasion. UTV explained that it had amended its procedures to address this going forward.

#### 4 June 2011

UTV explained that it transmitted 14 minutes of advertisements between 16:00 and 17:00.

It explained that a commercial break of one minute and 30 seconds' duration was scheduled to be transmitted at 16:43. This break was intended to include a 30 second live advertisement, but it was mistakenly replaced by another advertisement (of three minutes and 30 seconds' duration) when the Transmission Controller cued the previous break instead of the planned live advertisement. This error was not discovered until UTV re-joined the ITV network programming and the rest of the ITV network was already one minute and 56 seconds into the programme.

UTV told Ofcom that the incident was immediately reported to the Managing Director and appropriate action was taken. UTV explained that it was in the process of investigating why the Transmission Controller did not adhere to UTV's transmission procedures. It added that while this investigation is underway, an additional checking procedure has been put in place to ensure that if the Transmission Controller makes any manual changes to the playlist, the playlist must also be checked by a second engineer to ensure that the correct break is played. Paperwork must also be completed and signed off by both staff on duty.

In addition to this, UTV's internal auditor has been instructed to carry out a thorough audit of its transmission procedures.

UTV also requested a meeting with Ofcom to assure it of UTV's commitment to ensuring compliance with COSTA.

### **Decision**

#### Ofcom found that:

- On 4 May 2011, between 18:00 and 23:00 on 4 May 2011, UTV breached Rule 4(a) of COSTA by transmitting 41 minutes and ten seconds of advertising (one minute and ten seconds more than is permitted), which was in breach of Rule 4(a) of COSTA; and
- On 4 June 2011, between 16:00 and 17:00 on 4 June 2011, UTV breached Rule 4 of COSTA by transmitting 14 minutes of advertising (two minutes more than is permitted).

#### Conclusion

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<sup>1</sup> See footnotes 25, 26 and 28.



Ofcom is concerned that these failures followed four recently recorded breaches of a similar nature:

- 6 October 2010: breach of Rule 14 of COSTA for transmitting ten seconds more advertising in a centre break than is permitted<sup>2</sup>.
- 20 November 2010: breach of Rule 4(a)(ii) of COSTA for transmitting 30 seconds more advertising than permitted during peak<sup>3</sup>.
- 6 February 2011: breach of Rule 4(a)(i) of COSTA for transmitting ten seconds more advertising than permitted in a single hour<sup>4</sup>.
- 13 March 2011: one error which caused a breach of Rule 4 of COSTA for transmitting a centre break 20 seconds longer than is permitted as well as a breach of Rule 14 of COSTA for transmitting 20 seconds more advertising than permitted in a single hour<sup>5</sup>.

Ofcom acknowledges that in each case, UTV has notified Ofcom of the errors, and welcomes UTV's latest amendments to its procedures and the internal audit. 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 is therefore requiring UTV to attend a meeting to discuss the recent breaches of COSTA<sup>6</sup> and to explain how it will improve its procedures in order to ensure compliance with COSTA.

### **Breaches of Rules 4 and 4(a) of COSTA**

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<sup>2</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/817960/issue173.pdf>

<sup>3</sup> <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb180/>

<sup>4</sup> See footnote 25.

<sup>5</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb181/obb181.pdf>

<sup>6</sup> Ofcom acknowledges that in its representations in respect of the error on 4 June 2011, UTV had asked to meet with Ofcom to assure us of its commitment to ensuring compliance with COSTA.

## In Breach

### Breach findings table

*Code on the Scheduling of Television Advertising compliance reports*

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

“... time devoted to television advertising and teleshopping spots on any channel must not exceed 12 minutes.”

Channel	Transmission date and time	Code and rule	Summary finding
Media Platform Ltd	4 April 2011 19:00	COSTA Rule 4	Ofcom noted, during monitoring, that MPL exceeded the permitted advertising allowance by one minute in a single hour.  <b>Finding: Breach</b>
E! (Comcast)	27 February 2011, 17:00	COSTA Rule 4	Ofcom noted, during monitoring, that E! exceeded the permitted advertising allowance by 20 seconds in a single hour.  <b>Finding: Breach</b>
ESPN	20 February 2011, 15:00	COSTA Rule 4	Ofcom noted, during monitoring, that ESPN transmitted 30 seconds more advertising than is permitted in a single hour.  <b>Finding: Breach</b>
Magic TV	3 January 2011 09:00 and 11:00	COSTA Rule 4	Ofcom noted, during monitoring, that Magic TV transmitted two minutes 19 seconds more advertising than is permitted in a single hour between 09:00 and 10:00 and 31 seconds more advertising than in permitted between 11:00 and 12:00.  <b>Finding: Breach</b>

Fiver	27 November 2010, 15:00 to 16:00	COSTA Rule 4	Ofcom noted, during monitoring, that Fiver transmitted 12 seconds more advertising than is permitted in a single hour. <b>Finding: Breach</b>
Dave	29 September 2010, 18:00	COSTA Rule 4	Ofcom noted, during monitoring, that Dave transmitted 30 seconds more advertising than is permitted in a single hour. <b>Finding: Breach</b>
Alibi (UKTV)	13 September 2010, 08:00	COSTA Rule 4	Ofcom noted, during monitoring, that Alibi transmitted four minutes more advertising than permitted in a single hour. <b>Finding: Breach</b>
Good Food HD	3 September 2010, 22:00	COSTA Rule 4	Ofcom noted, during monitoring, that Dave transmitted six seconds more advertising than is permitted in a single hour. <b>Finding: Breach</b>

Additionally Rule 16 of COSTA states that:

“Restrictions apply when inserting advertising breaks during the following programmes;

- a) Films and news programmes may only include one advertising or teleshopping break for each scheduled period of at least 30 minutes.

Channel	Transmission date and time	Code and rule	Summary finding
Sky News	18 July 2010 to 16 September 2010, various times	COSTA Rule 16(a)	Ofcom noted, during monitoring, that three internal advertising breaks were broadcast during the 30 minute CBS News programmes shown on Sky News. <b>Finding: Breach</b>

## Resolved

### Advertising break patterns

*Sky Sports News, Sky Sports 2, Sky Sports 3 and Sky Sports 4, 20 February to 11 April, various dates and times*

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#### Introduction

Rule 17 of the Code on the Scheduling of Television Advertising (“COSTA”) stipulates the maximum number of advertising breaks programmes may contain:

Scheduled duration of programme (on non-PSB channels)	Number of breaks
< 26 minutes	One
26 – 45 minutes	Two
46 – 65 minutes	Three
66 – 85 minutes	Four
86 – 105 minutes	Five
106 – 125 minutes*	Six

\*for every additional 20 minutes of programming, a further break is permitted. In addition, Rules 16 of COSTA lists the following exceptions (amongst others) to the restrictions on the insertion of advertising breaks

- f) “in programmes of live events, more breaks may be taken than are indicated...provided that:
  - i) the timing of the event and its constituent parts are outside the control of the programme provider; and
  - ii) there would not be sufficient time within the number of permitted breaks which are also natural breaks to schedule the permitted amount of advertising.
- g) live programme feeds from an overseas broadcaster may take the break pattern of the originating broadcaster.”

During monitoring, Ofcom identified a number of compliance failures on the following Sky Sports channels between:

- Sky Sports News, broadcast eight programmes that contained more than the number of internal breaks permitted by Rules 16 and 17 between 20 February and 10 April 2011;
- Sky Sports 2, broadcast four programmes that contained more than the number of internal breaks permitted by Rules 16 and 17 between 28 March and 4 April 2011;
- Sky Sports 3, broadcast ten programmes that contained more than the number of internal breaks permitted by Rules 16 and 17 between 25 February and 3 April 2011; and

- Sky Sports 4, broadcast six programmes that contained more than the number of internal breaks permitted by Rules 16 and 17 between 26 February and 11 April 2011.

We therefore asked Sky to comment on these incidents in relation to Rules 16(f), 16(g) and 17 of COSTA.

## Response

Sky said it had “inadvertently added extra commercial breaks around longer duration programming such as Sky Sports News and tight turnaround, repeated coverage of tennis and golf tournaments” on the other Sky Sports channels.

The broadcaster said Sky Sports News runs all its programming in 60 minute slots, taking three centre breaks and a “junction break” between each clock hour. However, “due to an oversight” *Sports Sunday*, a programme scheduled for 300 minutes, was given the same break pattern as the hourly news sports slots. Sky acknowledged that applying this pattern for longer programmes in an hour-long slot meant the final break of the hour was a commercial centre break rather than an end break.

Sky said that with centre breaks in longer programmes such as *World Golf Championship* (shown on Sky Sports 3 and Sky Sports 4 within some of the incidents identified in this finding) “the live output can be repeated in as little as two hours from the original transmission, giving little if any time for editing anything but compliance issues.” Sky said this was an “editorial decision” which reflected the view that the “audience wants to see replay coverage of events quickly and in a timely fashion.”

The broadcaster added that much of this programming comes live from other parts of the world “and therefore break patterns have both reflected the live nature of the sport and the break patterns inserted by the host broadcaster.” Sky said that to rectify the issue, it has decided to include only Sky promotions in some breaks to ensure it does not exceed the required number of commercial advertising breaks.

Since this error was discovered, Sky said it took a “swift decision to reduce the number of internal breaks to an average of 3 per scheduled hour in our repeat programming such as *World Golf Championship*, *Davis Cup* and *PGA Tour Golf*, well as *Sports Sunday* on Sky Sports News.”

Sky said it apologised “sincerely for these errors” and said these were “genuine mistakes in the break pattern build”. The broadcaster said it was introducing new, compliant, advertising schedules across the Sky Sports channels.

## Decision

Ofcom found that the number of advertising breaks scheduled and broadcast in all of these instances had exceeded that permitted by Rule 17 of COSTA.

Ofcom acknowledged that Sky Sports News operates a continuing 60 minute slot for its news desk presentation, a pattern that permits it, under COSTA, to include three centre breaks as well as an end break in or around a programme 60 minutes in duration. However, programmes such as *Super Sunday* must comply with COSTA on the basis of the entire scheduled programme duration (in this case 300 minutes), rather than as five separate 60 minutes slots; and the number of internal breaks permitted in a programme 300 minutes in duration is less than could be broadcast in and around five programmes 60 minutes in duration.

Additionally, while there is latitude under COSTA for taking more advertising breaks during live events which are outside the broadcaster's control, such as when the breaks are taken by a host broadcaster during live sports coverage, a repeat of such an event does not permit the broadcaster to retain the same break pattern as permitted in a live programme.

Ofcom noted Sky's recognition that its calculation of break patterns for *Sports Sunday* on Sky Sports News and its repeats of certain live sporting events on its Sky Sports channels had not complied with COSTA. In addition, we welcomed the efforts the broadcaster had made, upon recognising these errors, to change its schedules to ensure they were compliant.

Therefore, in view of the action taken by the broadcaster, and the good compliance history of Sky's sports channels, Ofcom considered the matter resolved.

**Resolved**

## Resolved

### Advertising break patterns

*Vintage TV, 21 February 2011 to 10 April 2011, various dates and times*

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#### Introduction

Rule 17 of the Code on the Scheduling of Television Advertising (“COSTA”) stipulates the maximum number of advertising breaks programmes may contain:

Scheduled duration of programme (on non-PSB channels)	Number of breaks
< 26 minutes	One
26 – 45 minutes	Two
46 – 65 minutes	Three
66 – 85 minutes	Four
86 – 105 minutes	Five
106 – 125 minutes*	Six

\*for every additional 20 minutes of programming, a further break is permitted. During monitoring, Ofcom identified two instances when Vintage TV had included more internal breaks in its output than permitted by Rule 17 of COSTA. We therefore asked Vintage TV to comment on this situation in relation to Rule 17.

When Vintage TV provided Ofcom with its response (set out below) it also notified Ofcom of a further nine incidents in which the number of internal breaks in programmes exceed the maximum permitted by Rule 17, as well as providing formal comments on all of these incidents.

#### Response

Vintage TV apologised for this “inadvertent error”. The licensee acknowledged that the two programmes Ofcom had identified during monitoring contained seven internal advertising breaks, rather than the six internal breaks permitted in a programme lasting between 106 and 125 minutes, and therefore that the output was not compliant with COSTA. Vintage TV wished to point out that while the number of breaks taken was at odds with COSTA requirements, the total advertising minutage had not exceeded the permitted amount in any of the relevant clock hours.

Vintage TV said this “failure was due to a clerical system error” and – as noted above – brought to Ofcom’s attention a further nine programmes which were broadcast with one more internal break than the number permitted by COSTA. Vintage TV said it has now “addressed the system error which caused non-compliance”, has “instituted an additional check in the scheduling process”, and assured Ofcom that “there will be no further instances of this unfortunate occurrence.”

#### Decision

Ofcom found that the number of advertising breaks scheduled and broadcast in all of these instances had exceeded that permitted by Rule 17 of COSTA.

Ofcom was concerned that on 11 separate occasions Vintage TV exceeded the permitted allowance for internal breaks in its programming. Ofcom noted this was the

result of a “system error” and recognised the assurances from Vintage TV that this error has been corrected, as well as the initiation of an additional compliance procedure. Ofcom also noted that Vintage TV took very swift action in this case, and that it proactively notified Ofcom of further breaches when originally approached for comment on the two identified by Ofcom during monitoring.

In view of the action taken by the broadcaster, its swift assurances of future compliance, and good compliance history to date, Ofcom considers the matter resolved.

**Resolved**



## Resolved

### Advertising minutage

*Sony Entertainment Television (UK), 8 and 9 April 2011, various times*

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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.”

During monitoring Ofcom identified two instances when Sony Entertainment Television (UK) (“Sony”) exceeded the hourly allowance of 12 minutes on 8 and 9 of April 2011 by 21 and 49 seconds respectively. We therefore asked Sony to comment on this incident in relation to Rule 4 of COSTA.

#### Response

Sony said that it has contracted a separate company, Media Icon, to sell advertising space from the launch of the channel on 7 April 2011. Media Icon used another company to apply a computer programme for each break pattern to identify any COSTA breaches for advertising minutage, and to alert compliance staff should this happen.

Sony said this system had been working successfully for a year on other channels but that when software engineers accessed the programme in March they inadvertently disabled this function. As a consequence, the broadcaster said, “non-compliant hours were not flagged and unfortunately transmitted on Sony TV”.

The broadcaster said that when the situation came to light, “...all forward schedules were checked and any adjustments required were made”. The broadcaster said there had been no further incidents since these improvements had been made.

Sony said Media Icon “have instigated a regular check of their system to ensure it is functioning” and that now all these schedules are compliant. Additionally, Sony said it has initiated a further report to assess the television schedule before it is sent to transmission to act as a second compliance check.

#### Decision

Ofcom found that the amount of advertising broadcast in each of these ten instances exceeded that permitted by Rule 4 of COSTA.

Ofcom noted the minutage overruns were as a result of a human error by the company contracted to sell advertising space for the channel, which occurred while dealing with a technical issue, and that Sony would not have had direct oversight of the incident. We also acknowledged this situation was identified and rectified by Sony before Ofcom contacted the channel about this matter.

Ofcom welcomed the additional compliance measures put in place by both the broadcaster and its media sales contractor. In view of the steps taken, Ofcom considers the matter resolved.

#### Resolved

## Resolved

### Resolved findings table

*Code on the Scheduling of Television Advertising compliance reports*

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

“... time devoted to television advertising and teleshopping spots on any channel must not exceed 12 minutes.”

Channel	Transmission date and time	Code and rule	Summary finding
Challenge TV (BSkyB)	27 February 2011 13:00 and 22:00	COSTA Rule 4	<p>Ofcom noted, during monitoring, that Challenge TV exceeded the permitted advertising allowance by seven and eight seconds in these two hours respectively.</p> <p>Ofcom notes the Licensee’s explanation that this resulted from the insertion of eight seconds of blank screen earlier in the day, unaccounted for due to human error. Ofcom also notes the steps taken by the Licensee to address this failure, namely ensuring the relevant staff were briefed on the importance of COSTA compliance.</p> <p><b>Finding: Resolved</b></p>

Rule 16 of COSTA states that:

“Restrictions apply when inserting advertising breaks during the following programmes;

- b) Films and news programmes may only include one advertising or teleshopping break for each scheduled period of at least 30 minutes.

Additionally, Rule 3 (f) of COSTA states that:

“films’ means cinematographic works and films made for television.”

Rule 17 of COSTA stipulates the maximum number of internal breaks programmes (other than those exceptions in Rule 15) may contain:

Scheduled duration of programme (on non-PSB channels)	Number of breaks
< 26 minutes	One
26 – 45 minutes	Two
46 – 65 minutes	Three
66 – 85 minutes	Four
86 – 105 minutes	Five
106 – 125 minutes*	Six

\*for every additional 20 minutes of programming, a further break is permitted.

