Ofcom Broadcast Bulletin

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Contents

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[1], 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 and product placement on television (see Rules 9.13, 9.16 and 9.17 of the Code) and all commercial communications in radio programming (see Rules 10.6 to 10.8 of the Code);
- 'participation TV' advertising. This includes long-form advertising predicated on premium rate telephone services – most notably chat (including 'adult' chat), 'psychic' readings and dedicated quiz TV (Call TV quiz services). Ofcom is also responsible for regulating gambling, dating and 'message board' material where these are broadcast as advertising[2].

The BCAP Code is at: 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.

[1] The relevant legislation is set out in detail in Annex 1 of the Code.

[2] BCAP and ASA continue to regulate conventional teleshopping content and spot advertising for these types of services where it is permitted. Ofcom remains responsible for statutory sanctions in all advertising cases

Standards cases

In Breach

Miss Arab London

Al-Alamia TV, 7, 14, 21 and 29 October 2011

Introduction

Al-Alamia TV is an Arab culture and entertainment satellite broadcaster which broadcasts in Arabic and English. It is based in London and broadcasts via the Nilesat satellite to parts of southern Europe and the Middle East. Until December 2011, it also broadcast to Europe via the Hotbird platform. A live stream is also available on Al-Alamia TV's website. The licence for Al-Alamia TV is held by Biditis Limited ("the Licensee").

In October 2011, Al-Alamia TV held a beauty pageant entitled *Miss Arab London*. The accompanying television series comprised three pre-recorded episodes and a final broadcast live on 29 October 2011 ("the Live Final"). The three episodes introduced the 22 contestants and contained footage of their preparation for the final. Viewers were invited to vote for their favourite contestant via premium rate text message costing £1.50 each. Viewers outside the UK were invited to vote via an international text message number, also charged at a premium rate.

During the final, the eight contestants with the most votes were announced and went before a panel of judges. After a series of questions, the judges then determined the winner. There were also prizes for two runners up, a "talent" prize and a "popularity" prize (i.e. the contestant with the most public votes).

Ofcom received two complaints about the series. The complainants alleged that the Licensee had entered into an agreement with the mother of the winner and, as such, the winner had been selected prior to the start of the series. Therefore the concern was that the eight contestants who went through to the final stage did not necessarily do so as a result of viewers' votes. Initial correspondence with the Licensee indicated that the eventual winner was one of the "top eight" from the public vote. Since viewers played no part in the final selection process, Ofcom did not pursue the complaints.

However, after considering the information provided by the Licensee and viewing the material, Ofcom identified a number of issues warranting investigation under several rules of the Code in relation to audience voting, licence requirements for the handling of communications from viewers, product placement and other commercial references.

Audience voting

Mis-calculating vote percentages

The Licensee admitted that an error was made when calculating the vote percentages that determined which eight contestants went through to the final round. Contestant 21 who eventually went on to become second runner up was incorrectly entered into the final instead of contestant 14. This meant that viewers who had

voted for contestant 14 did not see their chosen contestant in the final even though she gained a sufficient proportion of the vote.

Incorrect scrolling message

Upon viewing the Live Final, Ofcom noted that the scrolling message which invited viewers to vote, and detailed the relevant voting numbers for each contestant, contained voting numbers for four contestants who had withdrawn from the contest prior to the broadcast. This presented a possibility that viewers could pay to vote for contestants who no longer had a chance of advancing to the final stage.

Inviting viewers to vote after the lines had closed

At 19:52 during the Live Final, the presenter announced that voting had closed. However, a segment comprising highlights of the series, which contained contestants encouraging viewers to vote for them, was broadcast after this announcement. Further, the scrolling message inviting viewers to vote remained on-screen for the duration of the programme (including after 19:52). Consequently, viewers may have responded to these calls to action to vote after lines had closed.

Ofcom considered the issues detailed above raised issues warranting investigation under Rules 2.13 and 2.14 of the Code:

Rule 2.13 "Broadcast competitions and voting must be conducted fairly."

Rule 2.14 "Broadcasters must ensure that viewers and listeners are not materially misled about any broadcast competition or voting."

We therefore asked the Licensee for its comments on how the programmes complied with Rules 2.13 and 2.14 of the Code.

Requirements for the handling of communications from viewers

Following a series of serious breaches of the Code regarding broadcasters' use of premium rate telephony services ("PRS"), Ofcom introduced a requirement for broadcasters to implement a system of third-party verification where PRS is used for competitions or voting schemes in programmes. The condition of the licence requiring third-party verification became an active requirement on 1 August 2008.

Condition 6(A)(3)(b) of Al-Alamia's Television Licensable Content Service (TLCS) licence states:

> "Where the Licensee uses a Controlled Premium Rate Service as defined under the PRS Condition in force at the time made under section 120 of the Communications Act 2003 as the method of communication for voting or competitions publicised within programme time, the Licensee shall ensure that its compliance procedures include a system of verification by an appropriate independent third party…"

Initial correspondence from the Licensee indicated that Al-Alamia had no such third party verification arrangements in place.