Channel	Transmission date and time	Code and rule	Summary finding
Movies 24	16 February 2011 18 February 2011 21 February 2011 22 March 2011 23 March 2011 26 March 2011 2 April 2011 4 April 2011 16 April 2011  Various times	COSTA Rule 16(a)	<p>Ofcom noted, during monitoring, that Movies 24 transmitted twelve cinematic works or television films with scheduled durations of between 95 minutes and 110 minutes, each with four internal breaks. This exceeded the permitted allowance of breaks for films with a scheduled duration of less than 120 minutes.</p> <p>Ofcom recognises the licensee's previously positive compliance record and notes that, in each case the incident was the result of last minute changes to the day's schedule. Ofcom also notes that it has received an assurance from the Licensee that it has implemented rigorous processes to prevent reoccurrences.</p> <p><b>Finding: Resolved</b></p>
Viva (MTV)	5 and 6 March 2011, 9 and 10 April 2011, various times	COSTA Rule 16(a)	<p>Ofcom noted, during monitoring, that VIVA transmitted the film <i>Never Back Down</i> with five internal breaks on these two dates. This exceeded the permitted allowance of breaks for films with a scheduled duration of 133 minutes.</p> <p>The Licensee explained that this was the result of the film having been cut to a different slot length than the one in which it was broadcast. Ofcom noted that the Licensee had recut the film to</p>

			<p>comply in future and taken steps to ensure its staff always scheduled films in appropriate slot durations.</p> <p><b>Finding: Resolved</b></p>
<p>MTV Dance (MTV)</p>	<p>18 February 2011 26 February 2011 13 March 2011</p> <p>Various times</p>	<p>COSTA Rule 17</p>	<p>Ofcom noted, during monitoring, that MTV Dance transmitted the programme <i>Ultimate Guest Vocals: Top 50</i> with 12 internal breaks on these three dates. This exceeded the permitted allowance of breaks for programmes with a scheduled duration of 225 minutes.</p> <p>The Licensee told Ofcom that the incident was the result of a failure to remove the last centre break when the programme's planned duration time was reduced. Ofcom notes that the Licensee has taken steps to ensure future compliance, including new checks and training.</p> <p><b>Finding: Resolved</b></p>

## Fairness and Privacy Cases

### Upheld in Part

#### **Complaint by The London Marathon Limited and The London Marathon Charitable Trust Limited**

*Dispatches: Tracing the Marathon Millions, Channel 4, 9 April 2010*

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**Summary:** Ofcom has upheld part of this complaint of unfair treatment made by The London Marathon Limited and The London Marathon Charitable Trust Limited (with one of the 38 parts of the complaint being upheld).

Channel 4 broadcast an edition of *Dispatches* that looked at the cost of staging the London Marathon, how much money it generates and the extent of its charitable giving. The programme included a number of criticisms of The London Marathon Limited and The London Marathon Charitable Trust Limited. It questioned the level of transparency and looked at how places in the race are awarded to individual runners and to charities. The programme also included criticisms of the Golden and Silver Bond places offered to charities and the more expensive packages that included running places and advertising. The programme also included criticisms of how and to whom income generated by the London Marathon is distributed.

In summary, Ofcom found the following:

- The programme makers were not unfair in their dealings with the complainants during the programme making process.
- The complainants were given sufficient information about the proposed programme.
- The complainants were given an appropriate and timely opportunity to respond to the serious allegations included in the programme.
- With the exception of an allegation of inconsistency regarding the amount awarded in grants, the programme did not present, disregard or omit material facts in a way that was unfair to the complainants.
- It was not incumbent on the programme makers to use the full statement provided by the complainants.

#### **Introduction**

On 9 April 2010, Channel 4 broadcast an edition of its documentary series *Dispatches*. This edition, entitled *Tracing the Marathon Millions*, looked at the cost of staging the London Marathon, how much money it generates and the extent of its charitable giving.

The programme explained that The London Marathon Charitable Trust Limited owned The London Marathon Limited, a trading company that organises the London Marathon and then hands the profits to the charitable trust. The programme included a number of criticisms of The London Marathon Limited and The London Marathon Charitable Trust Limited. The programme questioned the level of transparency of The London Marathon Limited and The London Marathon Charitable Trust Limited. The

programme looked at how places in the race are awarded to individual runners and to charities and included criticisms of the Golden and Silver Bond places offered to charities and the more expensive packages that included running places and advertising, sold through a private company, Realbuzz. The programme also included criticisms of how and to whom income generated by the London Marathon is distributed.

The London Marathon Limited and The London Marathon Charitable Trust Limited complained to Ofcom that they were treated unfairly in the programme as broadcast.

## **The Complaint**

### **The case made out by The London Marathon Limited and The London Marathon Charitable Trust Limited**

In summary, The London Marathon Limited and The London Marathon Charitable Trust Limited complained that they were treated unfairly in that:

- a) The programme makers were not fair in their dealings with the complainants, as they refused to return telephone calls, meet representatives of The London Marathon Limited and The London Marathon Charitable Trust Limited and examine documents offered.
- b) The programme makers sought a contribution from The London Marathon Limited and The London Marathon Charitable Trust Limited but did not obtain their informed consent to their participation, as they did not inform the complainants of the names of a number of contributors to the programme or the nature of their likely contributions.
- c) The programme included a number of allegations about or criticisms of The London Marathon Limited and The London Marathon Charitable Trust Limited that were not put to the complainants and they were therefore not given an appropriate and timely opportunity to respond. In particular, the programme included the following allegations or criticisms:
  - i) A criticism of the level of pay paid to The London Marathon Limited's highest paid employee.
  - ii) A criticism about the level of the income of The London Marathon Limited that went to charity or to The London Marathon Charitable Trust Limited.
  - iii) A criticism of the cost of staging the London Marathon compared with the cost of staging another race, the British 10K.
  - iv) An allegation of lack of transparency in relation to the grants awarded by The London Marathon Charitable Trust Limited.
  - v) An allegation of "*monopolistic behaviour*" on the part of the complainants.
  - vi) An allegation that members of the public were being misled into believing that a higher percentage of the income generated by the London Marathon went to charity than actually did, with the views of some members of the public being included.
  - vii) An allegation that the London Marathon had tried to prevent Mr Saxton from doing research as to how they could do a better job of running the London Marathon.
  - viii) An allegation, in relation to Realbuzz, that it was "*almost unheard of to sell web adverts of this type for a fixed price*".
  - ix) An allegation that 15,000 out of 36,000 entries went to Golden Bonds, when in fact over 51,000 entries were accepted each year into the race.

- x) An allegation that the complainants had “*dominance over running events in the capital*”.
  - xi) An allegation by Mr Saxton that the Golden Bond system was “*quite an extraordinary system because actually there are very few areas of life where charities get charged more than the ordinary consumer*”.
  - xii) An allegation that Help for Heroes had refused to pay £300 for a Bond place, when in fact the charity had never been asked to pay £300 per place and Major Phil Packer<sup>1</sup>, who walked the course over a period of 13 days, had an entry for which he paid £32.
  - xiii) An allegation that there was “*a particular issue*” regarding the structure of the London Marathon organisation.
- d) The programme makers presented, disregarded or omitted material facts in a way that was unfair to the complainants. In particular:
- i) The programme included footage of Mr Mike O’Reilly, organiser of the British 10K, complaining that the London Marathon had tried to prevent him from holding an event in London. However, the programme failed to include the London Marathon’s explanations that: Mr O’Reilly had tried to block a London Marathon event in London; the City of London and that the City of Westminster had decided not to allow any new road races; Mr O’Reilly had intended to call his event the “Official London Half Marathon”; and the words “London Marathon” were a registered trademark of The London Marathon Limited.
  - ii) The programme included on three occasions a comment by Mr Joe Saxton, a charity expert, that it was rare for a charity to make grants to local authorities. Although the presenter said that the complainants had said that grants were made to local authorities as they provide “*the majority of recreational facilities in London and that other charities make similar grants*”, Mr Saxton’s comment was given a great deal of prominence in the programme, which failed to inform viewers that such grants were not in fact rare. The programme also failed to include the complainants’ explanation that another reason for funding local authority provision of facilities was that they were able to maintain facilities financially once built and that many of the projects funded by the complainants were co-funded with other charities.
  - iii) The programme included an allegation that the lack of detail about grants made “*raised questions of transparency*”, but failed to inform viewers that the programme makers had asked the complainants about grants made and that full details had been given in every case.
  - iv) Despite a request from the complainants, the programme failed to inform viewers that the London Marathon had sued Channel 4 following a previous edition of *Dispatches* that included allegations about the London Marathon and its founders and that Channel 4 had settled the action by agreeing to pay costs and damages of over £1 million and by broadcasting an apology.
  - v) The programme included an allegation that the complainants were “*not always entirely consistent*” regarding the amount awarded in grants and gave only one example of this statement, when it referred to an email in which the figure of £31 million had been given instead of £35 million. The programme failed to include the London Marathon’s explanation that the figure of £31 million was a typographical error and that in press releases and interviews the correct figure of £35 million had been given.

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<sup>1</sup> Major Phil Packer suffered heart and spinal injuries whilst serving in Iraq. He completed the 2009 Marathon in 13 days and raised money for Help for Heroes, a charity that helps to provide better facilities for wounded servicemen and women.

- vi) The programme failed to inform viewers that the complainants had repeatedly offered to meet with Channel 4 and the programme makers but that their offers had been refused.
- vii) Viewers were not informed that Blakeway Productions (“Blakeway”), which made the programme, was a subsidiary of Ten Alps plc, a company that competed with Realbuzz, and which, like Realbuzz, has a business selling advertising to charities. Furthermore the programme failed to inform viewers that the reason the programme makers were not given details of money paid to Realbuzz for the provision of web services was because it was part of a commercial rival.
- viii) The programme included a criticism that The London Marathon Charitable Trust Limited was slow in spending its money, but failed to inform viewers that the London Marathon had informed the programme makers that its trustees made their awards less than three weeks after the money became available to them and that grant awards were usually paid out within a maximum of six weeks after grant conditions were met and usually sooner.
- ix) The programme failed to inform viewers that The London Marathon Charitable Trust Limited must have the lowest running costs of any charity in Great Britain, since 100% of its receipts are used for charitable purposes and it (as opposed to the trading subsidiary) has no costs or expenses. This was particularly unfair as the programme gave the impression that not enough of the money from the London Marathon was used for charitable purposes.
- x) The programme included an allegation from Ms Kate Sayer, a charity accountant, that HM Revenue and Customs rules did not permit a charity to “*just build up a pot of money*”, as the programme alleged that the London Marathon did, despite the fact that the complainants’ auditors did not accept that this applied to The London Marathon Charitable Trust Limited.
- xi) The programme omitted the views of a number of people who had positive things to say about the complainants, including the Chief Executive of The London Playing Fields Foundation, the complainants’ auditors, the Chief Executive of the Outward Bound Trust, other charities that supported the Golden Bond scheme, the former chair of the Event Managers’ Forum and the Institute of Fundraising.
- xii) The programme alleged, in relation to advertisements sold by Realbuzz, that it was “*almost unheard of to sell web adverts of this type for a fixed price*”, but failed to inform viewers that in the sale of advertising in relation to running websites, it was normal practice to sell at fixed prices.
- xiii) The programme compared the price of a Golden Bond entry at £300 to a ballot entry at £32 and led viewers to believe they were the same entries with the same benefits. However, despite having been informed by the London Marathon, the programme failed to explain that substantial additional benefits attached to the Golden Bond entries, that the complainants had substantial costs associated with the provision of Golden Bonds and that Golden Bonds were cheaper than those being sold by direct competitors.
- xiv) The programme failed to say that Mr Saxton had been an adviser to the Royal Parks Half Marathon, a rival event in London, which had its own charity guaranteed places scheme, despite the complainants having informed the programme makers of this.
- xv) The programme included a materially misleading allegation that 15,000 out of 36,000 entries went to Golden Bonds, when in fact there were 51,000 entries. The complainants informed the programme makers that the number of entries dedicated to Golden and Silver Bonds was less than 25% of entries available annually, rather than the 41% that the programme’s figures suggested, but this information was omitted.



- xvi) The programme alleged that 15,000 entries a year were “sold” for Golden Bonds, although the programme makers were aware that the figure of 15,000 included places carried over from previous years and not paid for again.
  - xvii) The programme included an allegation by Mr Patrick Cox, of the Male Cancer Awareness Campaign, that the complainants had not distributed charity places fairly, even though the London Marathon had informed the programme makers that Mr Cox had failed to apply for a Silver Bond despite the London Marathon writing to him and urging him to do so.
  - xviii) The programme included an allegation that the complainants had “*dominance over running events in the capital*”, despite the complainants having told the programme makers that in the last two years many major new races had started in Britain, that The London Marathon Limited is not the largest race organiser in Britain and that major event operators which sell charity places included IMG, which claims to be the world’s premier and most diversified sports, entertainment and media company, in events such as the London Triathlon and other London events.
  - xix) The programme included an allegation that Mr Nick Anstee, a director of The London Marathon Limited, had lied at a meeting of the Streets and Walkways sub-committee of the City of London about Mr O’Reilly’s past events and that he had improper reasons for commenting that events organised by Mr O’Reilly had been badly run. The programme failed to explain that there had been many complaints about past events organised by Mr O’Reilly, of which the complainants had provided detailed evidence.
  - xx) The programme alleged that the London Marathon “*refuses to be open about its finances*” and that the London Marathon said that this was because the information was “*highly confidential and commercially sensitive*”.
  - xxi) The programme included an allegation by Mr Saxton that the Golden Bond system was “*quite an extraordinary system because actually there are very few areas of life where charities get charged more than the ordinary consumer*”, despite the fact that the complainants had told the programme makers that many other running events had similar schemes.
  - xxii) The programme alleged that Realbuzz offered “*advertising in running magazines and on websites, packaged up with guaranteed running places in the marathon*” and that “*the London Marathon pays Realbuzz a commission to do this*”. However, the complainants had told the programme makers that Realbuzz received no commission on the value of the entries in the advertising packages.
- e) The programme failed to include a short statement from the complainants in response to the programme.

#### **Channel 4’s case**

In summary, Channel 4 responded to the complaint as follows:

- a) As regards the complaint that the programme makers were not fair in their dealings with the complainants as they refused to return telephone calls, meet representatives of The London Marathon Limited and The London Marathon Charitable Trust Limited and examine documents offered, Channel 4 said that the programme makers sent the complainants a long and detailed letter, which contained a list of significant areas and points to which they were invited to provide a response. This was sent on 16 March 2010, 17 working days before the broadcast.

Channel 4 said that the programme makers declined the offer of an informal, off the record, meeting with representatives of the London Marathon and did not return phone calls, as they preferred to correspond formally in writing. Channel 4 said that the complainants effectively declined the offer made to them to provide an appropriate representative for an on-camera interview, as they would only proceed on condition that the interview would be aired unedited. This would have effectively handed editorial control of the interview to the complainants and was not a realistic way in which to expect to be able to present their position within a 48 minute documentary. Channel 4 said that the large amount of information provided by the complainants prior to broadcast was carefully considered and reflected where appropriate.

- b) Channel 4 responded to the complaint that the programme makers sought a contribution from The London Marathon Limited and The London Marathon Charitable Trust Limited but did not obtain their informed consent to their participation, as they did not inform the complainants of the names of a number of contributors to the programme or the nature of their likely contributions.

Channel 4 said that the programme makers had fully complied with the measures set out in the Code and in fact went well beyond their obligations by providing detailed information to the complainants on a number of matters.

Channel 4 said that the complainants were given a full and detailed description of the programme and the areas it was investigating, first in a letter to Mr Nick Bitel, the Chief Executive of The London Marathon Limited, on 9 March 2010 and then in a highly detailed letter on 16 March 2010. Channel 4 said that the complainants understood they were being asked to provide their response to criticisms of the London Marathon and were kept up-to-date on the changing broadcast date of the Channel 4 *Dispatches* programme.

With reference to the kind of contribution they were expected to make, Channel 4 said that the complainants were offered a pre-recorded interview which would be edited fairly to reflect their position and later the opportunity to provide a response in writing.

As regards the areas of questioning and the nature of other likely contributions, Channel 4 said that the complainants were provided with details of the question areas in writing. Channel 4 said that the Code did not require broadcasters to supply prospective contributors with the names of other contributors and that the programme makers put the "nature of other likely contributions" to the complainants for their response prior to broadcast by summarising the matters to be examined and criticised in the programme and, where it was required in the interests of fairness, that included the identity or nature of the source for them.

As regards significant changes to the programme as it developed, Channel 4 said that even though the complainants had not agreed to give an interview, the programme makers approached them a number of times before broadcast with additional points so that their response could be obtained.

- c) Channel 4 next responded to the complaint that the programme included a number of allegations about or criticisms of The London Marathon Limited and The London Marathon Charitable Trust Limited that were not put to the complainants and they were therefore not given an appropriate and timely opportunity to respond.

Channel 4 said that the programme makers put the key criticisms to the complainants through the exchange of letters prior to broadcast, as part of the “right of reply” process. Channel 4 said that the opportunity given to respond was timely, as there was more than sufficient time for organisations of the size of the complainants, who were used to dealing with the media and public relations matters, to respond. Channel 4 also said that the complainants were given an appropriate opportunity to respond, as the programme makers summarised the key criticisms to be made in the programme, including allegations of wrongdoing and any significant allegations. Channel 4 said that it would not have been appropriate to have provided the complainants with every comment or statement of general opinion expressed by interviewees and that no matters that were not expressly put to the complainants led to any unfairness to them.

As regards the allegations or criticisms in relation to which the complainants said they were not given an appropriate and timely opportunity to respond, Channel 4 responded as follows:

- i) A criticism of the level of pay paid to The London Marathon Limited’s highest paid employee.

Channel 4 said the complainants did not refute the statement in the programme that in the 12 months to September 2009, one employee made “...*nearly a quarter of a million*” and said that the programme merely compared the level of remuneration for the London Marathon’s highest paid employee with that of other similar organisations.

Channel 4 said that, given that the information appeared in the London Marathon’s accounts, the programme makers were entitled to report it. There was no obligation to inform the complainants of an intention to comment on a matter of indisputable fact and, in any event, in the letter of 16 March 2010 the programme makers asked if the complainants would provide them “with the identity of the highest paid member of the Marathon staff as outlined in the company’s 2008-9 accounts?” The complainants therefore had the opportunity to answer the question and provide the information about the payment to this member of staff.

- ii) A criticism about the level of the income of The London Marathon Limited that went to charity or to The London Marathon Charitable Trust Limited.

Channel 4 said that, in looking at the structure of the Charitable Trust and the trading company the programme said that only a quarter of what the London Marathon took in 2009 went to charity. Competitive runners were then asked to guess what percentage of the money the organisers got for putting on the London Marathon went to charity.