We asked the Licensee for its comments under Condition 6(A)(3)(b) of its TLCS licence with regard to this matter.

Product placement

The Code defines product placement as:

> "The inclusion in a programme of, or a reference to, a product, service or trade mark where the inclusion is for a commercial purpose, and is in return for the making of any payment, or giving of other valuable consideration, to any relevant provider or any person connected with a relevant provider...".

It also states that:

> "With the exception of sponsorship credits, any reference to a sponsor that appears in a sponsored programme as a result of a commercial arrangement with the broadcaster, the programme maker or a connected person will be treated as product placement".

The Licensee referred to each of the following companies as programme sponsors, in a sponsor credit around the programme and orally during the programme.

- Crystal Palace Hair and Beauty Spa
- Duo Gym
- Fakhreldine restaurant
- Lycamobile

In addition, the Licensee provided information to Ofcom which indicated that these companies had provided a valuable consideration to the Licensee for the Miss Arab London event in return for being referred to in the programmes.

When viewing each episode, Ofcom identified segments that contained verbal and visual references to these companies. Examples of how these companies were referred to are detailed below. Please note that quotations in this Decision are taken directly from the programmes or are taken from an independent English translation obtained by Ofcom.

Crystal Palace Hair and Beauty Spa

The second and third episodes contained footage of the contestants' visit to Crystal Palace Hair and Beauty Spa. These segments featured several exterior shots of the spa which included the telephone number and website address of the business. Further, the presenter's introduction to this segment included the following statement:

> *"the destination is very beautiful and outstanding spa… because we want the girls to be very comfortable, we had to find them the one place for such an issue, what is this destination? It is Crystal Palace in London."*

Throughout this programme segment, the presenter interviewed several contestants about their experience at the spa. Some examples are set out below:

Presenter: *"So, we all love Crystal Palace for this experience".*

***

Contestant: *"It's beautiful, and I am really enjoying my experience here".*

***

Presenter: *"So would you tell people to come and visit Crystal Palace?"*

Contestant: *"Definitely. Crystal Palace is such a nice place, the staff are friendly, everything is beautiful, everything is clean, definitely, you have to come down".*

Ofcom noted this segment included examples of services available and an interview with a Crystal Palace employee who gave detailed descriptions of the various massage treatments the business offers.

Duo Gym

The second episode contained footage from the contestants' visit to Duo Gym. During this segment the presenter was wearing a t-shirt featuring the company's logo.

The presenter introduced the gym as follows:

> *"The girls are here with me today to exercise, you will see with us how this experience is going to be like and how beautiful the gym is itself, because the queen* [Miss Arab London 2011] *will win a year membership in Duo Gym. Duo Gym is one of the biggest sponsors of this event".*

There were also many interior shots of the gym that included the company's logo and footage showing the contestants using the equipment.

The third episode featured an interview with one of the gym's fitness consultants. The consultant gave details of the different types of activities that could be included in Duo Gym's fitness programmes.

Fahkreldine restaurant

During the first episode, the contestants visited a Lebanese restaurant called Fakhreldine. The presenter closed the programme segment as follows:

> *"Since we don't wish to make the girls work harder…we were obliged to take them for a break. A destination that is very much prestigious and known in the middle of London which is none other than Fakhreldine."*

> *"The girls did not want to leave the place without leaving their mark behind in their own special way, so as to commemorate their visit to Fakhreldine as unforgettable and once in a lifetime visit for the rest of their life."*

The segment also featured close up shots of the restaurant's frontage signs.

Lycamobile

The first episode contained footage of the launch of the Miss Arab London contest. This included a short speech by the Managing Director of Lycamobile. The speech contained information about Lycamobile. For example:

> *"Our Arab customers are the fastest growing customer base for Lycamobile."*

During the third episode, the contestants visited Lycamobile's headquarters. This segment featured several close-up shots of the company's logo and an interview with the Managing Director. The presenter's introduction to this segment included the following:

> *"We are at Lycamobile head office. Why? Because Lycamobile is the only telecoms sponsor to Miss Arab London 2011. The girls and I decided to visit Lycamobile in order to express our joy of having them as our sponsor…and it is certain, because, you have to vote for the girls so we should not forget that we need a SIM card."*

The interview with the Managing Director took place directly in front a large board which contained fifteen images of the company's logo. The interview included the following dialogue:

Managing Director: *"We celebrated our fifth birthday on this balcony with the Mayor of London, Boris Johnson, in July of this year. From launch we've grown to fourteen countries across Europe and Australia and we have over six and a half million customers and every five seconds a new customer joins Lycamobile."*

Presenter: *"So this is an advert for all the people who are watching us today to get a Lycamobile SIM card and vote for beautiful ladies, isn't it?"*

Managing Director: *"Of course."*

The Managing Director also gave the following information about the company during the interview:

> *"We appeal to customers of all sorts of nationalities across the world… people come to London from all parts of the world and to call back to home is very important for them and Lycamobile offers a very good calling rate… very cost effective."*

Ofcom considered the above programme segments raised issues warranting investigation under Rules 9.8, 9.9 and 9.10 of the Code concerning product placement.

Rule 9.8 "Product placement must not influence the content and scheduling of a programme in a way that affects the responsibility and editorial independence of the broadcaster."

With reference to Rule 9.8, the Code contains the following note:

> "There must always be sufficient editorial justification for the inclusion of product placement in programmes. In particular, editorial content must not be created or distorted so that it becomes a vehicle for the purpose of featuring placed products."

Rule 9.9 "References to placed products, services and trade marks must not be promotional."

Rule 9.10 "References to placed products, services and trade marks must not be unduly prominent."

The Code requires that the inclusion of product placement in a programme is clearly signalled if the programme was produced or commissioned by the broadcaster or a person connected with that broadcaster. Ofcom noted that the inclusion of product placement was not signalled in any of the programmes. Ofcom therefore also considered the material raised issues warranting investigation under Rule 9.14 of the Code:

Rule 9.14 "Product placement must be signalled clearly, by means of a universal neutral logo, as follows:

a) at the beginning of the programme in which placement appears;

b) when the programme recommences after commercial breaks; and

c) at the end of the programme."

With regard to each sponsor, Ofcom asked the Licensee how the programmes complied with Rules 9.8, 9.9, 9.10 and 9.14.

Other commercial references

The third episode featured footage from the contestants' visits to the following companies:

- Queen's Ice and Bowl
- London Dermatology Centre

The Licensee confirmed to Ofcom that neither it, the programme producer, nor any person connected with either[1], received payment or other valuable consideration for the inclusion of the references to these companies during the programmes, and that therefore the references had not been subject to any product placement arrangement.

Queen's Ice and Bowl

The third episode contained footage from the contestants' visit to this venue. This segment also featured an interview with Queen's Ice and Bowl marketing manager. This interview contained the following dialogue:

Marketing Manager: *"It has been open for more than seventy years.... Essentially, we like to cater for families and all walks of life. We welcome everyone from all backgrounds."*

Presenter: *"Besides ice-skating and bowling, what other things do we have here?"*

Marketing Manager: "*We have a games arcade which is fantastic – there's dance machines, there's car racing, all types of games. But we also have karaoke so if they fancy a bit of singing, they can go and do karaoke."*

[1] "Connected person" is defined in Part 1 of Schedule 2 of the Broadcasting Act 1990.

London Dermatology Centre

The third episode contained footage from the contestants' visit to this venue. This segment featured an interview with consultant Dr Mario Knight who gave details of the business and the various treatments available:

> *"We have been based in Wimpole Street in the heart of Marylebone for over ten years and we are the leading skin clinic in the UK. We have a particular speciality in treating patients from Middle East, Africa and the Asian sub-continent. We specialise in all aspects of skin care… with a particular interest in aesthetics. Rather than other skin clinics which leave people with an artificial look, we don't do that. When we have patients here they stay for life."*
>
> ***
>
> *"We provide a whole range of treatments ranging from eczema, psoriasis, acne and right down to skin cancer but also the aesthetic side as well. When someone leaves our clinic we don't want anyone to know they have had any work done. People will just think 'oh they look nicer, they look fresher, they look healthier' … they will feel more confident in themselves, they will feel more confident in their personal lives, in the work lives, going for a job interview, they are going to look more confident."*

Ofcom considered these programme segments raised issues warranting investigation under Rules 9.4 and 9.5 of the Code.

Rule 9.4 "Products, services and trade marks must not be promoted in programming."

Rule 9.5 "No undue prominence may be given in programming to a product, service or trade mark. Undue prominence may result from:

- the presence of, or reference to, a product, service or trademark in programming where there is no editorial justification; or
- the manner in which a product, service or trade mark appears or is referred to in programming."

We asked the Licensee for its comments on how these programme segments complied with Rules 9.4 and 9.5 of the Code.

Response

Audience voting

Upon receiving Ofcom's initial correspondence about the matter, the Licensee reviewed the voting figures for *Miss Arab London 2011*.

Mis-calculating vote percentages

The Licensee acknowledged that a "technical and human error" was made during the calculation of each contestant's percentage share of the public vote and as a consequence one contestant was put through to the final eight by mistake.

The Licensee said that after voting had closed, it expected its PRS operator to present the results in a way that clearly identified which eight contestants had progressed to the next stage. However, the PRS operator submitted a report detailing the entire voting history (950 votes) and therefore the staff on-hand had to manually calculate the percentage share for each contestant to determine which of the eight contestants were successful. The Licensee added that it had only approximately 20 minutes to complete this task.