Channel 4 said that the complainants did not dispute the figure but would have liked it to be compared with “other major marathons”. Channel 4 said that what other marathons did was not relevant in this context and that it was not unfair not to put to the complainants a matter of fact that was not an allegation of “wrongdoing or incompetence” and not a “significant allegation”.

- iii) A criticism of the cost of staging the London Marathon compared with the cost of staging another race, the British 10K.

Channel 4 said that, since the London Marathon declined to provide details of the cost of staging the race, citing commercial sensitivity, the programme stated that the programme makers were forced to try to find out for themselves what it cost to put on a big race. However, the programme's commentary made it clear that there were "extensive differences" between the London Marathon and the British 10K.

Channel 4 said that it was not necessary to put to the complainants that the programme would report the cost of staging the British 10K race.

- iv) An allegation of a lack of transparency in relation to the grants awarded by The London Marathon Charitable Trust Limited.

Channel 4 said that this was not an allegation and that the context of this part of the programme was transparency in the London Marathon's published accounts in relation to grants to local authorities. The presenter interviewed Tower Hamlets' Councillor Peter Golds, who raised concerns about the level of detail contained in The London Marathon Charitable Trust Limited's accounts and suggested there should be more transparency. The focus of this part of the programme was the complainants' published accounts and that the matter was raised in the context of Mr Saxton examining the published accounts. He stated in his interview that the information about grants was "...about as minimalist as it possibly could be..." He suggested that the London Marathon would be better with more "transparency and openness".

Channel 4 said that pre-broadcast correspondence, particularly the programme makers' letter of 16 March 2010 to London Marathon, stated that the programme would examine issues of transparency in the London Marathon's published accounts and the information and level of detail given by the London Marathon's representatives about grants awarded. The programme makers put this point to the complainants in the letter of 7 April 2010, when they asked why details about grants to local authorities not appear in the accounts.

- v) An allegation of "monopolistic behaviour" on the part of the complainants.

Channel 4 said that, in the context of discussing being discouraged by the London Marathon when he carried out some research on the potential for another marathon in London, Mr Saxton said in the programme that the London Marathon did "...a fairly good job on occasions of demonstrating that kind of monopolistic behaviour...". Channel 4 said that this was not an allegation of "wrongdoing", but a comment by Mr Saxton on what he took from the complainants' response to his endeavours in this area. Channel 4 said that Mr Saxton qualified his opinion by stating clearly his definition of the word "monopoly" and that there was no reason to put this comment to the complainants prior to broadcast.

- vi) An allegation that members of the public were being misled into believing that a higher percentage of the income generated by the London Marathon went to charity than actually did, with the views of some members of the public being included.

Channel 4 said that the programme merely questioned whether the level of the complainants' income that went to charity would accord with the

perceptions of ordinary competitive runners. The programme makers asked a number of runners at a Brighton running event a simple, open and non-leading question, shown in the programme, about what percentage of the money raised they guessed went to charity. Channel 4 said that the answers broadcast fairly reflected the responses received, with the vast majority under the impression that a larger percentage went directly to charity than did. This was not an allegation of impropriety by the complainants but an illustration of public perception.

- vii) An allegation that the London Marathon had tried to prevent Mr Saxton from doing research as to how they could do a better job of running the London Marathon.

Channel 4 said that the programme described how the London Marathon had sent emails to Mr Saxton informing him that his research on the potential for another marathon in London might damage the interests of the London Marathon and the charities involved in the race. They alerted him to the fact that "London Marathon" is a registered trademark and suggested he would be infringing it. Channel 4 said that it was fair and reasonable to say this was "*stiff opposition*" and for Mr Saxton to feel he was "*discouraged*" in his research and that it was not an allegation of wrongdoing which needed to be put to the complainants prior to broadcast.

- viii) An allegation, in relation to Realbuzz, that it was "*almost unheard of to sell web adverts of this type for a fixed price*".

Channel 4 said that the programme included an interview with the CEO of the Internet Advertising Bureau, Guy Philippon, who was hugely respected and knowledgeable in his field. Mr Philippon did not make an allegation but gave his opinion that the way Realbuzz sold advertising space was unusual in the wider context of the sale of advertising space across the internet. The relevance of the point was that this was a very expensive way for a charity to secure places for runners. The programme did state that some charities said they found the advertising useful in attracting runners.

Channel 4 said that the point was put to Realbuzz, who had not complained of unfair treatment.

- ix) An allegation that 15,000 out of 36,000 entries went to Golden Bonds, when in fact over 51,000 entries were accepted each year into the race.

Channel 4 said that the programme reported statements of fact and did not make allegations. The programme did not claim that "15,000 out of 36,000 entries went to Golden Bonds", but said that Jo, a runner interviewed for the programme, had not got a place through the ballot and had become one of 15,000 runners who secured a place that had been bought by a charity. The programme said that some of those places were called Golden Bond places and that they cost charities £300, about nine times more than was paid by runners who got a place through the ballot.

Channel 4 said that the complainants told the programme makers that the figure of 15,000 included places carried over from previous years and not paid for again. The programme therefore accurately stated that 15,000 runners secured a place that had been bought by a charity.

- x) An allegation that the complainants had “dominance over running events in the capital”.

Channel 4 said that, on any analysis the London Marathon, by its size, profile and iconic status, was the dominant running event in London. The comment made was not pejorative and it was not necessary to seek a comment from the complainants.

- xi) An allegation by Mr Saxton that the Golden Bond system was “*quite an extraordinary system because actually there are very few areas of life where charities get charged more than the ordinary consumer*”.

Channel 4 said that this was not an allegation that required a response, but a comment on matters of fact made by Mr Saxton in his capacity as an expert on charities. Channel 4 said that, while it may be that other charities in the field of competitive running operated similar systems, this did not undermine the genuine opinion expressed by Mr Saxton nor did it merit a right of reply from the complainants.

- xii) An allegation that Help for Heroes had refused to pay £300 for a Golden Bond place, when in fact the charity had never been asked to pay £300 per place and Major Packer, who walked the course over a period of 13 days, had an entry for which he paid £32.

Channel 4 said that, in light of Mr Saxton’s comment that there were “*very few areas of life where charities get charged more than the ordinary consumer*”, the programme’s commentary stated that some charities refused to pay £300 for a Golden Bond and would not “*buy their way into the marathon*”.

Channel 4 said that this was a statement of fact. The point was not that Help for Heroes had never been asked to pay £300 per place, but that the charity, in the knowledge that they would be charged £300 per running place for a Golden or Silver Bond, decided not to pay that sum but to gain runners through the ballot system. In these circumstances it was accurate to describe this as the charity refusing to pay for a Golden Bond place. The reference to Major Packer having paid £32 merely supported the argument that Help for Heroes refused to pay the £300 and relied instead on people who had paid £32 in the ballot to run for them instead.

- xiii) An allegation that there was “*a particular issue*” regarding the structure of the London Marathon organisation.

Channel 4 said that this comment by Mr Saxton was made in the context of the programme explaining the structure of the London Marathon, when he observed that the structure was, in his opinion, “*untypical*”. Channel 4 said that no allegation of wrongdoing was made that needed to be put to the complainants.

- d) Channel 4 next responded to the complaint that the programme makers presented, disregarded or omitted material facts in a way that was unfair to the complainants. In particular:
  - i) The programme included footage of Mr Mike O’Reilly, organiser of the British 10K, complaining that the London Marathon had tried to prevent him from holding an event in London. However, the programme failed to include the

London Marathon's explanations that: Mr O'Reilly had tried to block a London Marathon event in London; the City of London and that the City of Westminster had decided not to allow any new road races; Mr O'Reilly had intended to call his event the "Official London Half Marathon"; and that the words "London Marathon" were a registered trademark of The London Marathon Limited.

Channel 4 said that the explanations referred to by the complainants were not material facts and had no bearing on what Mr O'Reilly said. Channel 4 said that the complainants had not challenged the factual accuracy of Mr O'Reilly's contribution. However, although the programme makers were not obliged to do so, the programme had reflected the complainants' response on this point.

- ii) The programme included on three occasions Mr Saxton's comment that it was rare for a charity to make grants to local authorities. Mr Saxton's comment was given a great deal of prominence in the programme, which failed to inform viewers that such grants were not in fact rare. The programme also failed to include the complainants' explanation that another reason for funding local authority provision of facilities was that they were able to maintain facilities financially once built and that many of the projects funded by the complainants were co-funded with other charities.

As regards the repetition of a short extract from Mr Saxton's interview, Channel 4 said that this was the accepted practice of "teasing" an interview coming up later in a documentary. The extract was then put into its full context at the point at which the fuller extract from the interview appeared.

Channel 4 said that, as well as saying that he did not know of any charities that gave money to a local authority, Mr Saxton described this as "*quite rare*", as his view was that the usual flow of money was *to* charities *from* local authorities and that the flow of money from charity to local authority was especially unusual with fundraised monies.

Channel 4 said that the programme reflected the complainants' position on this point.

- iii) The programme included an allegation that the lack of detail about grants made "raised questions of transparency", but failed to inform viewers that the programme makers had asked the complainants about grants made and that full details had been given in every case.

Channel 4 said that the London Marathon did provide the programme makers with details of various grants, but that details of those grants were not made public as a matter of course by the London Marathon other than in their own PR. This was fairly stated as raising "*questions of transparency*".

- iv) Despite a request from the complainants, the programme failed to inform viewers that the London Marathon had sued Channel 4 following a previous edition of *Dispatches* that included allegations about the London Marathon and its founders and that Channel 4 had settled the action by agreeing to pay costs and damages of over £1 million and by broadcasting an apology.

Channel 4 said that the programme which was the subject of the libel action was broadcast in 1991 and that no one involved in the programme complained of had any involvement in the original programme. Channel 4

said that the programme did not make the same points as the programme which was the subject of the libel settlement. Channel 4 said that it fully complied with an undertaking it had given not to repeat certain allegations. This was explained to the complainants in correspondence at an early stage by Channel 4's Head of News & Current Affairs.

- v) The programme included an allegation that the complainants were "*not always entirely consistent*" regarding the amount awarded in grants and gave only one example of this statement, when it referred to an email in which the figure of £31 million had been given instead of £35 million. The programme failed to include the London Marathon's explanation that the figure of £31 million was a typographical error and that in press releases and interviews the correct figure of £35 million had been given.

Channel 4 said that the inconsistency referred to by the complainants was not minor, as it amounted to £4 million and concerned donations. Channel 4 said that a further example of inconsistency on this same issue, which was not ultimately included in the programme, appeared in an article in the October 2009 edition of the *Marathon News*, a magazine published by the London Marathon.

Channel 4 said that London Marathon's explanation before broadcast did not address the statement that they were not always consistent but gave an explanation as to how the particular inconsistency referred to in the programme occurred, i.e. a typographical error.

- vi) The programme failed to inform viewers that the complainants had repeatedly offered to meet with Channel 4 and the programme makers but that their offers had been refused.

Channel 4 said that the programme makers were under no obligation to inform viewers of the complainants' offers to meet them.

- vii) Viewers were not informed that Blakeway Productions ("Blakeway"), which made the programme, was a subsidiary of Ten Alps plc, a company that competed with Realbuzz, and which, like Realbuzz, has a business selling advertising to charities. Furthermore the programme failed to inform viewers that the reason the programme makers were not given details of money paid to Realbuzz for the provision of web services was because it was part of a commercial rival.

Channel 4 said that it commissioned a documentary about the London Marathon because it considered that there were matters of public interest that required legitimate journalistic investigation. Channel 4 said that it was aware that Ten Alps is the parent company of Blakeway and that it has other media-related commercial interests. Blakeway had assured Channel 4 that no Ten Alps company was a commercial rival of Realbuzz in the way suggested by the complainants. There was therefore no conflict of interest that was required to be disclosed to the audience.

Channel 4 said that both Ten Alps Creative and Realbuzz were online businesses that sold online advertising as part of their businesses, but that the similarity ended there. Realbuzz is a niche business focused entirely on sports, fitness and leisure, whereas Ten Alps Publishing, as part of a much larger business, sells advertising space in various publications, some of which



are owned by charities, and sells advertising to charities along with a wide range of other businesses. Channel 4 said that the total revenue from this activity made up a fraction of Ten Alps Publishing's advertising revenue and that charities formed a tiny percentage of the client base in this area. Furthermore, this activity differed from Realbuzz's in important ways, as Realbuzz actively targeted charities to sell advertising packages on behalf of the London Marathon whereas Ten Alps Publishing sold advertising on behalf of charities and when it did sell to charities it was not targeting those charities any more than it did any other business wishing to advertise.

- viii) The programme included a criticism that The London Marathon Charitable Trust Limited was slow in spending its money, but failed to inform viewers that the London Marathon had informed the programme makers that its trustees made their awards less than three weeks after the money became available to them and that grant awards were usually paid out within a maximum of six weeks after grant conditions were met and usually sooner.

Channel 4 said that the programme's commentary asked why, if it was "so *slow*" in spending money, the London Marathon kept charging charities so much to have runners in the race.

Channel 4 said that this issue was put to the London Marathon in the programme makers' letter of 16 March 2010 and that the programme contained an extract from the London Marathon's response and therefore fairly reflected the London Marathon's response to the observation that money was being distributed slowly. Channel 4 said that to have included the complainants' references to six weeks and three weeks would have created the misleading impression that grant monies were paid out within weeks whereas in fact grant conditions often take a year, or sometimes even longer, to be met.

- ix) The programme failed to inform viewers that The London Marathon Charitable Trust Limited must have the lowest running cost of any charity in Great Britain, since 100% of its receipts are used for charitable purposes and it (as opposed to the trading subsidiary) has no costs or expenses. This was particularly unfair as the programme gave the impression that not enough of the money from the London Marathon was used for charitable purposes.

Channel 4 said that the programme included factually accurate statements, which related to the London Marathon as a whole, not to individual parts of its make-up. The programme clearly explained that the London Marathon as an entity was made up of The London Marathon Charitable Trust Limited and The London Marathon Limited and that the latter gave money from the proceeds of organising the race and other events to the former. Channel 4 said that whether The London Marathon Charitable Trust Limited had high or low running costs was irrelevant to the wider point that a relatively small percentage of the total income of the London Marathon as a whole was distributed to good causes by The London Marathon Charitable Trust Limited. Channel 4 said that the programme at no point sought to suggest that The London Marathon Charitable Trust Limited had high running costs so inclusion of a response countering such a claim was unnecessary.

- x) The programme included an allegation from Ms Sayer that HM Revenue and Customs rules did not permit a charity to "just build up a pot of money", as the programme alleged that the London Marathon did, despite the fact that the

complainants' auditors did not accept that this applied to The London Marathon Charitable Trust Limited.

Channel 4 said that Ms Sayer had examined the published accounts of The London Marathon Charitable Trust Limited and that her comments were made in the context of the programme examining how much of The London Marathon Charitable Trust Limited's funds were being distributed. Channel 4 said that Ms Sayer did not make a specific allegation, but outlined the rules and gave her view that HMRC might take an interest. No specific claim of wrongdoing was made that was required to be put to the complainants. The programme was not required to report that the complainants' auditors took a different view and, had it done so, the programme would have had to reflect Ms Sayer's opinion, expressed to the programme makers, that the auditor's view was wrong.

- xi) The programme omitted the views of a number of people who had positive things to say about the complainants, including the Chief Executive of The London Playing Fields Foundation, the complainants' auditors, the Chief Executive of the Outward Bound Trust, other charities that supported the Golden Bond scheme, the former chair of the Event Managers' Forum and the Institute of Fundraising.

Channel 4 said that these views were not "material facts" and that the programme makers were under no obligation to include the unsolicited opinions of third parties who may well have vested interests. However, Channel 4 said that the programme did include, where relevant, the opinions of third parties where they contrasted with those of interviewees. For example, when the programme highlighted the selling of expensive advertising packages, with running places attached, by the London Marathon and Realbuzz, the programme reflected opinions of charities which found the packages useful.

- xii) The programme alleged, in relation to advertisements sold by Realbuzz, that it was "*almost unheard of to sell web adverts of this type for a fixed price*", but failed to inform viewers that in the sale of advertising in relation to running websites, it was normal practice to sell at fixed prices.

As set out in its response to the complaint at head c) viii) above, Channel 4 said that the programme included an interview with Mr Philippson, CEO of the Internet Advertising Bureau, who gave his opinion that the way Realbuzz sold advertising space was unusual in the wider context of the sale of advertising space across the internet.

Channel 4 reiterated that the point was put to Realbuzz, who had not complained of unfair treatment

- xiii) The programme compared the price of a Golden Bond entry at £300 to a ballot entry at £32 and led viewers to believe they were the same entries with the same benefits. However, despite having been informed by the London Marathon, the programme failed to explain that substantial additional benefits attached to the Golden Bond entries, that the complainants had substantial costs associated with the provision of Golden Bonds and that Golden Bonds were cheaper than those being sold by direct competitors.

Channel 4 said that the programme did not seek to compare the different benefits of the three ways of securing a place in the London Marathon, nor did it lead viewers to infer that they had the same benefits. Channel 4 said that the “substantial additional benefits” that the complainants said attached to Golden Bond entries were not relevant to the matters being debated in the programme.

- xiv) The programme failed to say that Mr Saxton had been an adviser to the Royal Parks Half Marathon, a rival event in London, which had its own charity guaranteed places scheme, despite the complainants having informed the programme makers of this.

Channel 4 said that this was not a material fact and there was no reason why the programme should have included this information. Channel 4 said there was no conflict of interest on Mr Saxton’s part, that it understood from him that he did not receive any payment for advising the Royal Parks Half Marathon and that his advice consisted of three meetings with the organisers. Channel 4 said that Mr Saxton advised over 100 charities in a year, in many cases without being paid. Channel 4 said that Mr Saxton informed the programme makers that he was approached by the organisers of the Royal Parks Half Marathon after his charity think tank published research looking at ways to meet the excessive demand for running events in London and that the aim of his research was to explore ways of meeting this demand, not ways of “competing” as a rival to the London Marathon.