The Licensee explained that *Miss Arab London* was its first programme to use PRS and it was not sufficiently prepared or equipped for this task. It said that during the process an error was made when reading the handwritten percentage shares for contestants 14 and 21. Contestant 21's share of the vote was misread as 8.6% and contestant 14's 8.6% share was misread as 2.6%. This resulted in contestant 21's incorrect inclusion in the top eight contestants instead of contestant 14. The Licensee attributed the error to the "pressure of live broadcasting".

The Licensee said that as soon as it became aware of the error, it contacted contestant 14 and offered her "an honorary third runner up title" as compensation, which she accepted. An apology was broadcast on Al-Alamia TV during a news bulletin, and also published on the Miss Arab London website and Facebook page.

Incorrect scrolling message and inviting viewers to vote after the lines had closed

In respect of the scrolling message inviting viewers to vote for their favourite, the Licensee explained that some contestants withdrew from the competition during the course of the series and the list of remaining contestants was updated each day. A total of 13 of the original 22 took part in the final event but the director of the final, who was "not involved directly with the production team and the organisers of the event", did not use the most up-to-date version of the scrolling message. Therefore, the message contained voting numbers for withdrawn contestants.

The Licensee reiterated that it was its first event of this kind and owing to production pressures, it "did not pay attention to some details". It asserted that the general public did not vote because most of the viewers of *Miss Arab London 2011* were the contestants, their parents and close friends and as such, would only have voted for participating contestants. The Licensee said that this was demonstrated by the SMS voting report which contained multiple entries for several numbers and no votes for withdrawn contestants received on the day of the final.

The Licensee said that the Master Control Room Operator had been instructed to remove the scrolling message once the presenter had announced that lines had closed. However, this instruction was not followed and the scrolling message remained on screen for the remainder of the programme. The Licensee explained that it only became aware of the error when viewing a recording of the programme after transmission. It said that the highlights segment broadcast after voting had closed was a "prepared video in advance about the journey of the contestants to the final which included activities and voting numbers but was never intended to mislead viewers [and] was for a technical reason." The Licensee again attributed these errors to "working under stress and pressure."

While acknowledging that viewers may have responded to the calls to action to vote, the Licensee asserted that lines were closed after the announcement and any viewer who had attempted to vote after this time would have had their SMS rejected and would not be charged.

The Licensee also provided information that indicated its premium rate operator for international text message votes failed to activate the service. It said that it became aware of this issue after receiving complaints from viewers from Arabic countries in mid-October. However, it explained that there was not sufficient time for the international numbers to be edited out for the final programme.

In all cases, the Licensee said that it was never the intention of Al-Alamia TV to mislead its viewers.

Requirements for the handling of communications from viewers

The Licensee said it could only "plead ignorance" of the requirement to have a third party verifier for its use of PRS (as stipulated in Condition 6A(3)(b) of its TLCS licence). Although it recognised that it should have been aware of this obligation, it only became aware of it when the matter was highlighted by Ofcom during the investigation. It said when embarking on using PRS, it had expected the PRS operator to advise it of "everything… [it] needed to know".

The Licensee explained that its lack of knowledge of the requirement was because of a change in management after the TLCS licence had been issued. When preparing for the series it discovered that it did not possess a copy of the licence in its files and therefore requested one from Ofcom on 20 September 2011. However, the Licensee said that when it received a copy, it was undergoing a change of management and due to timing constraints, it was "not able to properly analyse and thoroughly read through the licence". It added that at the time, Al-Alamia TV was organising the Miss Arab London 2011 event and accompanying programmes and was "under immense pressure".

The Licensee wished to add that it did not have sufficient funds to have a dedicated compliance department or a lawyer to bring such regulations to its attention.

Product placement and other commercial references

The Licensee said it "plead[ed] complete ignorance" of Section Nine of the Code and "never intentionally set out to breach any rules". It therefore entered into agreements with companies in return for visual and verbal references within the series of programmes unaware that this could raise compliance issues. It was also unaware that references to sponsors within programmes (as opposed to sponsorship credits around programmes) would be considered product placement. Further, it said that it had no knowledge of the requirement to signal product placement by means of the universal neutral logo.

Conclusion

The Licensee apologised for the compliance issues raised by the series and explained that it had terminated in-house productions until all editorial staff are fully trained and it had an experienced member of staff dedicated to overseeing its standards and practices.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, 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". These objectives are reflected in, among other rules, Rules 2.13 and 2.14, which serve to ensure voting exercises are conducted fairly and prevent them from misleading the audience in such a way as to cause material harm, such as financial loss.

In addition, under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure specific standards objectives, one of which is "that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with."

Article 19 of the EU Audiovisual Media Services (AVMS) Directive requires, among other things, that television advertising is kept visually and/or audibly distinct from programming.

The purpose of this is to prevent programmes becoming vehicles for advertising and to protect viewers from surreptitious advertising. Further, Article 23 of the AVMS Directive requires that television advertising is limited to a maximum of 12 minutes in any clock hour.

The above requirements are therefore reflected in, among other Code rules, Rules 9.4 and 9.5, which prohibit both the promotion and undue prominence of products, services or trade marks in programming.

Further, with regards to products, services and trade marks which are included in programmes as a result of a commercial arrangement, both the AVMS Directive and the Communications Act 2003 (as amended) require that:

- product placement should not influence the content and scheduling of television programmes in such a way as to affect the responsibility and editorial independence of the broadcaster;

- programmes containing product placement shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;

- programmes containing product placement shall not give undue prominence to the products, services or trade marks concerned; and

- viewers are clearly informed of the existence of product placement in programmes; and surreptitious advertising is prohibited.

Rules 9.8, 9.9, 9.10 and 9.14 and of the Code reflect these requirements.

Audience voting

Ofcom noted that there were four fundamental errors made by the Licensee with regard to the operation and promotion of the voting mechanic.

1. When determining which eight contestants had gained sufficient votes to progress to the second stage, two contestants' scores were misread from the list that was prepared following the manual calculation of each contestant's share of the vote.

Contestant 14's score of 8.6% was recorded as 2.6%; if recorded correctly, contestant 14 would have progressed to the next stage. Since viewers' votes for this contestant were not properly counted, Ofcom concluded that these viewers had been materially misled and the vote had not been conducted fairly.

2. During each of the programmes, viewers outside the UK were invited to vote via an international text message number, charged at a premium rate. The service was not activated by the premium rate operator for the international text messages, so any votes made by international viewers would not have been received.

Displaying voting numbers which have not been activated presented the possibility of viewers paying their standard network charge (which would vary by country) for a vote that ultimately would not be received. Therefore, Ofcom did not consider the Licensee undertook sufficient measures to ensure that viewers were not materially misled.

3. During the broadcast of the final event, the scrolling message at the bottom of the screen contained the relevant voting numbers for each contestant. However, this also included the details of four contestants who had previously withdrawn from the contest.

Displaying voting numbers for withdrawn contestants presented the possibility of viewers paying £1.50 (plus their standard network rate) for a vote that ultimately would not be counted. Although it was fortunate that no votes were cast for these contestants during the final, Ofcom did not consider the Licensee undertook sufficient measures to ensure that viewers would not be materially misled.

4. During the broadcast of the Live Final, the presenter announced that lines had closed and later in the programme revealed the result of the public vote. However, viewers were still invited to vote in the subsequent highlights section and also, by the scrolling message which remained on screen until the end of the broadcast.

Ofcom noted the Licensee's assertion that since lines had closed, SMS votes received after the presenter's announcement would have been rejected and not charged. However, there are two stages when applying charges to PRS text messages – the premium rate element (in this case £1.50) and the standard network element (normally between 10-12p). Although the premium rate charge may not have applied, any viewer responding to these calls to action after lines had closed would still have been charged their standard network rate. Ofcom therefore considered that the Licensee had failed to ensure that viewers were not materially misled.

Ofcom noted the Licensee's explanation that this was its first use of PRS voting and these mistakes were largely caused by inexperience and production pressures. However, this does not, in Ofcom's view absolve the Licensee of its responsibility in this area. Ofcom was particularly concerned that:

- the Licensee did not consider it necessary to confirm the format in which votes would be delivered with the PRS operator before the event and make the necessary arrangements to ensure the results were calculated accurately and not subject to human error;

- fundamental details such as the final list of names and voting numbers of the remaining contestants were not communicated to the director of the live

event. Ofcom was also concerned by the fact that the names and voting numbers of withdrawn contestants were displayed for the entire programme and that this was not identified by the broadcaster or any of the production staff. Ofcom considered the Licensee's argument that viewers would have known which contestants were participating and which had withdrawn to be unacceptable. Irrespective of the composition of the audience, the presence of the scrolling message inviting viewers to vote for non-participants was a serious error as it would have resulted in financial detriment to any viewer who responded;

- the Licensee was aware in mid-October that the international text message voting numbers had not been activated, but did not remove the numbers from its broadcasts;

- the Licensee prepared a highlights section containing invitations to vote. It broadcast this highlights section after lines had closed and did not recognise that this may have prompted viewers to vote outside the voting window; and

- the Licensee did not follow up the instruction it gave to the Master Control Room Operator to remove the scrolling message after voting had closed. Furthermore, the message, which was prominently displayed at the bottom of screen for the remainder of the programme (125 minutes), went undetected. It appeared to Ofcom that the Licensee's assertion that it did not become aware of the error until viewing a recording after the event, indicated that the live feed had not been sufficiently monitored. Ofcom has serious concerns that such a fundamental error was not identified during this time.

In recent years, Ofcom has published several breach findings regarding broadcasters' use of premium rate services and has stated that it expects broadcasters to exercise the utmost care in the conduct of audience voting in particular those which invite viewers or listeners to pay to do so. The above circumstances demonstrated clearly that the Licensee did not have sufficiently robust procedures in place to ensure compliance with Rules 2.13 and 2.14. Consequently, Ofcom is recording a breach of Rule 2.13 and 2.14 with regard to these incidents.