Channel 4 said that the Royal Parks Half Marathon did have its own charity guaranteed places scheme, but that that did not affect the programme’s broad point about the London Marathon Bond schemes, which was that they were not transparent in their operation.

- xv) The programme included a materially misleading allegation that 15,000 out of 36,000 entries went to Golden Bonds, when in fact there were 51,000 entries. The complainants informed the programme makers that the number of entries dedicated to Golden and Silver Bonds was less than 25% of entries available annually, rather than the 41% that the programme’s figures suggested, but this information was omitted.

As set out in its response at head c) ix) above, Channel 4 said that in this regard the programme did not report allegations but statements of fact. Channel 4 said that the programme did not claim that “15,000 out of 36,000 entries went to Golden Bonds” but said that runner Jo was one of 15,000 people who had secured a Golden Bond place bought by a charity. Channel 4 said that, in a letter dated 6 April 2010 to the programme makers, the London Marathon said that the figure of 15,000 places included places carried over from previous years and not paid for again.

Channel 4 said that the programme accurately stated that 15,000 runners secured places that had been bought by a charity, according to the London Marathon’s own figures. Channel 4 said that the programme expressly did not refer at this point to the total number of entries into the London Marathon, nor did it attempt to extrapolate overall percentage figures. Channel 4 also said that the programme did not state that these entries all went to Golden Bonds. The programme referred to the total number of “runners” in the London Marathon as being 36,000, but that these were not referred to as “entries”.

- xvi) The programme alleged that 15,000 entries a year were “sold” for Golden Bonds, although the programme makers were aware that the figure of 15,000 included places carried over from previous years and not paid for again.

Channel 4 said that the programme accurately reported that there were 15,000 places paid for by charities, whether paid for in that particular year or previously paid for in other years. The commentary deliberately did not state “a year” to avoid the confusion the complainants now alleged. Channel 4 said that the script did not say those places related to Golden Bonds but that “*some of these*” were known as Golden Bonds.

- xvii) The programme included an allegation by Mr Patrick Cox, of the Male Cancer Awareness Campaign, that the complainants had not distributed charity places fairly, even though the London Marathon had informed the programme makers that Mr Cox had failed to apply for a Silver Bond despite the London Marathon writing to him and urging him to do so.

Channel 4 said that in his interview Mr Cox was discussing Golden Bonds not charity places in general and that his charity, the Male Cancer Awareness Campaign, had been told it could not secure a Golden Bond, like many other charities which wanted them. Channel 4 said that, as a Golden Bond secured a place in the race every year for a charity, effectively indefinitely, but a Silver Bond only allowed a charity one runner in one year and then another in five years time, charity would not place a similar value on a Silver Bond as it would a Golden Bond, or find it an adequate replacement.

Channel 4 said that the London Marathon informed the programme makers that Mr Cox had been offered a Silver Bond and that the programme reflected this, but that whether Mr Cox did or did not choose to accept the offer of a Silver Bond did not materially affect his view of the Golden Bond System.

- xviii) The programme included an allegation that the complainants had “dominance over running events in the capital”, despite the complainants having told the programme makers that in the last two years many major new races had started in Britain, that The London Marathon Limited is not the largest race organiser in Britain and that major event operators which sell charity places included IMG, which claims to be the world’s premier and most diversified sports, entertainment and media company, in events such as the London Triathlon and other London events.

Channel 4 said that the reference to “*dominance over running events in the capital*” had been taken out of context and that, as set out in its response at head c) x), the London Marathon was on any analysis, given its size, profile and iconic status, the dominant running event in London. The comment made was not pejorative and it was not necessary to seek a comment from the complainants.

- xix) The programme included an allegation that Mr Nick Anstee, a director of The London Marathon Limited, had lied at a meeting of the Streets and Walkways sub-committee of the City of London about Mr O’Reilly’s past events and that he had improper reasons for commenting that events organised by Mr O’Reilly had been badly run. The programme failed to explain that there had been many complaints about past events organised by Mr O’Reilly, of which the complainants had provided detailed evidence.

Channel 4 said that the programme contained no such allegations and that Channel 4 said that the point made in the programme was that a director of The London Marathon Limited made objections to Mr O'Reilly's plans and drew the committee's attention to allegations that his past events had been "badly" run. Channel 4 said that this had happened at a meeting of which Mr O'Reilly was unaware and so he had been unable to answer any criticisms made of his events and that no basis for the allegations had been minuted. Channel 4 said that whether the complainants subsequently provided the programme makers with evidence of complaints about Mr O'Reilly's events had no bearing on what Mr Anstee said at the meeting at the time and was not a material fact.

- xx) The programme alleged that the London Marathon "*refuses to be open about its finances*" and said that the London Marathon said that this was because the information was "*highly confidential and commercially sensitive*".

Channel 4 said that it was unclear what the complainants considered had been misrepresented or omitted from the programme which caused unfairness. It said that the programme examined the published accounts of both The London Marathon Limited and The London Marathon Charitable Trust Limited and reflected the complainants' position on the issue.

- xxi) The programme included an allegation by Mr Saxton that the Golden Bond system was "quite an extraordinary system because actually there are very few areas of life where charities get charged more than the ordinary consumer", despite the fact that the complainants had told the programme makers that many other running events had similar schemes.

Channel 4 said that, as set out in its response at head c) xi), this was not an allegation, but a comment on matters of fact made by Mr Saxton in his capacity as an expert on charities.

- xxii) The programme alleged that Realbuzz offered "advertising in running magazines and on websites, packaged up with guaranteed running places in the marathon" and that "the London Marathon pays Realbuzz a commission to do this". However, the complainants had told the programme makers that Realbuzz received no commission on the value of the entries in the advertising packages.

Channel 4 said that the London Marathon paid Realbuzz a commission to sell the packages. While it was correct that the London Marathon told the programme makers that they did not pay Realbuzz a commission on the value of the running places, at no point did the programme state or imply that there was a commission paid on the value of the places, so fairness did not require any comment on this by the London Marathon to be included.

- e) Channel 4 then responded to the complaint that the programme failed to include a short statement from the complainants in response to the programme.

Channel 4 said that the complainants sent to the programme makers with a letter dated 6 April 2010 a document headed "STATEMENT TO BE USED IN FULL OR NOT AT ALL". Channel 4 said that it was decided that the interests of fairness did not require it to be included. However, the complainants' position was fully and fairly reflected throughout the programme, which contained six key sections

giving direct extracts from the complainants' responses to the programme makers.

Channel 4 said that, in a letter of 26 March 2010 in response to repeated invitations from the programme makers to provide a representative for an on-camera interview, the complainants asked for confirmation that a representative would be able to say everything that was expressed in the letter and that the interview would be broadcast unedited. This was at the end of a detailed 15 page letter and was an unreasonable basis for an interview. Channel 4 said that the programme makers had no obligation to offer an unedited interview and, by making such an unreasonable and unrealistic demand, the complainants effectively closed one avenue offered to them to put across their perspective.

## 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.

- a) Ofcom first considered the complaint that the programme makers were not fair in their dealings with the complainants, as they refused to return telephone calls, meet representatives of The London Marathon Limited and The London Marathon Charitable Trust Limited and examine documents offered.

In considering this part of the complaint Ofcom took account of Practice 7.2 of the Code, which states that broadcasters and programme makers should normally be fair in their dealings with potential contributors to programmes unless, exceptionally, it is justified to do otherwise.

Ofcom first noted the dealings between the parties prior to the broadcast. There was correspondence between Mr Bitel, the programme makers and Channel 4 between January 2010 and the broadcast and the programme makers told Mr Bitel that they did not consider any off the record discussions to be appropriate. On Monday 5 March 2010 the series producer told Mr Bitel that the programme makers were producing a programme that examined "the operation and organisation of the London Marathon and the companies and other bodies associated with it" and asked for an interview with Race Director, David Bedford. Mr Bitel asked for a meeting without cameras in order to discuss the allegations and the complainants' position, which the programme makers declined. On 16 March 2010, the series producer wrote to Mr Bitel asking for his response to 13 specific matters. Mr Bitel provided a lengthy response and asked that his letter be broadcast in an unedited format. On 6 April 2010 Mr Bitel provided a statement marked "to be used in full or not at all".

In Ofcom's view the Code's provision that programme makers should be fair in their dealings with potential contributors to programmes did not require the programme makers to engage in the informal process suggested by the complainants, either through telephone conversations or informal, off the record

meetings. Subject to one finding at decision head d) v) below, while the timescale for the complainants to respond was, on occasions, tight, Ofcom considered that the programme makers gave the complainants enough information regarding the general nature of the criticisms to be made to enable them to decide whether to take part in the programme or not and in this respect were fair in their dealings with the complainants.

Ofcom noted that the parties were unable to agree on terms for recording an interview with a London Marathon representative in the programme and that Mr Bitel required that any interview would be aired unedited. In Ofcom's view it was not incumbent on the programme makers to accede to this request.

Ofcom also noted that a large amount of material was provided to the programme makers by the complainants. Subject to one finding at d) v) below, this material appears to have been considered and referred to in the programme where relevant.

Accordingly, Ofcom found no unfairness to the complainants in this respect.

- b) Ofcom considered the complaint that the programme makers sought a contribution from The London Marathon Limited and The London Marathon Charitable Trust Limited but did not obtain their informed consent to their participation, as they did not inform the complainants of the names of a number of contributors to the programme or the nature of their likely contributions.

In considering this part of the complaint Ofcom took account of Practice 7.2, as set out under decision head a) above. Ofcom also took account of Practice 7.3, which states that where a person is invited to make a contribution to a programme, they should normally be told about the nature and purpose of the programme, what kind of contribution they are expected to make, the areas of questioning and the nature of other likely contributions.

As set out under decision head a) above, Ofcom noted that the parties were unable to agree on the terms of an interview with a representative of the complainants and so no such interview was included in the programme. However the programme included footage of Mr Bitel and extracts from the complainants' letters to the broadcasters.

Ofcom considered whether, as potential contributors, the complainants were given sufficient information about the nature of the programme and the likely contributions to it in accordance with Practice 7.3. As set out under decision head a) above, the programme makers took steps to involve the complainants in the programme making process and provided them with extensive information about the proposed programme and the matters that were likely to be raised in it. Ofcom took the view that the complainants were told what the key criticisms or allegations were likely to be in the programme. Ofcom also noted that the parties kept in touch during the programme making process, with the programme makers asking further questions and the complainants responding and providing further information. The complainants were not told the names of all the contributors to the programme and the programme makers were not required to give them this information. The programme makers were required to inform the complainants about the nature of other likely contributions. Ofcom took the view that the information provided to the complainants in correspondence was sufficient to alert them to the nature of likely contributions and to the likelihood of contributions being critical of aspects of the London Marathon. Ofcom therefore took the view

that the complainants were given sufficient information about the nature of the likely contributions to enable them to respond to the specific allegations that were put to them.

Ofcom therefore found no unfairness to the complainants in this respect.

- c) The programme included a number of allegations about or criticisms of The London Marathon Limited and The London Marathon Charitable Trust Limited that were not put to the complainants and they were therefore not given an appropriate and timely opportunity to respond.

In considering this part of the complaint Ofcom took account of Practice 7.11 of the Code, which states that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

Before considering the individual issues raised below, Ofcom noted that the programme opened with the following commentary:

*“Tonight on Dispatches we investigate the London Marathon. We reveal how it makes big money from charities and their runners. We show how some charities are paying up to £2500 for an advertising package that gets them just one place in the race...And questions are being raised about what the London Marathon charity is doing with the money it gives out...Dispatches has spend months investigating the London Marathon’s finances. We tried to find out what happens to the tens of millions raised by charity runners each year”.*

In Ofcom’s view this opening commentary set the tone of the programme as being one that would be investigating serious criticisms of the London Marathon.

Ofcom then went on to consider the following allegations or criticisms complained of:

- i) A criticism of the level of pay paid to The London Marathon Limited’s highest paid employee.

Ofcom noted that the programme said in relation to The London Marathon Limited’s highest paid employee:

*“In the 12 months to last September, one employee made between £240,000 and £250,000 – nearly a quarter of a million. Compare this with the top salaries paid by other charities. It’s £100,000 more than the best paid person at the NSPCC. It’s more than double the amount paid to the highest paid employees at the RSPCA or Oxfam”.*

Ofcom noted Channel 4’s position that this was not an allegation that should have been put to the complainants.

Ofcom acknowledged that the figure appeared in the complainant’s accounts and was therefore public information that the programme makers were entitled to include in the programme. Ofcom took the view that the programme simply stated a fact about the salary of an employee of The London Marathon Limited and that the inclusion of this information was not an



allegation of wrongdoing or incompetence or other significant allegation that should have been put to the complainants.

This was not unfair to the complainants.

- ii) A criticism about the level of the income of The London Marathon Limited that went to charity or to The London Marathon Charitable Trust Limited.

Ofcom noted that the programme said:

*“We’ve discovered that the London Marathon took in almost £18 million last year but of that, only £4.5 million went to The London Marathon Charitable Trust. In other words just one quarter of its income went to the charity”.*

At the end of the programme, the commentary said of the London Marathon:

*“...the way it is organised sets charity against charity and the stark fact is that for every £6 that the race organisation received last year, less than £1 was actually paid out to the sporting and recreation projects it is meant to finance...On April the 25th, runners will arrive here having shed their sweat and their tears to cover 26.2 miles. Vast sums of money will be raised, but a large chunk will go to organisers of the London Marathon. The big questions are why and just what happens to that money? Until the London Marathon agrees to be more open, the public, charities and runners simply won’t know”.*

Ofcom noted Channel 4’s position that this was not an allegation that it was necessary for the programme makers to put to the complainants.

Ofcom noted that in the letter of 16 March 2010 the programme makers asked the complainants for a breakdown of the costs incurred in staging the London Marathon. Ofcom also noted that in his letter of 26 March 2010, Mr Bitel provided some information about costs but refused to provide the programme makers with information about the individual elements of the costs of staging the event, on grounds of commercial confidentiality.

In Ofcom’s view, the programme simply stated fact about the income raised by the event and the amount that went to charity. The inclusion of this information was not an allegation of wrongdoing or incompetence or other significant allegation that should have been put to the complainants.

This was not unfair to the complainants.

- iii) A criticism of the cost of staging the London Marathon compared with the cost of staging another race, the British 10K.

Ofcom noted that the programme stated:

*“Because the London Marathon refused to be open about its spending, we were forced to try to find out for ourselves what it costs to put on a big race. Each July the centre of London is closed for a 10K race. We asked the organiser of the race what’s involved in staging an event in the capital”.*

The organiser of the 10K race indicated it cost around £400,000 and the commentary then said:

*“The London Marathon is, of course, a much bigger race and the organisation also has expenditure related to other, smaller events it stages”.*

Ofcom noted Channel 4’s position that this point was not put to the complainants, because it was part of the programme’s overall concerns about transparency, which were put to the complainants in the letter of 16 March 2010, and there was no need to put the specific comparison to complainants.

Ofcom took the view that the comparison with the British 10K did not, in isolation, amount to an allegation of wrongdoing or incompetence on the part of the complainants. Furthermore, the programme’s commentary acknowledged the different sizes of the events being compared. There was therefore no requirement for the programme makers to provide the complainants with an opportunity to respond on this point.

Ofcom therefore found no unfairness in this respect.

- iv) An allegation of lack of transparency in relation to the grants awarded by The London Marathon Charitable Trust Limited.

Ofcom noted that in this section of the programme, which looked at the grants awarded and paid out by The London Marathon Charitable Trust Limited, Mr Saxton stated:

*“When you go and look at their accounts ... The London Marathon literally has one-liners saying the London borough of such and such got £50,000 from us, the London borough of such got £30,000 from us. So it’s about as minimalist as it possibly could be, the amount of information, and I think again the London Marathon would do a good job in terms of transparency and openness in talking a little bit more about how it spends its money”.*

The commentary then stated:

*“In the past, some grants to London boroughs have been made without the charity’s accounts giving any indication of what the money was for. Between 2000 and 2007 the London Marathon paid out nearly £4 million in this way. Grants are made to boroughs across London, but again the lack of detail raises questions of transparency”.*

The programme then showed Councillor Golds of Tower Hamlets calling for greater transparency, saying:

*“I think that’s completely wrong. Everybody wants to know what, where money is going and what happens to it.... There needs to be more transparency”.*

Ofcom noted Channel 4’s argument that this issue was put to the complainants but that they did not respond.

Ofcom considered that this section of the programme included an allegation that the level of information about grants that was provided in the complainants' accounts was insufficient. Ofcom took the view that this was an allegation of wrongdoing on the part of the complainants.

Ofcom noted that the complainants provided the programme makers with a list of grants made, but took the view that, as the issue being raised was an alleged lack of transparency in the accounts, it was not necessary for the information given to the programme makers, but not provided in the accounts, to be referred to in the programme. Ofcom also noted that the programme makers' letter to the complainants of 7 April 2010 said "we are still interested to learn why you award grants to councils in any event... Furthermore, given that you have now supplied us with details of these various payments, why is it that this information doesn't appear in your accounts?" Ofcom noted that, although the complainants responded to the letter of 7 April 2010, they did not respond to the question about why the information about grants to local authorities did not appear in their accounts. In the circumstances, Ofcom considered that the complainants were provided with an appropriate and timely opportunity to respond to this criticism, but declined to do so.

Ofcom found no unfairness to the complainants in this respect.

- v) An allegation of "*monopolistic behaviour*" on the part of the complainants.