Requirements for the handling of communications from viewers

Ofcom noted the Licensee's admission that it did not have any third party verification arrangements in place for its use of PRS in this series.

Ofcom Licensees are responsible for ensuring that they are fully compliant with all requirements of their broadcasting licence. Ofcom was very concerned that Biditis Limited had no knowledge of an important licence requirement that had been in force for over three years, and when receiving a copy of its TLCS licence did not have the time to read it thoroughly. Ofcom did not accept the Licensee's argument that it was unaware that the requirement regarding third party verification existed. It is the responsibility of all Licensees to ensure that they understand their responsibilities as set out in their licence to broadcast. Ofcom is therefore recording a breach of Condition 6(A)(3)(b) of Biditis Limited's licence for its service Al-Alamia TV.

Product placement

Ofcom noted that not only were Crystal Palace Health and Beauty Spa, Duo Gym, Fahkreldine restaurant and Lycamobile credited as sponsors of *Miss Arab London*

2011, but the programmes contained significant verbal and visual references to these companies. As stated in the Code: "With the exception of sponsorship credits, any reference to a sponsor that appears in a sponsored programme as a result of a commercial arrangement with the broadcaster, the programme maker or a connected person will be treated as product placement". Therefore, Code rules regarding product placement were applicable in this case.

The relevant rules are as follows:

Rule 9.8 "Product placement must not influence the content and scheduling of a programme in a way that affects the responsibility and editorial independence of the broadcaster."

With reference to Rule 9.8, the Code contains the following note:

"There must always be sufficient editorial justification for the inclusion of product placement in programmes. In particular, editorial content must not be created or distorted so that it becomes a vehicle for the purpose of featuring placed products."

Rule 9.9 "References to placed products, services and trade marks must not be promotional."

Rule 9.10 "References to placed products, services and trade marks must not be unduly prominent."

Ofcom noted that the series contained at least one programme segment dedicated to each company.

Crystal Palace Hair and Beauty Spa

As stated, the series featured two programme segments (in episodes two and three) totalling approximately 26 minutes, containing the contestants' visits to Crystal Palace Hair and Beauty Spa.

In the context of an upcoming beauty pageant, Ofcom recognised the editorial relevance of the featuring the contestants' visits to a beauty spa. However, the extent to which the company was promoted raised substantial issues under Rules 9.8, 9.9 and 9.10 of the Code:

- The presenter asked eleven contestants to give their view about the spa, each of whom gave extremely positive endorsements. For example:

"*you know it's great to be here"*

***

"I love it…I am getting my make-up done by Akram, she is amazing…this place is so friendly"

***

"very relaxing, I loved it so much and I would love to come back again"

- Further, the presenter specifically asked one contestant whether she would *"tell people to come and visit the spa."* The contestant replied:

> "*Definitely. Crystal Palace is such a nice place, the staff are friendly, everything is beautiful, everything is clean, definitely, you have to come down".*

- The segment featured several exterior shots of the spa which contained details of the business' website and telephone number.

- During an interview, an employee gave details of the various treatments the business offered:

> *"We have, as well, available on request, different types of therapeutic massages. We use different types of oils… the massages vary from head massage, relax massage, feet massage… fully body massage, we do aromatherapy, deep tissue sports massage so you can see, the personnel are really qualified… they all are professional therapists."*

Duo Gym

Ofcom noted that the segments featuring the contestants' visit to Duo Gym contained several shots of the facilities available and an interview with an employee about the various training programmes offered:

> *"'Yes you can' is a specially designed programme for people who like to do workout at home. They do everything from cardio exercises to weight training with the minimum of equipment. We do Pilates and some yoga… we also do meditation in a programme called 'zone out' so, whoever follows us will become very, very fit and will be very happy and will find many pleasant surprises and there are changes all the time in the programme."*

Ofcom also noted that during these segments, the presenter wore a t-shirt displaying the company's logo and advised viewers that they would now see "*how beautiful the gym is itself*".

Fahkreldine restaurant

As stated in the Introduction, the programme segment featuring the contestant at Fahkreldine restaurant contained many close up shots of the restaurant's frontage signs. The presenter also used words and phrases such as *"prestigious", "unforgettable"* and *"a once in a lifetime visit"* when talking about the restaurant.

Lycamobile

The segment featuring the interview with the Managing Director of Lycamobile implied that the audience should purchase a Lycamobile SIM card:

> *"you have to vote for the girls so we should not forget that we need a SIM card."*

Later in the same interview the presenter also made a direct call to action to purchase a Lycamobile SIM card:

Presenter: "*So this is an advert for all the people who are watching us today to get a Lycamobile SIM card and vote for a beautiful ladies, isn't it?"*

Managing Director: *"Of course"*

As stated above in the Introduction, this segment also contained details of the history of the business and the fact that Lycamobile offered *"very good"* and *"cost-effective"* calling rates.

Ofcom considered that the segments including references to Crystal Palace Hair and Beauty Spa, Duo Gym, Fahkreldine and Lycamobile were purposefully designed to promote the businesses. Not only did Ofcom consider this material promotional, but the inclusion of these segments in the programmes appeared significantly to influence the content of the programme and called into question the editorial independence of the broadcaster. Ofcom therefore recorded breaches of Rule 9.8 and 9.9 of the Code.

Further, Ofcom did not consider there was sufficient editorial justification for the extent to which Crystal Palace Hair and Beauty Spa and Lycamobile were featured in the programmes and as such concluded the references to each company to be unduly prominent, in breach of Rule 9.10.

In cases where a programme is produced or commissioned by the broadcaster or any person connected to the broadcaster, the inclusion of product placement must be signalled to the audience. Rule 9.14 requires that the product placement logo is broadcast at the beginning and end of such programmes and when returning to the programme after any commercial breaks. In this case, the logo was not broadcast at any of the required points, so the audience was not made aware that the programme contained references to companies which were included as a result of a commercial arrangement between the company and the programme producer. Ofcom therefore found the programmes in breach of Rule 9.14 of the Code.

Other commercial references

In respect of both Queen's Ice and Bowl and the London Dermatology Centre, the Licensee confirmed to Ofcom that neither it, the programme producer, or any person connected with either, received payment or other valuable consideration for the inclusion of the references to these companies during the programmes, and that therefore the references had not been subject to any product placement arrangement.

Ofcom noted that each segment contained an interview with a representative of these companies. In both cases, the presenter allowed the representative an opportunity to provide information about the company and make positive comments about the services the business offered.

The representative of Queen's Ice and Bowl told the presenter that in addition to ice-skating and bowling, the business offered a "*games arcade which is fantastic – there's dance machines, there's car racing, all types of games… we also have karaoke".*

The representative of the London Dermatology Centre gave details of the business' location and the fact that it was "*the leading skin clinic in the UK"*. He also listed

examples of the different skin conditions that the Centre can treat and the benefits for customers ("*they look nicer, they look fresher, they look healthier").*

Ofcom considered that by allowing these representatives to provide detailed and positive information about their services, the programme was effectively promoting these businesses; in both cases this constituted a breach of Rule 9.4.

While it could be argued that the London Dermatology Centre is clearly associated with the general theme of the programme (i.e. beauty), Ofcom did not consider there was sufficient editorial justification to include either business in this manner, or to this extent. Consequently, the material was also in breach of 9.5 of the Code.

Ofcom was surprised at the Licensee's explanation that it was in "complete ignorance" of the requirements regarding product placement and commercial references detailed in Section Nine of the Code. Ofcom's records suggested that a representative of Al-Alamia TV attended a workshop dedicated to Ofcom's revised rules on product placement and commercial references in July 2011.

Conclusion

In summary, Ofcom's investigation into *Miss Arab London 2011* identified multiple and significant breaches of rules of the Code with regard to audience voting, product placement and other commercial references. Additionally, in the course of the investigation, it became apparent that the Licensee had no third party verification arrangements for its use of PRS and as such did not fulfil Condition 6(A)(3)(b) of its TLCS licence.

The Licensee's response attributed each circumstance to a lack of knowledge or experience. It is a Licensee's responsibility to ensure it is fully aware of its obligations, and a lack of knowledge or experience is not, in any way, an acceptable explanation for non-compliance. It appeared that the Licensee did not consider it appropriate to research its compliance obligations before embarking on the production of a series which involved extensive commercial arrangements, national and international premium rate service telephony and a live broadcast.

Owing to the number and severity of breaches found in these programmes, Ofcom puts the Licensee on notice that it is considering this case for the imposition of statutory sanction.

Breaches of Rules 2.13, 2.14, 9.4, 9.5, 9.8, 9.9, 9.10 and 9.14 and TLCS Licence Condition 6(A)(3)(b)

In Breach

Provision of recordings

Noor TV, 13 and 14 January 2012, 20:00

Introduction

Noor TV is a general entertainment and Islamic education channel broadcast on the Sky platform. The channel is aimed at Muslims living in Europe. The licence for the service is held by Al Ehya Digital Television Limited ("Al Ehya" or "the Licensee").

Ofcom received a complaint about charity appeals broadcast on the channel on 13 and 14 January 2012 at 20:00.

As part of its assessment of the complaint, Ofcom asked it to provide recordings of these specific programmes. After several requests, Al Ehya provided recordings of content from 7 and 8 January instead of 13 and 14 January. Ofcom wrote to Al Ehya to reiterate that the content requested in this case was that broadcast on Noor TV on 13 and 14 January.[1]

Given the Licensee's failure to provide the correct recordings when requested, Ofcom considered the case raised issues warranting investigation under Condition 11(2)(b) of Al Eyha's Television Licensable Content Service (TLCS) licence, which states that:

> "11 (2) In particular the Licensee shall:
>
> (b) At the request of Ofcom forthwith produce to Ofcom any… recording for examination or reproduction."