Ofcom noted that, when talking about the response he had when he carried out some research on the potential for another marathon in London, Mr Saxton said in the programme:

*"If your definition of a monopoly was, once you've got to the top of the ladder you spend your time trying to kick out as fiercely as you can to stop anyone else from climbing up the ladders as well, the London Marathon do a fairly good job on occasions of demonstrating that kind of monopolistic behaviour, 'we're doing nicely thank you and actually were not going to encourage anyone else'".*

The commentary then said:

*"The emails sent by the London Marathon to Joe Saxton accused him of breaching its copyright and damaging its charitable work".*

Ofcom considered that, in suggesting that the complainants engaged in "*monopolistic behaviour*", the programme had the potential to be viewed as being critical of the complainants. However Ofcom did not consider that Mr Saxton's views or the programme's commentary amounted to an allegation of wrongdoing or incompetence or other significant allegation that should have been put to the complainants.

Ofcom therefore found no unfairness to the complainants in this respect.

- vi) An allegation that members of the public were being misled into believing that a higher percentage of the income generated by the London Marathon went to charity than actually did, with the views of some members of the public.

Ofcom noted that the presenter said that "*just one quarter*" of the London Marathon's income went to charity. He then asked runners in Brighton what

percentage of the money received by the organisers of the London Marathon they thought went to charity, he received a wide range of responses (ranging from 10% to “close to 100%”).

In Ofcom’s view, it was apparent from the programme that members of the public assumed and hoped that a significant proportion of the complainants’ income went to charity. However, Ofcom did not consider there was a suggestion that the public was being misled by the complainants. As a result there was no requirement to provide the complainants with an opportunity to respond on this point.

Ofcom therefore found no unfairness in this respect.

- vii) An allegation that the London Marathon had tried to prevent Mr Saxton from doing research as to how they could do a better job of running the London Marathon.

Ofcom noted that the commentary stated that Mr Saxton had come up against “stiff opposition” when he carried out research into the potential for another marathon in London. Mr Saxton said:

*“When the London Marathon is sending emails to me trying to discourage me from doing research as to how they could do a better job of running their marathon and other marathons, I’m really quite surprised”.*

As set out under decision head c) v) above, Ofcom noted that the programme commentary then stated that the London Marathon accused Mr Saxton of breaching its copyright and damaging its charitable work.

Ofcom noted Channel 4’s position that this was not an allegation and did not need to be put to the complainants.

Ofcom took the view that when suggesting that Mr Saxton had been discouraged from conducting his research, the programme had the potential to be viewed as being critical of the complainants. However Ofcom did not consider that Mr Saxton’s views or the programme’s commentary amounted to an allegation of wrongdoing or incompetence or other significant allegation that should have been put to the complainants.

Ofcom therefore found that the programme was not unfair to the complainants in this respect.

- viii) An allegation, in relation to Realbuzz, that it was “almost unheard of to sell web adverts of this type for a fixed price”.

Ofcom noted that this part of the programme looked at the charities that failed to secure Golden Bond places in the London Marathon. The presenter explained that the London Marathon offers “another, more expensive, way to secure running places”, namely by buying advertising packages through Realbuzz. The commentary said that selling such fixed price packages was “almost unheard of” and that “...Realbuzz’s price list shows it is charging a flat rate for online advertising”. The programme then included a statement from Guy Philippon, Chief Executive of the Internet Advertising Bureau, who said:

*“You wouldn’t just buy a banner for thousands of pounds on trust that it’s going to deliver anything”.*

Ofcom noted the following commentary:

*“Some charities say they do find the advertising useful in attracting runners...Realbuzz told Dispatches that the prices they offer are “highly competitive” and are based on their knowledge of the traffic on the relevant site. Realbuzz is doing nothing wrong”.*

Ofcom considered that, although this part of the programme was looking at one of the ways to obtain places in the London Marathon, this point related primarily to Realbuzz. Ofcom took the view that this part of the programme did include some criticism of the London Marathon, albeit indirectly. Ofcom considered that Realbuzz was the appropriate organisation for the programme makers to approach for comment on this point and noted that the response provided by Realbuzz and included in the programme was sufficient to address any criticism of the complainants in this respect.

In these circumstances, Ofcom found no unfairness to the complainants.

- ix) An allegation that 15,000 out of 36,000 entries went to Golden Bonds, when in fact over 51,000 entries were accepted each year into the race.

Ofcom noted that the relevant part of the programme looked at the different ways of securing a place in the London Marathon and the opportunity for Golden Bond places for runners who did not get ballot places. The commentary stated:

*“Because Jo didn’t get a place through the ballot she has become one of 15,000 runners who secure a place that has been bought by a charity. Some of these are known as Golden Bond places and cost charities £300 each”.*

In a separate part of the programme there was the following commentary:

*“Of the 36,000 runners in the Marathon, around 20,000 get their places through a public ballot. We’ve been looking at how the other 16,000 or so places are allocated. Most of these are secured through the Golden Bond scheme”.*

Ofcom noted that there was a distinction between the number of “entries” accepted for the Marathon and the number of “runners” who actually took part. The complainants explained to the programme makers in correspondence that, as a result of injuries and other reasons, a number of successful entrants do not actually run.

Therefore the programme stated that 15,000 runners secured a place in the London Marathon that was bought by a charity and that some of those 15,000 places were Golden Bond places. The programme later stated that there would be 36,000 “runners” in the Marathon and that most of the non-ballot runners would be Golden Bond runners.

Ofcom understood that the complainants’ concern was that the programme gave an incorrect impression of the proportion of places that went to Golden

Bonds. However Ofcom noted that the programme did not state that 15,000 out of 36,000 “entries” went to Golden Bonds.

Ofcom found no unfairness in this respect.

- x) An allegation that the complainants had “*dominance over running events in the capital*”.

Ofcom noted that the programme stated:

*“We’ve seen how the London Marathon uses its position as the premier fundraising event in the world to make millions of pounds from charging charities for running places. Its dominance over running events in the capital helps it to do this”.*

Ofcom also noted Channel 4’s position that this was not a pejorative comment and that it was not necessary to put it to the complainants.

In Ofcom’s view, the reference to the complainants’ “*dominance*” over running events in the capital was simply a factual statement, made on the basis of the size of the event. Ofcom did not consider that this was an allegation of wrongdoing or incompetence or other significant allegation about the complainants and so the programme makers were not required to provide them with an opportunity to respond.

Ofcom found no unfairness in this respect.

- xi) An allegation by Mr Saxton that the Golden Bond system was “*quite an extraordinary system because actually there are very few areas of life where charities get charged more than the ordinary consumer*”.

Ofcom noted that in the course of the programme’s look at Golden Bonds, Mr Saxton stated that it was “*quite an extraordinary system*” and went on to say:

*“But it’s supply and demand. Charities are happy to pay because they know the amounts of money that they can raise are so substantial, and in a sense the London Marathon has said ‘well let’s charge whatever we think people are willing to pay for them’. And actually I don’t think most people would be that happy with the fact that probably the only reason that the London Marathon makes as much money as it does is that the charities they’re running for are paying an awful lot more for the privilege of those Golden Bond places compared to the people in the ballot”.*

Ofcom noted Channel 4’s position that this was a matter of fact and that there was no need for the programme makers to put this to the complainants.

Ofcom did not consider that, when he expressed his opinion that it was an extraordinary system that charged charities more than ordinary consumers, Mr Saxton was simply making a statement of fact. Ofcom took the view that Mr Saxton’s comment had the potential to be viewed as being critical of the complainants. However Ofcom did not consider that Mr Saxton’s comments amounted to an allegation of wrongdoing or incompetence or other significant allegation that should have been put to the complainants.

Ofcom found that this was not unfair to the complainants.

- xii) An allegation that Help for Heroes had refused to pay £300 for a Golden Bond place, when in fact the charity had never been asked to pay £300 per place and Major Phil Packer, who walked the course over a period of 13 days, had an entry for which he paid £32.

Ofcom noted that, in relation to Help for Heroes, the programme stated:

*“Some charities refuse to pay the £300 for a Golden Bond place. They won't buy their way into the marathon”.*

A Help for Heroes spokesman then said:

*“If you get a place for the marathon and you know about us and want to support us, join our marathon team. But when people ring us up and say, 'have you got any Golden Bond places', I'd like to run for you', we say 'I'm terribly sorry no we haven't,' because you know, we just simply don't want to spend donors' money on, on buying those places”.*

In Ofcom's view, the programme did not suggest that Help for Heroes had been asked to pay £300 for a Golden Bond place or that Major Packer had paid that sum for his entry into the race, merely that, as a matter of principle, it would not spend £300 of donors' money to secure an entry in the London Marathon. Ofcom did not consider that this was an allegation of wrongdoing or incompetence or other serious allegation about the complainants and therefore no response to it was required.

Ofcom therefore found no unfairness in this respect.

- xiii) An allegation that there was “a particular issue” regarding the structure of the London Marathon organisation.

Ofcom noted that the programme's commentary explained the structure as follows:

*“The body that organises the London Marathon is also itself a charity. Let's have a look to see how that charity is structured. It's under the control of The London Marathon Charitable Trust and that owns The London Marathon Limited. It's this company that actually organises the race. It makes profits and then hands them to the charitable trust. It is this whole entity that makes up the London Marathon. There is nothing unusual or wrong in a charity owning a trading company. But charity expert Joe Saxton thinks in this case there's a particular issue”.*

Mr Saxton then said:

*“Normally what you have is the tail is relatively small in comparison to the size of the charity dog, in this case actually the trading company that actually does all the business of the London Marathon is really quite a lot bigger and the only real activity of the charity itself is to take on the surplus, so what is untypical about this arrangement is that actually the trading company is really quite a lot bigger than the charity itself, and what the charity really only has going into is the income, the profit, if you like, from running the Marathon”.*

Ofcom noted that, following the commentary that there was nothing unusual or wrong in a charity owning a trading company, Mr Saxton observed that what he considered was unusual in this case was the size of the trading company by comparison to the charity. In Ofcom's view Mr Saxton was simply giving his opinion and the programme did not include an allegation of wrongdoing or incompetence or other significant allegation that should have been put to the complainants.

Ofcom therefore found no unfairness to the complainants in this respect.

Accordingly Ofcom found no unfairness to the complainants under this head of complaint.

- d) The programme makers presented, disregarded or omitted material facts in a way that was unfair to the complainants.

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

Ofcom made the following findings in relation to the issues raised under this head of complaint:

- i) The programme included footage of Mr Mike O'Reilly, organiser of the British 10K, complaining that the London Marathon had tried to prevent him from holding an event in London. However, the programme failed to include the London Marathon's explanations that: Mr O'Reilly had tried to block a London Marathon event in London; the City of London and that the City of Westminster had decided not to allow any new road races; Mr O'Reilly had intended to call his event the "Official London Half Marathon"; and that the words "London Marathon" were a registered trademark of The London Marathon Limited.

Ofcom noted, with reference to Mr O'Reilly's proposal to stage a half marathon in London, that the programme stated:

*"Another proposal, this time from the organisers of London's 10K race, was met with similar opposition from the London Marathon. The plan was to stage a half marathon in the capital".*

Mr O'Reilly explained that he had received a letter from the London Marathon saying he was infringing their copyright and demanding he withdraw the event from the calendar and write to everyone who had been told about the event.

The programme also stated that, when the City of London Corporation's Streets and Walkways sub-committee discussed Mr O'Reilly's proposed event, Mr Anstee, while declaring his interest as a director of The London Marathon Limited, had indicated that past events of Mr O'Reilly had allegedly been badly run, but not given his reasons for saying so. The programme then stated:

*"We asked the City of London about their decision and they said "the event had been turned down on technical grounds by the Director of*



*Environmental Services” and not by the Streets and Walkways sub-committee. The London Marathon told us that O’Reilly had pursued a “vendetta against the London Marathon for many years” and that his race’s title would be a “breach of trademark”.*

Ofcom noted that the complainants did not dispute that Mr O’Reilly’s event had been opposed in the way described in the programme, but complained that the omission of information provided by them to the programme makers amounted to the omission of material facts which resulted in unfairness to the complainants.

Ofcom noted that the complainants said that the City of London and the City of Westminster had decided not to allow any new road races and that the London Marathon had also been turned down for another event. Ofcom considered that the inclusion of the statement that Mr O’Reilly’s proposed event was turned down by the City of London’s Director of Environmental Services on “*technical grounds*” made it clear that the event was not turned down as a result of Mr Anstee’s statement to the Streets and Walkways sub-committee. In these circumstances, Ofcom did not consider that the omission of the information provided by the complainants amounted to the omission of material facts which resulted in unfairness to the complainants.

Ofcom also noted that the complainants said that Mr O’Reilly had attempted to block a London Marathon event and that his proposal to call his event the “Official London Half Marathon” would have resulted in trademark infringement and passing off. In Ofcom’s view, the inclusion of the statement from the complainants in the programme conveyed this information and as a result, Ofcom did not consider that material facts were omitted.

Ofcom found no unfairness in this respect.

- ii) The programme included on three occasions a comment by Mr Saxton that it was rare for a charity to make grants to local authorities. Although the presenter said that the complainants had said that grants were made to local authorities as they provide “*the majority of recreational facilities in London and that other charities make similar grants*”, Mr Saxton’s comment was given a great deal of prominence in the programme, which failed to inform viewers that such grants were not in fact rare. The programme also failed to include the complainants’ explanation that another reason for funding local authority provision of facilities was that they were able to maintain facilities financially once built and that many of the projects funded by the complainants were co-funded with other charities.

Ofcom noted that Mr Saxton’s statement was trailed twice in earlier parts of the programme as follows:

*“I don’t know any other charities that give money to a local authority, that’s really quite rare”.*

Later in the programme Mr Saxton said:

*“When you go and look at their accounts and you can see they have given their money to 30 or 40 local authorities in London, people like me think, I don’t know any other charities that give money to a local authority, that’s really quite rare. The London Marathon literally has one-liners saying the*

*London borough of such and such got £50,000 from us, the London borough of such and such got £30,000 from us. So it's about as minimalist as it possibly could be, the amount of information, and I think again the London Marathon would do a good job in terms of transparency and openness in talking a little bit more about how it spends its money".*

Ofcom also noted that the programme included a statement from the complainants:

*"The London Marathon also told Dispatches that grants are made to local authorities as they provide 'the great majority of recreational facilities in London', and that other charities make similar grants".*

In Ofcom's view, Mr Saxton's comments were made in the context of a lack of transparency in the complainants' accounts. Mr Saxton indicated that in his experience it was unusual for a charity to provide funds to local authorities and that because the complainants' accounts did not state what the funds were for, it was difficult to assess whether the funds were being well spent. Ofcom considered that this was a matter of public interest and that the programme makers were entitled to broadcast Mr Saxton's views on it.

Ofcom noted that by letter dated 7 April 2010 the complainants were asked why they made grants to councils as the programme makers understood that was unusual. In Ofcom's view, the gist of the complainants' response to the question was included in the programme. Ofcom noted that the programme did not include the complainants' point that local authorities are financially able to maintain the facilities once they have been built, but considered that the point was not relevant and would not have altered viewers' understanding of the point being made.

Ofcom found no unfairness in this respect.

- iii) The programme included an allegation that the lack of detail about grants made *"raised questions of transparency"*, but failed to inform viewers that the programme makers had asked the complainants about grants made and that full details had been given in every case.

Ofcom noted the statement of Mr Saxton in the programme set out at head d) ii) above was followed by commentary:

*"In the past, some grants to London boroughs have been made without the charity's accounts giving any indication of what the money was for. Between 2000 and 2007, the London Marathon paid out nearly £4 million in this way. Grants are made to boroughs across London, but again, the lack of detail raises questions of transparency".*

In Ofcom's view it was clear that the issue being raised in the programme related specifically to a lack of detail and transparency in the complainants' accounts. In that context, Ofcom did not consider that the provision of the information to the programme makers by the complainants during the programme making process was a material fact, the omission of which resulted in unfairness to the complainants.

Ofcom therefore found no unfairness in this respect.

- iv) Despite a request from the complainants, the programme failed to inform viewers that the London Marathon had sued Channel 4 following a previous edition of *Dispatches* that included allegations about the London Marathon and its founders and that Channel 4 had settled the action by agreeing to pay costs and damages of over £1 million and by broadcasting an apology.

Ofcom noted that a programme broadcast by Channel 4 in 1991 was the subject of a successful libel action on the part of the complainants and that no mention was made of that programme or the legal action in the programme. However, Ofcom's role is to assess the programme complained of on its own merits. In Ofcom's view, the previous litigation between the parties, almost 20 years before the programme complained of, was not relevant to the issues raised in the programme and it was not necessary, in the interests of fairness, for the programme to include it.

Ofcom found no unfairness in this respect.

- v) The programme included an allegation that the complainants were "*not always entirely consistent*" regarding the amount awarded in grants and gave only one example of this statement, when it referred to an email in which the figure of £31 million had been given instead of £35 million. The programme failed to include the London Marathon's explanation that the figure of £31 million was a typographical error and that in press releases and interviews the correct figure of £35 million had been given.

Ofcom noted that the programme stated:

*"The London Marathon likes to boast about how much it has given out. But it's not always entirely consistent in what it says. This official London Marathon press release from February says they've awarded over £35 million in grants since 1981. Then this email sent by the race director, David Bedford, says the figure is £31 million. We wanted to find out what runners are told by the people who organise the Marathon. So we sent an undercover reporter to a London Marathon event called 'meet the experts'".*

Undercover footage then showed Mr Bitel speaking at an event and saying:

*"That brought the total amount that we have awarded since the race started in 1981 to over £35 million".*

The commentary then continued:

*"You might be forgiven for thinking this means that since 1981, £35 million has actually been handed out. In fact, a large proportion of the money Bitel says has been 'awarded' is still in the London Marathon's bank account. The London Marathon told us they have been 'very consistent' in what they have said about the amount awarded by the Charitable Trust".*

Ofcom noted that the programme makers raised two examples of inconsistencies with the complainants prior to broadcast of the programme. The first related to a claim made by one of the trustees of the Charitable Trust in a newspaper article that £450 million had been donated by the London Marathon to London projects since 1981. The complainants informed the programme makers that £450 million was the sum that had been raised by

runners for charities since 1981 rather than the sum awarded by the complainants to London projects and that the position was clear elsewhere in the newspaper article referred to, a press release dated 11 February 2010, the Official Programme and previous official media guides.

As regards the second inconsistency, which was referred to in the programme, the complainants said there was a typographical error in an email from David Bedford to charities, but that the correct £35 million figure had been consistently used in press releases, interviews and many forums, including the one attended by the undercover reporter in the programme.

Ofcom noted that Channel 4 had stated that the complainants did not address the general allegation of an overall lack of consistency, but simply gave an explanation about the particular inconsistency regarding the figure of £35 million. In correspondence, the programme makers put to the complainants the two specific inconsistencies referred to above, but did not make a general allegation of lack of consistency. Ofcom also noted that the programme referred to the complainants saying they were “*very consistent*”, in response to the two specific inconsistencies put to them (but did not relay the complainants’ explanation relating to the £35 million figure). In Ofcom’s view the programme not only cited a specific “inconsistency” but also suggested a more general lack of consistency on the part of the complainants. In Ofcom’s view, in the context of widespread correct publicity, there was no basis for a general claim of inconsistency on the part of the complainants and this part of the programme misrepresented the complainants’ position. Furthermore, Ofcom did not consider that the inclusion of their statement that they were “*very consistent*” addressed the allegation made.

Ofcom found that this was unfair to the complainants.

- vi) The programme failed to inform viewers that the complainants had repeatedly offered to meet with Channel 4 and the programme makers but that their offers had been refused.

As set out under decision head a) above, Ofcom noted that during the course of the correspondence between Mr Bitel and the programme makers, he made a number of offers to meet with Channel 4 and the programme makers and found that there was no obligation on the programme makers or Channel 4 to engage with the informal process proposed by Mr Bitel. Ofcom also noted that Mr Bitel suggested meetings off camera and stipulated that any contribution by the complainants to the programme should be included unedited. Ofcom took the view that these requirements on the part of the complainants were not reasonable and the programme makers were entitled to reject them. In Ofcom’s view, this information about the programme making process was not relevant to the issues raised in the programme and it was not necessary, in the interests of fairness, for the programme to include it.

Ofcom found no unfairness in this respect.

- vii) Viewers were not informed that Blakeway, which made the programme, was a subsidiary of Ten Alps plc, a company that competed with Realbuzz, and which, like Realbuzz, has a business selling advertising to charities. Furthermore the programme failed to inform viewers that the reason the programme makers were not given details of money paid to Realbuzz for the provision of web services was because it was part of a commercial rival.

Ofcom noted that the alleged conflict was between Blakeway and Realbuzz and that there was no suggestion of a conflict between Blakeway and the complainants. Ofcom considered that the overlap in business between Blakeway and Realbuzz was remote and unlikely to constitute a conflict of interest. In these circumstances it was not necessary for the programme makers to refer to the overlap in business nor was it incumbent on them to refer in the programme to any commercial rivalry between Realbuzz and the programme makers.

Ofcom did not consider that the relationship between Blakeway, Ten Alps and Real Buzz was a material fact, the omission of which resulted in unfairness to the complainants.

Ofcom therefore found no unfairness in this respect.

- viii) The programme included a criticism that The London Marathon Charitable Trust Limited was slow in spending its money, but failed to inform viewers that the London Marathon had told the programme makers that its trustees made their awards less than three weeks after the money became available to them and that grant awards were usually paid out within a maximum of six weeks after grant conditions were met and usually sooner.

Ofcom noted that the programme's commentary stated:

*"Payouts have lagged behind income for years so the amount in its bank account has grown from just £4 million a decade ago to £14m today...this build-up of money in The London Marathon Charitable Trust's coffers raises an obvious question: If they're so slow in spending their money, why does the London Marathon keep charging charities so much to have runners in the race?"*

Ofcom also noted that this issue was put to the complainants in the programme makers' letter of 16 March 2010, in the following terms:

*"The London Marathon Charitable Trust is slow in distributing funds that it has received from the London Marathon Ltd. As a consequence the money it holds has increased in almost every year in the last decade. We note that at present The London Marathon Charitable Trust has funds of £14.4m. Thus the actual distributed figure is closer to £21m than £35m".*

The programme then included the following extract from the complainants' response:

*"The London Marathon told Dispatches it has a "very good record of paying out very quickly once grant conditions are met", and that funds have built up in the accounts because projects are waiting for "further grants" or "planning consent to be obtained"".*

Ofcom considered that this was intended to be a criticism of the complainants. The issue was raised in correspondence and the complainants were given an opportunity to respond to it. Although the specific timings referred to in the complainants' response to the programme makers were not included in the programme, Ofcom considered that the inclusion of the extract from the complainants' response made their position sufficiently clear and that

the omission of reference to three and six weeks did not amount to the omission of material facts.

Ofcom found no unfairness in this respect.

- ix) The programme failed to inform viewers that The London Marathon Charitable Trust Limited must have the lowest running costs of any charity in Great Britain, since 100% of its receipts are used for charitable purposes and it (as opposed to the trading subsidiary) has no costs or expenses. This was particularly unfair as the programme gave the impression that not enough of the money from the London Marathon was used for charitable purposes.

Ofcom noted that the programme commentary said:

*“We’ve discovered that the London Marathon took in almost £18 million last year but of that, only £4.5 million went to The London Marathon Charitable Trust. In other words just one quarter of its income went to the charity... And the stark fact is that for every £6 that the race organisation received last year, less than £1 was actually paid out to the sporting and recreation projects it is meant to finance”.*

Later in the programme, undercover footage was shown of Mr Bitel saying:

*“Every single penny that we make from staging this race, from all the sponsorship etc, everything goes to our holding company, which is a charity, and last year we took that profit and we awarded over £5 million to recreational projects in London”.*

In Ofcom’s view, the programme made clear that 100% of the income of the charitable trust, as opposed to the trading company, was awarded to charity.

Ofcom considered that the question raised in the programme was about the amount of money expended by the trading company and why only a quarter of the income was actually handed over to the charitable trust. In Ofcom’s view there was no suggestion in the programme that expenses incurred by the charitable trust meant that not enough money was being used for charitable purposes. In these circumstances, it was not incumbent on the programme makers to include a specific reference to the running costs of the trust.

Ofcom found no unfairness in this respect.

- x) The programme included an allegation from Ms Sayer that HM Revenue and Customs rules did not permit a charity to “*just build up a pot of money*”, as the programme alleged that the London Marathon did, despite the fact that the complainants’ auditors did not accept that this applied to The London Marathon Charitable Trust Limited.

Ofcom noted that in the section of the programme that looked at the amount of money given to charities by the complainants, Ms Sayer stated:

*“A continuing pattern over all the years is that they are not actually distributing the grants that they’re awarding, and we’ve got a build-up over the years that they’ve now got £14 million still to be distributed. So in fact*

*the amount that has actually been paid out, it must be the difference, so about £21 million”.*

The commentary stated:

*“Last year, the Charitable Trust paid out just 55% of the money it said it awarded. Payouts have lagged behind income for years, so the amount in its bank account has grown from just £4 million a decade ago to £14m today. However, charities are under an obligation to distribute the money that they raise”.*

Ms Sayer then said:

*“You don't get charitable status or tax status as a charity unless you are actually doing the things that are within your charity's objects. HM Revenue and Customs also take an interest in this area because charities only receive the tax reliefs they're entitled to if they are using the money which they receive as donations for their charitable purposes. So again it is not allowed under the tax rules to just build up a pot of money, you have to be using it for your charitable objectives”.*

Later in the programme, the commentary said:

*“The London Marathon told Dispatches it has a ‘very good record of paying out very quickly once grant conditions are met’, and that funds have built up in the accounts because projects are waiting for ‘further grants’ or ‘planning consent to be obtained’”.*

Ofcom noted that the complainants informed the programme makers that grants awarded by them (usually within three weeks of the monies becoming available) were often conditional upon other factors being satisfied, for example matching funding from another body or planning permission. Within six weeks of the conditions being met the monies were paid out, but in the meantime, the monies awarded could not be used for other purposes. In Ofcom's view the inclusion of the complainants' statement in relation to this matter made it clear that the complainants paid out quickly and that the build up of funds was due to the fact that it took time for conditions to be fulfilled. Ofcom did not consider that the omission of the further information provided by the complainants to the programme makers amounted to the omission of material facts which resulted in unfairness to the complainants.

As a result, Ofcom found no unfairness in this respect.

- xi) The programme omitted the views of a number of people who had positive things to say about the complainants, including the Chief Executive of The London Playing Fields Foundation, the complainants' auditors, the Chief Executive of the Outward Bound Trust, other charities that supported the Golden Bond scheme, the former chair of the Event Managers' Forum and the Institute of Fundraising.

In Ofcom's view the question of which contributors to include in a programme is an editorial decision for the programme makers and it was not incumbent on them to include the views of the people and organisations referred to by the complainants.

Ofcom therefore found no unfairness in this respect.

- xii) The programme alleged, in relation to advertisements sold by Realbuzz, that it was “*almost unheard of to sell web adverts of this type for a fixed price*”, but failed to inform viewers that in the sale of advertising in relation to running websites, it was normal practice to sell at fixed prices.

As set out under decision head c) viii) above, Ofcom took the view that this issue related primarily to Realbuzz, rather than the complainants, and that the response provided by Realbuzz and included in the programme was sufficient to address any criticism of the complainants in this respect.

Ofcom therefore found no unfairness to the complainants in this regard.

- xiii) The programme compared the price of a Golden Bond entry at £300 to a ballot entry at £32 and led viewers to believe they were the same entries with the same benefits. However, despite having been informed by the London Marathon, the programme failed to explain that substantial additional benefits attached to the Golden Bond entries, that the complainants had substantial costs associated with the provision of Golden Bonds and that Golden Bonds were cheaper than those being sold by direct competitors.

As set out under decision head c) ix) above, Ofcom noted that the programme referred to Jo, who had not got a ballot place and had secured a Golden Bond place. The programme looked at Golden Bonds and included Mr Saxton's view that the system was “*extraordinary*”. The commentary stated that Golden Bonds:

*“...cost charities £300 each. That's about nine times more than is paid by runners who secure a place through the ballot”.*

The commentary said a little later:

*“The London Marathon told Dispatches that it is 'rightly proud of the fantastic success of the Golden Bond scheme which has enabled charities between them to raise hundreds of millions of pounds'. This may be, but the London Marathon is also making millions from those charities lucky enough to get runners in the race”.*

In Ofcom's view, the programme did compare the cost of the ballot places with the cost of the Golden Bond places. Ofcom considered that it was clear from the programme that the reason charities were prepared to pay a premium for Golden Bond places was that they guaranteed them entries for the race each year and the charities knew they could raise substantial sums from people running in their name. Ofcom did not consider that the programme would have led viewers to believe that the different types of entry carried the same benefits. In Ofcom's view, the other benefits attaching to the Golden Bonds, the costs associated with their provision and that they were cheaper than those sold by competitors were not material facts the omission of which was unfair to the complainants.

Ofcom found no unfairness in this respect.

- xiv) The programme failed to say that Mr Saxton had been an adviser to the Royal Parks Half Marathon, a rival event in London, which had its own charity



guaranteed places scheme, despite the complainants having informed the programme makers of this.

Ofcom noted that Mr Saxton put his views a number of times during the course of the programme. Ofcom has addressed complaints relating to Mr Saxton's views at decision heads c) iv), v), vii), xi), xiii) and d) ii), iii) and xiv) above.

Ofcom further noted that Mr Saxton was not paid for advising on the Royal Parks Half Marathon (which consisted of three meetings) and that he had advised over 100 charities in a year. In Ofcom's view, Mr Saxton's role as an adviser to the Royal Parks Half Marathon was not a material fact, the omission of which resulted in unfairness to the complainants.

This was not unfair to the complainants.

- xv) The programme included a materially misleading allegation that 15,000 out of 36,000 entries went to Golden Bonds, when in fact there were 51,000 entries. The complainants informed the programme makers that the number of entries dedicated to Golden and Silver Bonds was less than 25% of entries available annually, rather than the 41% that the programme's figures suggested, but this information was omitted.

As set out at decision head c) ix) above, Ofcom understood that the complainants' concern was that the programme gave an incorrect impression of the proportion of places that went to Golden Bonds. However Ofcom noted that the programme did not state that 15,000 out of 36,000 "entries" went to Golden Bonds.

Ofcom therefore found no unfairness in this respect.

- xvi) The programme alleged that 15,000 entries a year were "sold" for Golden Bonds, although the programme makers were aware that the figure of 15,000 included places carried over from previous years and not paid for again.

Ofcom noted that the programme referred to runner Jo being:

*"...one of 15,000 runners who secure a place that has been bought by a charity".*

In Ofcom's view the programme did not say that 15,000 entries a year were "sold" for Golden Bonds and therefore the allegation complained of was not made in the programme.

Ofcom therefore found no unfairness in this respect.

- xvii) The programme included an allegation by Mr Patrick Cox, of the Male Cancer Awareness Campaign, that the complainants had not distributed charity places fairly, even though the London Marathon had informed the programme makers that Mr Cox had failed to apply for a Silver Bond despite the London Marathon writing to him and urging him to do so.

Ofcom noted that the programme stated:

*“The London Marathon told him that his cancer charity wouldn't be getting any Golden Bond places”.*

Mr Cox then said:

*“The London marathon provides an incredible fundraising event. Huge exposure. The issue I have about it is with the unfairness that comes around with it. We see the same charities every single year and for a small charity like ourselves we will never get the opportunity to be part of that. The lack of information that surrounds Golden Bond places and the lack of transparency. I think is, it's dire...I don't know how many places each charity has, for example. We've tried to find out, haven't found, still haven't found out that information. For me, what I would like to see more transparency. I would dearly like to see distribution of these Golden Bonds places given over to an independent committee who can distribute them more fairly”.*

The commentary then said:

*“The London Marathon does offer another way for charities, including Patrick Cox's, to get a place in the Marathon – a Silver Bond. This gives a guaranteed place for one year and then another one in five years' time. It also costs £300”.*

Ofcom considered that Mr Cox was clearly disappointed that his charity would never get a Golden Bond and dissatisfied with the allocation of Golden Bonds and the difficulty in finding out who has them and how many they have.

In the circumstances, as Mr Cox's dissatisfaction was with the Golden Bonds, Ofcom did not consider that the fact that his charity had been informed that it could apply for a Silver Bond place and had not done so was a material fact. Ofcom also noted the programme included reference to the fact that Silver Bonds were available to charities such as Mr Cox's.

Ofcom therefore found no unfairness in this respect.

- xviii) The programme included an allegation that the complainants had *“dominance over running events in the capital”*, despite the complainants having told the programme makers that in the last two years many major new races had started in Britain, that The London Marathon Limited is not the largest race organiser in Britain and that major event operators which sell charity place included IMG, which claims to be the world's premier and most diversified sports, entertainment and media company, in events such as the London Triathlon and other London events.

As set out under decision head c) x) above, Ofcom took the view that the reference to the complainants' *“dominance”* over running events in the capital was simply a factual statement, on the basis of the size of the event. In these circumstances the details of other major events was not a material fact that needed to be included in the programme.

Ofcom found no unfairness in this respect.

- xix) The programme included an allegation that Mr Anstee had lied at a meeting of the Streets and Walkways sub-committee of the City of London about Mr

O'Reilly's past events and that he had improper reasons for commenting that events organised by Mr O'Reilly had been badly run. The programme failed to explain that there had been many complaints about past events organised by Mr O'Reilly, of which the complainants had provided detailed evidence.

Ofcom noted that the programme said in this respect:

*"While O'Reilly was considering the London Marathon's letter, the City of London Corporation's Streets and Walkways sub Committee discussed his application to stage the race. O'Reilly wasn't invited. Although he wasn't a member of the committee, this councillor, Nick Anstee, now Lord Mayor of London, attended the meeting to object to O'Reilly's event. The minutes show that Anstee claimed O'Reilly's past events 'had allegedly been badly run' without explaining his grounds for saying so. What he did declare, was that he had an outside interest – he was a Director of London Marathon Ltd. We told O'Reilly what had happened at the meeting".*

Mr O'Reilly then said:

*"I've always known there was stuff going on behind the scenes, I didn't realise it was as high level as that, you know, and to actually start saying that the event is bad, previous events is organised as badly organised, well, as I say, it's gone for ten years, hasn't it? And it's got bigger, and there's always only been one group ever against the staging of this event, and that is employees of The London Marathon Limited company and it's as simple as that".*

The commentary stated:

*"We asked the City of London about their decision and they said 'the event had been turned down on technical grounds by the Director of Environmental Services' and not by the Streets and Walkways Sub Committee".*

Ofcom did not consider that the programme suggested that Mr Anstee had lied and noted that the programme made clear that Mr Anstee had declared his interest. Nor did Ofcom consider that the programme suggested that he had improper motives for commenting that events organised by Mr O'Reilly had been badly run. The programme also included Mr O'Reilly's position on this point and the City of London's reasons for turning down the event. In these circumstances Ofcom took the view that the complainants' allegations about the organisation of Mr O'Reilly's past events were not material facts that needed to be included in the programme and that in the interests of fairness it was not necessary for Channel 4 to include the information provided by the complainant.

Ofcom found no unfairness to the complainants in this respect

- xx) The programme alleged that the London Marathon "*refuses to be open about its finances*" and said that the London Marathon said that this was because the information was "*highly confidential and commercially sensitive*".

Ofcom noted that, having said that the London Marathon refused to be open about its finances, the programme included the following commentary:

*“When Dispatches asked the London Marathon for a breakdown, it told us that the accounts drawn up for its directors have a ‘complete line by line breakdown of all of the expenses incurred’ in staging the race but it wouldn’t tell us. It said the information was ‘highly confidential and commercially sensitive’”.*

Ofcom noted that the complainants had not specified in what way they considered material was not fairly represented or was omitted. However Ofcom considered that the complainants’ reason for not giving greater detail, namely confidentiality and commercial sensitivity, was included in the programme.

Ofcom therefore found no unfairness in this respect.

- xxi) The programme included an allegation by Mr Saxton that the Golden Bond system was *“quite an extraordinary system because actually there are very few areas of life where charities get charged more than the ordinary consumer”*, despite the fact that the complainants had told the programme makers that many other running events had similar schemes.

Ofcom noted that in his letter to the programme makers of 26 March 2010, Mr Bitel explained that similar schemes were used for other events around the world. However, as set out under decision head c) xi), Ofcom took the view that Mr Saxton was giving his views on the Golden Bond system and that this did not amount to an allegation of wrongdoing or incompetence or another significant allegation. In these circumstances Ofcom did not consider that the omission of the further information provided by the complainants to the programme makers amounted to the omission of material facts which resulted in unfairness to the complainants.

Ofcom found that this was not unfair to the complainants.

- xxii) The programme alleged that Realbuzz offered *“advertising in running magazines and on websites, packaged up with guaranteed running places in the marathon”* and that *“the London Marathon pays Realbuzz a commission to do this”*. However, the complainants had told the programme makers that Realbuzz received no commission on the value of the entries in the advertising packages.

Ofcom noted that the programme stated:

*“The company, Realbuzz, is the London Marathon’s official online partner. Realbuzz sends unsolicited emails, like this, to some charities who have failed to get Golden Bonds. They offer advertising in running magazines and on websites, packaged up with guaranteed running places in the Marathon. The London Marathon pays Realbuzz a commission to do this”.*

Ofcom noted that the unfairness complained of was that the programme omitted to say that Realbuzz was not paid a commission on the value of entries to the marathon. Ofcom did not consider that such a suggestion was made in the programme.

Ofcom found no unfairness in this respect.

Accordingly, with the exception of decision head d) v) above, Ofcom has not upheld this head of complaint.

- e) The programme failed to include a short statement from the complainants in response to the programme.

In considering this part of the complaint Ofcom took account of Practice 7.13 of the Code, which states that where it is appropriate to represent the views of a person or organisation that is not participating in the programme, this must be done in a fair manner.

Ofcom noted that, in his letter of 6 April 2010 to the series producer, Mr Bitel included a statement marked "Statement to be used in full or not at all". It was not incumbent on the programme makers to use the statement in full, nor did they agree to do so.

Ofcom therefore found no unfairness in this respect.

**Accordingly, Ofcom has upheld part of this complaint of unfair treatment made by The London Marathon Limited and The London Marathon Charitable Trust Limited (with one of the 38 parts of the complaint being upheld).**

## Not Upheld

### Complaint by Mr Paul Gadd

*The Execution of Gary Glitter, Channel 4, 9 November 2009*

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**Summary:** Ofcom has not upheld this complaint of unfair treatment.

*The Execution of Gary Glitter* was a feature-length drama set in a fictional United Kingdom where capital punishment had been reintroduced for serious sexual offences against children. The programme followed the dramatised and fictional trial, conviction and execution of Mr Paul Gadd (also known as “Gary Glitter”), who was played by an actor, for child rape in Vietnam.

The programme was presented in the style of a documentary and included interviews with real journalists and a politician (as well as actors playing various roles), who provided commentary on the fictional trial and execution. The programme also included actual archive footage taken from news coverage of the real Mr Gadd outside Bristol Crown Court in 1999 and of his return to the United Kingdom from Vietnam in 2008.

Mr Gadd complained that he was treated unfairly in the programme as broadcast in that a reasonable viewer might have concluded that the real Mr Gadd had committed “terrible crimes” (namely, child rape) which had gone unpunished.

The Committee found that the programme was clearly signposted as fictional and that it would have been clear to viewers that it was a fictional drama.

The Committee noted that the drama did include real facts and considered that viewers may not have been clear at all times about precisely where fact and fiction overlapped. However, because the programme as a whole was clearly fictional, and the parts of the programme concerning the charge of child rape were clearly in a fictional context the Committee found that viewers would not have reached the conclusion that Mr Gadd was guilty of more serious crimes which had gone unpunished as a result of any assertions made in this drama programme.

The Committee also noted that Mr Gadd had a well known history of child sex offences.

The Committee therefore found that the programme as broadcast was not unfair to Mr Gadd.

#### Introduction

In 2006, Mr Paul Gadd (also known as “Gary Glitter”) was convicted in Vietnam of committing obscene acts with minors for which he was sentenced to a term of imprisonment. Initially, Mr Gadd had faced charges of child rape, but he was not convicted of this offence.

On 9 November 2009, Channel 4 (“Channel 4” or “the broadcaster”) broadcast *The Execution of Gary Glitter*, a feature-length drama set in a fictional United Kingdom where capital punishment had been reintroduced for serious sexual offences against children. The programme portrayed a dramatised and fictional trial, conviction and

subsequent execution of Mr Paul Gadd (played by an actor in the programme), for child rape in Vietnam.

The programme was presented in the style of a documentary and included interviews with real journalists and a real politician (as well as actors playing various roles), who provided commentary on the fictional trial and execution. The programme also included actual archive footage taken from news coverage of Mr Gadd outside Bristol Crown Court in 1999 and of his return to the United Kingdom from Vietnam in 2008.

Mr Gadd complained to Ofcom that he was treated unfairly in the programme as broadcast.

## **The Complaint**

### **Mr Gadd's case**

Mr Gadd complained that he was treated unfairly in the programme as broadcast in that the programme blended fact with fiction in such a way that a reasonable viewer might have concluded that Mr Gadd had committed "terrible crimes which have gone unpunished". Mr Gadd said that he was never prosecuted in Vietnam for child rape.

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

In response to the complaint of unfair treatment, Channel 4 said that the programme's purpose was to question the appropriateness and legitimacy of the death penalty and that to achieve this, the programme used an entirely fictional scenario, but one with resonances from the real world. It said that this approach ensured viewer engagement with the story.

Channel 4 said that the programme was a work of fiction which aimed to open a debate about the death penalty, but was not sensationalist and was not intended to be forensic examination of Mr Gadd's sexual activities.

Channel 4 rejected the complaint that a reasonable viewer might have concluded that Mr Gadd had committed "terrible crimes which have gone unpunished". In particular, it said that the programme did set out Mr Gadd's real life convictions, but did not suggest that the fictional Mr Gadd had committed or had been convicted of any crime but not punished for it. Channel 4 said that the archive footage was used as a back story relevant to the present action in the fiction and would not have confused or misled the viewer.

Channel 4 said that the fact that the drama was set in a fictional Britain was signposted to viewers in several ways, including pre-programme announcements, and reminders during two of the advertising breaks. In addition, the fictional nature of the programme was emphasised by a number of factors which were included in the programme but did not reflect reality (e.g. the sequence indicating that Britain has resiled from the European Convention on Human Rights and threatened to withdraw from the EU).

Channel 4 said that the blending of fact and fiction is not a new technique and that viewers were well used to engaging with the technique especially where the fictional nature of the programme was clear. Channel 4 said that the programme did not take fictional information and present it as applying to the real world and no reasonable viewer would have thought so.

Channel 4 acknowledged that there were some similarities between the fictional charges faced by Mr Gadd and real life events. However, it said that this did not amount to any unfairness, or contribute to any viewer misapprehension. Channel 4 said that the programme made it clear that in the alternative United Kingdom in which it was set, the fictional Mr Gadd (like the real Mr Gadd) had been convicted and imprisoned in Vietnam. However, unlike the real Mr Gadd, the fictional Mr Gadd faced entirely new, fictional, charges. Channel 4 said that even in the unlikely event that a viewer knew the minute details of the charges that the real Mr Gadd had faced in Vietnam, any similarity between those details and the fictional charges in the programme would have been of no concern because the viewer would be aware that the programme was a work of fiction.

## 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.

Ofcom's Executive came to a Provisional Decision to uphold Mr Gadd's complaint. Channel 4 requested and was granted a review of the Provisional Decision. The Broadcasting Review Committee ("the Committee"), a sub-committee of the Ofcom Board consisting of members of the Ofcom Content Board, independently reconsidered the Provisional Decision in accordance with paragraphs 38 and 39 of Ofcom's Procedures for the handling of Fairness and Privacy complaints ("the procedures").

When considering the complaint of unfair treatment, the Committee had regard to whether the broadcaster's actions ensured that the programmes as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of the Code.

Rule 7.1 of the Code states that "*Broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes*"; and

Practice 7.10 of the Code states that "*Programmes - such as dramas and factually based dramas - should not portray facts, events, individuals or organisations in a way which is unfair to an individual or organisation.*"

The Committee decided, in accordance with Paragraph 39 of the Procedures, that it should substitute its own decision for the provisional decision.

As a preliminary point, the Committee noted the complainant's submission that Channel 4 appeared to argue that the programme was justified to contend that Mr



Gadd was a child rapist and that Mr Gadd should therefore have been given an opportunity to rebut such allegations. The Committee did not consider that this was a fair interpretation of Channel 4's submissions, which focused on the effect of the programme on viewers' perception of Mr Gadd. The Committee also did not consider that the programme made any specific allegation against the real Mr Gadd. As such, the Committee did not consider that Channel 4 was obliged to give Mr Gadd an opportunity to respond.

The Committee noted that the complainant was a public figure who had been convicted for downloading hardcore photographs of children being abused, had been deported from Cambodia after being detained over suspected sex offences, had been convicted in Vietnam of committing obscene acts with two girls aged 10 and 11, and is currently on the Sex Offenders Register in the United Kingdom. The Committee further noted that these events had attracted widespread publicity. For these reasons, the Committee took the view that the viewing public would already have had knowledge of the type (but not necessarily the detail) of the offences for which Mr Gadd had been accused or convicted. In view of Mr Gadd's well-publicised reputation in relation to child sex offences, the Committee considered that there was likely to be little scope for additional damage to his reputation in relation to his sexual activities that would result in unfairness to him.

The Committee examined the content of the programme and how it was presented to viewers. To this end, the Committee examined all signposts used before and during the programme.

The Committee noted the title of the programme, *"The Execution of Gary Glitter"*, and considered that any reasonable viewer would have been aware that, in reality, Mr Gadd had not been executed, and that the programme as a whole was therefore fictional. It noted that the programme was introduced by the following announcement:

*"But first now on Four, how do you really feel about the death penalty? Would you want it brought back to this country? With strong language, thought provoking drama 'The Execution of Gary Glitter' puts capital punishment on trial".*

It noted that during the opening sequences of the programme the following captions were shown consecutively:

*"This is a work of fiction".  
"We are in an imaginary Britain".  
"In this world there is one big difference".  
"The death penalty is back".*

In addition, the following announcement was made after the second and fourth advertisement breaks and before the programme resumed:

*"Now we return to 'The Execution of Gary Glitter', set in a fictional Britain, which contains strong language".*

The Committee also noted that the actual content of the programme, i.e. the charge, trial and execution of Gary Glitter, was in fact fictional.

Taking these points into account, the Committee considered that the programme was a fictional drama and that it would have been clear to viewers that this was the case.

The Committee recognised that the programme relied on and used an amount of factual detail and archive footage. For example, it used the real life example of Paul Gadd, his address in Vietnam, the dates the alleged offences in Vietnam took place, the age of one of the girls involved, the family name of one of the girls involved and real footage of Mr Gadd arriving at Heathrow airport in August 2008.

The Committee considered that it was possible that viewers may have been unclear as to precisely which of the facts included in the programme were real and which were fictional. In particular, the Committee considered that most viewers would not have been aware of the precise details of what Mr Gadd had or had not been convicted of in Vietnam. However, the Committee considered that they would have been aware that he had been found guilty of serious sexual offences against children and had been deported as a result.

The Committee noted that the programme used this background to create the fictional elements of the drama about the reintroduction of the death penalty in Britain using a fictional scenario in which police in the UK had found sufficient evidence that Mr Gadd had committed child rape abroad. With this in mind, the Committee examined the excerpt of the programme in which Mr Gadd's fictional charge of child rape was first raised. It noted that this was by a fictional character, DCI Crane, played by an actor.

The Committee considered that it was clear to viewers that the programme was a fiction and from the earlier interview sequence, that DCI Crane was a fictional character. In such circumstances, the Committee felt that it was unlikely viewers would take DCI Crane's comments to be assertion of true fact. The Committee noted that further mention of the specific charge of child rape in the programme was always in a clearly fictional context. Consequently, viewers would not have come to the conclusion that Mr Gadd was guilty of more serious crimes which had gone unpunished.

## **Conclusion**

In reaching its conclusion, the Committee carefully weighed up all the circumstances of the case and the submissions by Channel 4 and the complainant, taking into consideration the signposting and the fact that viewers were informed a number of times that it was a fictional drama (albeit based on a real person) set in a fictional Britain where the death penalty had been reintroduced; as well as the particular background of Mr Gadd and his well-publicised reputation for child sex offences.

The Committee concluded that in these particular set of circumstances there was no unfairness to Mr Gadd in the programme as broadcast.

**Accordingly, Ofcom has not upheld Mr Gadd's complaint of unfair treatment in the programme as broadcast.**

## Not Upheld

### **Complaint by Dr Saeed Gul on his own behalf and on behalf of Mrs Fatma Gul (his wife), Ms Nirmeen Gul and Ms Nisreen Gul (his daughters)**

*BBC London News, BBC 1, 25 February 2011*

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**Summary:** Ofcom has not upheld this complaint of unfair treatment made by Dr Saeed Gul on his own behalf and on behalf of Mrs Fatma Gul (his wife), Ms Nirmeen Gul and Ms Nisreen Gul (his daughters)).

A news item reported that Mr Mohammed Gul was sentenced to five years' imprisonment for "*posting Islamic terrorist propaganda on the internet*". The reporter said that he had spoken to Mr Gul's family, who were "*devastated*" and had described him as "*one of the world's most unlikely jihadists*".

In summary, Ofcom found that the general tenor of the report was that it was surprising that a young man of Mr Gul's background would have committed such crimes and that viewers were likely to have interpreted the reference to him being "*one of the world's most unlikely Jihadists*" as meaning that his family did not think that Mr Gul was a terrorist.

#### **Introduction**

On 25 February 2011, BBC1 broadcast an edition of its daily London news programme. This edition included a report on the five year sentence of imprisonment passed on Mr Mohammed Gul, for "*posting Islamic terrorist propaganda on the internet*". The reporter said that Mr Gul was a 23 year old law student who lived in Essex and that until recently he had not been particularly religious. The presenter asked the reporter if he had spoken to Mr Gul's family, to which the reporter replied that he had and that they were "*devastated*" and had described him as "*one of the world's most unlikely jihadists*".

Following the broadcast of the programme, Dr Saeed Gul, Mr Gul's father, complained to Ofcom that he, his wife and his two daughters were treated unjustly or unfairly in the programme as broadcast.

#### **The Complaint**

##### **Dr Gul's case**

In summary, Dr Gul complained that he, his wife and his two daughters were treated unjustly or unfairly in the programme as broadcast in that the statement by the reporter that Mr Gul's family had described him as "*one of the world's most unlikely jihadists*" was untrue and that no such statement was ever made. By incorrectly attributing this statement to the family, the report made it sound as though the family believed that Mr Gul was a terrorist and that he was guilty of the crimes. Dr Gul said that the family did not believe that Mr Gul was a jihadist.

## The BBC's case

The BBC said that the programme's reporter was certain that he gave a truthful and accurate account of what had been said to him by a family member on an unattributable basis.

The BBC also argued that the statement complained of by Dr Gul would not have the effect imputed to it by Dr Gul, but in fact the reverse effect, as it indicated that Mr Gul's family believed that the charges against him, of which he was convicted, were highly unlikely to be true.

## 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 carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast, a transcript and both parties' written submissions.

When considering complaints of unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of Ofcom's Broadcasting Code ("the Code"). Ofcom had regard to this Rule when reaching its decisions on the individual heads of complaint detailed below.

Ofcom considered the complaint that Dr Gul, his wife and his two daughters were treated unjustly or unfairly in the programme as broadcast in that the statement by the reporter that Mr Gul's family had described him as "*one of the world's most unlikely jihadists*" was untrue and that no such statement was ever made. By incorrectly attributing this statement to the family, the report made it sound as though the family believed that Mr Gul was a terrorist and that he was guilty of the crimes. Dr Gul said that the family did not believe that Mr Gul was a jihadist.

In considering this part of the complaint, Ofcom had regard to Practice 7.9 of its Broadcasting Code ("the Code") which states that that broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that it unfair to an individual or organisation.

Ofcom noted that the presenter said that Mr Gul had been jailed for five years for posting Islamic terrorist propaganda on the internet and that the judge said that Mr Gul's actions could have spurred others on to commit acts of terror. The reporter, who was at the Old Bailey, then said:

*"He turned 23 just yesterday, born in Libya, lived in Hornchurch in Essex with his father and a younger brother, well to do, well educated, had a 2:1 in law from Queen Mary's College, University of London in Mile End. Not particularly religious*

*even until recently. What's interesting and I suppose what's most worrying about the case is here's a young man who became completely self radicalised from the comfort of his own bedroom with nothing to hand but a laptop".*

The reporter then explained the offences for which Mr Gul was convicted as follows:

*"He basically re-edited and re-packaged Al Qaeda style videos, he disseminated them widely, he encouraged other people to become involved in some of the more hardcore discussion forums. When the police raided his home it took them six months to wade through all the computer data that they found there, one of the biggest computer data reviews that Scotland Yard have ever undertaken".*

When the presenter asked the reporter if he had spoken to the family and whether they were surprised by what had happened, he said:

*"Yeah as you'd expect they're devastated. They described him to me as "one of the world's most unlikely Jihadists". One of the detectives I spoke to interestingly said that this was a classic case of what we're seeing, which is the rise of the sort of middle class online Jihadists. He was sentenced to five years, he's spent a lot of time on remand already so will probably spend about another eighteen months in Belmarsh Prison".*

Ofcom noted that Dr Gul said no family member had spoken to the reporter after Mr Gul was sentenced, while the BBC said that a family member had spoken to the reporter, but did not give any indication as to the closeness of that person's family relationship to Mr Gul. However, it is not Ofcom's role to adjudicate on a dispute as to whether the reporter spoke to a family member, but to determine whether, in broadcasting the comment that Mr Gul was *"one of the world's most unlikely Jihadists"*, the broadcaster took reasonable care not to present, disregard or omit material facts in a way that was unfair to Dr Gul and his family.

Having noted these points, Ofcom went on to consider whether the reporter's comment regarding the family, namely that *"They described him to me as "one of the world's most unlikely Jihadists"'"* was unfair to them. Ofcom noted that Dr Gul's position was that viewers would have mistakenly understood this to mean that Mr Gul's family believed that Mr Gul was a terrorist and that he was guilty of the crimes. The BBC, on the other hand, argued that the reporter's comment was likely to be interpreted by viewers as meaning that Mr Gul's family believed that the charges against him were highly unlikely to be true.

Ofcom considered that the general tenor of the report was that it was surprising that a young man of Mr Gul's background would have committed such crimes. This was apparent from the summary of his background given in the report, namely that he was well-educated and from a well-to-do family. Ofcom understood Dr Gul's concern that viewers may have interpreted the reporter's reference to Mr Gul as *"one of the world's most unlikely Jihadists"* as, wrongly, suggesting that the family believed he was a terrorist and had committed the crimes. However, given the context of the item and notwithstanding the dispute as to the source of the quotation, Ofcom considered that viewers were more likely to have interpreted the quotation as meaning that the family did not think that Mr Gul was a terrorist.

Ofcom therefore found no unfairness to Dr Gul, his wife and his daughters.

**Accordingly, Ofcom has not upheld Dr Gul's complaint of unfair treatment on his own behalf and on behalf of his wife and daughters.**

## Other Programmes Not in Breach

Up to 27 June 2011

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
A Very Dangerous Doctor	Channel 4	12/05/2011	Generally accepted standards	49
Attack The Block special	Film 4	12/05/2011	Advertising/editorial distinction	1
Britain's Got Talent	ITV1 London	14/05/2011	Nudity	59
Derren Brown: Enigma	Channel 4	06/01/2011	Harm	1
Diagnosis Live from the Clinic (trailer)	Channel 4	Various	Generally accepted standards - other	1
Dispatches	Channel 4	27/09/2010	Due accuracy/impartiality	3
Dispatches	Channel 4	28/03/2011	Due impartiality/bias	3
Elite Days	Elite TV 2	05/04/2011	Participation TV - Offence	1
Elite Days	Filth	25/05/2011	Participation TV - Offence	1
Elite Nights	Filth	18/05/2011	Participation TV - Offence	1
Family Guy	BBC 3	08/05/2011	Transgender discrimination/offence	1
Heart Breakfast with Bush, Troy & Paulina	Heart Bristol	18/05/2011	Materially misleading	1
Home and Away Competition	Channel 5	Various	Competitions	6
James O'Brien	LBC 97.3FM	10/05/2011	Due impartiality/bias	1
Northern Birds	Northern Birds	19/05/2011	Participation TV - Protection of under 18s	1
Psychic Interactive	Psychic TV	05/04/2011	Participation TV - Misleadingness	1
Psychic Interactive	Psychic TV	10/04/2011	Participation TV - Harm	1
Sky Anytime Plus promo	Sky Anytime	Various	Materially misleading	1
The Alan Titchmarsh Show	ITV1 London	11/05/2011	Undue prominence	1
Verdens Strengeste Forældre	TV3 Denmark	09/03/2011	Offensive language	1
Weather	Five	10/05/2011	Promotion of products/services	1

## Complaints assessed but not further investigated

Between 14 and 27 June 2011

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
4 Music Trailer	E4+1	16/06/2011	Sexual material	1
5 News at 7	Channel 5	10/06/2011	Scheduling	1
Advertising scheduling	Various	Various	Advertising scheduling	1
Angry Boys	BBC3	07/06/2011	Offensive language	1
Angry Boys	BBC3	11/06/2011	Race discrimination/offence	1
Angry Boys	BBC3	14/06/2011	Race discrimination/offence	1
Angry Boys	BBC3	14/06/2011	Offensive language	1
Angry Boys	BBC3	21/06/2011	Scheduling	1
BBC News	BBC1	13/06/2011	Outside of remit / other	1
BBC News	BBC1	15/06/2011	National/regional/local issues	1
Boogie In the Morning	Forth One	30/05/2011	Race discrimination/offence	1
Boulton and Co	Sky News	10/06/2011	Gender discrimination/offence	1
Britain's Got Talent	ITV1	28/05/2011	Competitions	1
Britain's Got Talent	ITV1	01/06/2011	Participation TV	1
Britain's Got Talent	ITV1	03/06/2011	Flashing images/risk to viewers who have PSE	1
Bums, Boobs and Botox (trailer)	Channel 4	30/05/2011	Generally accepted standards	1
Bums, Boobs and Botox (trailer)	More4	01/06/2011	Generally accepted standards	7
Camelot	Channel 4	11/06/2011	Offensive language	3
Camelot	Channel 4	11/06/2011	Generally accepted standards	1
Case Histories	BBC1	20/06/2011	Violence and dangerous behaviour	1
Cash in the Attic	BBC1	16/06/2011	Race discrimination/offence	1
Channel 4 News	Channel 4	14/06/2011	Generally accepted standards	1
Channel 4's Comedy Gala	Channel 4	10/06/2011	Disability discrimination/offence	1
Channel 4's Comedy Gala	Channel 4	10/06/2011	Advertising/editorial distinction	1
Channel 4's Comedy Gala	Channel 4	10/06/2011	Sexual material	1
Channel 4's Comedy Gala	Channel 4	10/06/2011	Offensive language	1
Chelsea Norris comments	Key 103 Manchester	n/a	Generally accepted standards	1
Come Dine with Me	Channel 4	20/06/2011	Offensive language	1
Come Dine with Me	Channel 4	24/06/2011	Religious/Beliefs discrimination/offence	1

Comedy Central Trailers	Comedy Central	18/06/2011	Offensive language	1
Coogan's Bluff	Channel 24	21/06/2011	Advertising minutage	1
Coronation Street	ITV1	31/05/2011	Under 18s in programmes	1
Coronation Street	STV	13/06/2011	Generally accepted standards	1
Countdown	Channel 4	06/06/2011	Sexual orientation discrimination/offence	1
Cricket coverage	Various	Various	Advertising scheduling	1
Criminal Minds	Kanal 5	29/04/2011	Race discrimination/offence	1
Da Khair Khabary	Noor TV	14/10/2010	Advertising content	1
Dave Berry show	Capital FM	18/06/2011	Scheduling	1
Deep Space Nine	Sky 2	12/06/2011	Advertising scheduling	1
Dirty Sexy Funny: Olivia Lee	Comedy Central	08/06/2011	Generally accepted standards	1
EastEnders	BBC1	06/06/2011	Religious/Beliefs discrimination/offence	1
EastEnders	BBC1	07/06/2011	Sexual orientation discrimination/offence	1
EastEnders	BBC1	13/06/2011	Sexual orientation discrimination/offence	1
EastEnders	BBC1	14/06/2011	Generally accepted standards	1
EastEnders	BBC1	17/06/2011	Generally accepted standards	1
EastEnders	BBC1	21/06/2011	Generally accepted standards	6
EastEnders	BBC1	21/06/2011	Generally accepted standards	1
EastEnders	BBC1	21/06/2011	Generally accepted standards	1
Edward Scissorhands	Film4	12/06/2011	Scheduling	1
Elite Nights	Elite TV	15/05/2011	Participation TV - Offence	1
Embarrassing Bodies	Channel 4	15/06/2011	Nudity	1
Embarrassing Bodies	Channel 4	08/06/2011	Nudity	4
Embarrassing Bodies	Channel 4	08/06/2011	Nudity	1
Embarrassing Bodies	Channel 4	15/06/2011	Nudity	11
Embarrassing Bodies	Channel 4	15/06/2011	Generally accepted standards	1
Embarrassing Bodies	Channel 4	15/06/2011	Nudity	1
Embarrassing Bodies	Channel 4	15/06/2011	Nudity	1
Embarrassing Bodies	Channel 4	n/a	Nudity	1
Embarrassing Fat Bodies (trailer)	Channel 4	01/06/2011	Generally accepted standards	6
Embarrassing Fat Bodies (trailer)	Channel 4	01/06/2011	Generally accepted standards	1
Emmerdale	ITV1	02/06/2011	Sexual material	1
Fake or Fortune?	BBC1	19/06/2011	Offensive language	1
Fem Fresh's	Channel 5	n/a	Gender	1



sponsorship of Channel 5 Weather			discrimination/offence	
Four Rooms	Channel 4	14/06/2011	Scheduling	3
Four Rooms	Channel 4	14/06/2011	Scheduling	1
French Open	BBC Interactive Red Button (Channel 301 on Freeview)	28/05/2011	Race discrimination/offence	1
Five News	Channel 5	17/06/2011	Scheduling	1
General Programming	N/A	n/a	Competitions	1
General Programming	N/A	n/a	Nudity	1
Geordie Shore	MTV	24/05/2011	Generally accepted standards	48
Graham Norton	BBC1	17/06/2011	Race discrimination/offence	1
Holby City	BBC1	14/06/2011	Age discrimination/offence	1
Hollyoaks	Channel 4	31/05/2011	Under 18s in programmes	1
Hollyoaks	Channel 4	03/06/2011	Scheduling	1
Hollyoaks	Channel 4	20/06/2011	Sexual material	1
Hollyoaks	E4	22/06/2011	Race discrimination/offence	1
In with the Flynns	BBC1	22/06/2011	Sexual material	1
Inside the Human Body	BBC1	05/06/2011	Harm	1
International Rugby Union	Sky Sports 2	18/06/2011	Gender discrimination/offence	1
ITV News	STV	16/06/2011	Privacy	1
ITV News at Ten and Weather	ITV1	14/06/2011	Due impartiality/bias	1
118 118's sponsorship of ITV Movies	ITV1	Various	Generally accepted standards	1
Jeremy Kyle Show	ITV1	14/06/2011	Generally accepted standards	1
Kermode and Mayo's Film Review	BBC Radio 5 Live	20/05/2011	Generally accepted standards	1
'Kick Ass' Movies on Channel 5 promo	5 USA	07/06/2011	Scheduling	1
Kill it, Cut it, Use it	BBC3	22/06/2011	Animal welfare	1
Kiss 100	Kiss Breakfast	01/06/2011	Competitions	1
Kiss Breakfast	Kiss 105-108	13/06/2011	Disability discrimination/offence	1
Kylie Live: Aphrodite Les Folies	Sky1 / Sky 3D	19/06/2011	Gender discrimination/offence	1
Live US open golf	Sky Sports 2	19/06/2011	Generally accepted standards	1
Loose Women	ITV2	21/06/2011	Materially misleading	1
Loose Women	ITV1	22/06/2011	Age discrimination/offence	1
Luther	BBC1	20/06/2011	Violence and dangerous behaviour	1
Man Versus Food	Good Food HD	11/06/2011	Generally accepted standards	1
Michael McIntyre's Comedy Roadshow	BBC1	18/06/2011	Race discrimination/offence	1

Midsomer Murders	ITV1	08/06/2011	Nudity	1
Midsomer Murders	ITV1	09/06/2011	Nudity	1
Midsomer Murders	ITV1	15/06/2011	Nudity	1
Midsomer Murders	ITV1	15/06/2011	Nudity	1
Midsomer Murders	ITV1	15/06/2011	Nudity	1
Nihal	BBC Asian Network	31/05/2011	Religious/Beliefs discrimination/offence	1
OK! TV	Channel 5	16/06/2011	Offensive language	1
Paul O'Grady Live	ITV1	17/06/2011	Sexual material	3
Paul O'Grady Live	ITV1	17/06/2011	Scheduling	1
Paul O'Grady Live	ITV1	17/06/2011	Disability discrimination/offence	1
Politics Now	STV	02/06/2011	Due impartiality/bias	1
Question Time	BBC1	09/06/2011	Sexual material	6
Question Time	BBC1	09/06/2011	Generally accepted standards	4
Real Radio	Real Radio	Various	Competitions	1
Reporting Scotland - Lunchtime Bulletin	BBC1 Scotland	17/06/2011	Generally accepted standards	1
Russell Howard's Good News	BBC3	31/03/2011	Transgender discrimination/offence	1
Sally Morgan	Sky Living	21/06/2011	Harm	1
Scott & Bailey (trailer)	ITV1	29/05/2011	Offensive language	1
Scott and Bailey	ITV1	19/06/2011	Generally accepted standards	1
Scott and Bailey (trailer)	ITV1	28/05/2011	Violence and dangerous behaviour	1
Skoda's sponsorship of US Crime Drama	Channel 5	01/06/2011	Advertising content	1
Sky News	Sky News	10/06/2011	Violence and dangerous behaviour	3
Sky Sports Promo	Sky Sports 1	11/06/2011	Generally accepted standards	1
South Park promotion	Comedy Central	Various	Sexual material	1
Springwatch	BBC2	13/06/2011	Violence and dangerous behaviour	1
Steve Allen	LBC 97.3FM	07/06/2011	Race discrimination/offence	1
Tetley Bitter sponsorship credits	ITV4	10/06/2011	Harm	1
Tetley Bitter sponsorship credits	ITV4	20/06/2011	Offensive language	1
The Apprentice	BBC1	15/06/2011	Age discrimination/offence	1
The Apprentice	BBC1	22/06/2011	Generally accepted standards	1
The Aristocrats	Film4	14/06/2011	Generally accepted standards	1
The Catherine Tate Show	Watch	16/06/2011	Generally accepted standards	1
The Dales	ITV1	13/06/2011	Animal welfare	1
The Dave Brown Motown Show (promo)	Smooth Radio	18/06/2011	Due accuracy	1

The Fairy Jobmother	Channel 4	07/06/2011	Generally accepted standards	1
The Fairy Jobmother	Channel 4	14/06/2011	Gender discrimination/offence	1
The Graham Norton Show	BBC1	10/06/2011	Sexual material	1
The Hotel Inspector	Channel 5	23/05/2011	Generally accepted standards	1
The Jeremy Kyle Show	ITV1	15/06/2011	Generally accepted standards	1
The Mentalist	Channel 5	10/06/2011	Outside of remit / other	1
The News Quiz	BBC Radio 4	08/10/2010	Offensive language	1
The Now Show	BBC Radio 4	18/06/2011	Offensive language	1
The One Show	BBC1	17/06/2011	Race discrimination/offence	5
The Only Way is Essex (trailer)	ITV1	29/05/2011	Scheduling	1
The Secret Millionaire	Channel 4	31/05/2011	Race discrimination/offence	1
The Sex Researchers	Channel 4	16/06/2011	Sexual orientation discrimination/offence	1
The Stephen Nolan Show	BBC Radio Ulster	07/06/2011	Generally accepted standards	1
The Sunday Supplement	Sky Sports 1	29/05/2011	Religious/Beliefs discrimination/offence	2
The Vanessa Show	Channel 5	22/06/2011	Race discrimination/offence	1
The World's Strictest Parents	BBC3	19/06/2011	Offensive language	1
The World's Strictest Parents	BBC3	21/06/2011	Offensive language	1
The Wright Stuff	Channel 5	22/06/2011	Sexual orientation discrimination/offence	1
This Morning	ITV1	16/06/2011	Gender discrimination/offence	1
Tombola's sponsorship of Emmerdale	ITV1	n/a	Generally accepted standards	1
Total Blackout	Kanal 5	25/04/2011	Animal welfare	1
Total Star Weekend Late Breakfast	Total Star, Warminster	11/06/2011	Format	1
Trailer for The Sex Researchers	Channel 4	12/06/2011	Sexual material	1
Trailer for The Sex Researchers	Channel 4	15/06/2011	Scheduling	1
Travie McCoy - "Billionaire"	Chelmsford Radio	22/06/2011	Offensive language	1
True Stories: Best Undressed (trailer)	More4	02/06/2011	Sexual material	1
Various	Various	Various	Generally accepted standards	1
Walking the Amazon	Channel 5	23/06/2011	Animal welfare	2
Waterloo Road	BBC1	15/06/2011	Offensive language	1
Wimbledon 2011	BBC2	22/06/2011	Advertising/editorial distinction	1
Wimbledon 2011	BBC2	22/06/2011	Advertising/editorial distinction	1

World's Craziest Fools	BBC3	19/06/2011	Harm	1
You Are What You Eat	The Style Network	13/06/2011	Generally accepted standards	1

## Investigations List

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

Here is an alphabetical list of new investigations launched between 4 and 13 July 2011

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission date</b>
Balls of Steel	Kanal 5	Monday, 7 March 2011
Baylis sponsors Hirsty and Helen in the Morning	Wyvern FM	Thursday, 23 June 2011
Bishop FM	Bishop FM	Wednesday, 8 June 2011
Channel S News	Channel S	various
Dispatches: A Very Dangerous Doctor	Channel 4	Thursday, 12 May 2011
Dumb and Dumber	Channel 5	Sunday, 26 June 2011
Duran Duran: Video Killed the Radio Star	Sky Arts1	Saturday, 25 June 2011
Satinder Sartaj promotion	Brit Asia TV	various
Sponsorship credits	Colors	various
Station Ident	Ujima 98 FM Bristol	Wednesday, 29 June 2011
The Big Questions	BBC1	Sunday, 15 May 2011
The Phil Mack Country Show	Showcase TV	Monday, 23 May 2011 and Monday, 6 June 2011

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

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

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

For fairness and privacy complaints go to:

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