Al Ehya did not provide the recordings or any comments under Licence Condition 11(2)(b).

Ofcom therefore came to the preliminary view that the Licensee was in breach of Condition 11(2)(b) of its TLCS licence.[2] The preliminary view made clear that Ofcom intended to put the Licensee on notice that it would consider this breach for the imposition of a statutory sanction.

The preliminary view was sent to the Licensee for its comments. Al Ehya did not provide any comments.

Ofcom therefore proceeded to reach the decision that the Licensee was in breach of TLCS Licence Condition 11(2)(b) and that the breach would be considered for the imposition of a statutory sanction. Shortly before the intended publication date, the draft decision was sent to the Licensee to provide it with the opportunity to comment on any factual inaccuracies.

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[1] Al Ehya had previously provided the content broadcast on Noor TV on 7 and 8 January 2012 in relation to a separate complaint Ofcom had received. It then provided this content again in relation to this case regarding content broadcast on 13 and 14 January 2012.

[2] *Saturday Night Special*, Noor TV, 13 November 2010 - http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/Al-Ehya.pdf. *Saturday Night Special* was an appeal to viewers to donate funds to run Noor TV.

Response

Upon receipt of the decision, Al Ehya provided the recordings of the content that it had broadcast on Noor TV on 13 and 14 January.

The Licensee did not provide any formal comments in relation to Condition 11(2)(b) of its TLCS licence.

Decision

Under the Communications Act 2003 ("the Act"), Ofcom has a duty to ensure that in each broadcaster's licence there are conditions requiring that the licensee retains recordings of each programme broadcast in a specified form and for a specific period after broadcast; and to comply with any request by Ofcom to produce such recordings.

Ofcom formally asked Al Ehya on several occasions to provide recordings of Noor TV's output on 13 and 14 January, so that Ofcom could reach a decision on the complaint we had received concerning the programmes in question.

Despite the requests clearly stating that the required recordings were of the content broadcast on Noor TV on 13 and 14 January, Al Ehya eventually sent recordings of the content broadcast on Noor TV on 7 and 8 January, which was content it had already provided to Ofcom in relation to a separate complaint.

Under Licence Condition 11(2)(b) Licensees are required to provide recordings and do so forthwith.

In this case, it was not until the Licensee had received Ofcom's draft decision, which included the threat of the imposition of a statutory sanction, that it provided the requested recordings of the content broadcast on 13 and 14 January.[3]

Failure by a licensee to provide the correct recordings forthwith when requested by Ofcom is a serious and significant breach of Licence Condition 11(2)(b) of Al Ehya's licence.

Breaches of Condition 11(2)(b) are potentially serious because they impede Ofcom's ability to assess whether a particular broadcast raises potential issues under the relevant codes. This can therefore affect Ofcom's ability to carry out its statutory duties in regulating broadcast content.

Therefore, Ofcom has decided not to consider the imposition of a statutory sanction on this occasion as the Licensee eventually provided the requested recordings. However, if the Licensee fails to provide recordings forthwith when requested in future, Ofcom will consider further regulatory action.

Breach of TLCS Licence Condition 11(2)(b)

[3] Ofcom considered that the content did not raise any issue which warranted investigation under the Code.

In Breach

Gavin and Stacey

GOLD, 25 February 2012, 10:00

Introduction

Gavin and Stacey is a sitcom which features the long-distance relationship of two characters, Gavin from Essex and Stacey from Wales, and their friends, Smithy and Nessa, and their families. The first series was originally broadcast post-watershed on BBC 3 in 2007.

This particular programme broadcast at 10:00 on a Saturday, on the classic comedy channel GOLD, was a repeat of the first episode of the first series of this long running sitcom. The licensee for the service GOLD is UK Gold Services Limited ("UKTV" or "the Licensee").

Ofcom was alerted by a complainant to this programme because it featured several examples of offensive language and content with adult themes and sexual references throughout the narrative. Ofcom reviewed the material and noted, for example:

- an opening scene outside Stacey's house in Wales where she talks to her elderly neighbour, Doris, about Stacey's forthcoming trip to London for her first date with Gavin. Doris advises Stacey, *"don't go giving him nothing on the first night ... well not nothing ... a kiss, a cuddle, a cheeky finger – just don't go selling him the whole farm"*;

- a scene where Gavin and Smithy discuss going back with Nessa and Stacey to their hotel and Smithy asks Gavin, *"you got any johnnies? I ain't going in there bareback"*; to which Nessa replied: *"don't worry I've got a stash – ribbed"*;

- a scene back at the hotel where Nessa makes clear the reasons for returning there are to have sex and says, *"why don't we cut to the chase and we'll all get some,"* and she reaches her hand towards Smithy's genital area. She then goes on to say, *"I hopes you hungry big boy,"* and slaps his backside;

- a scene the next morning when Smithy wakes up after spending the night with Nessa and tells Gavin, *"I feel like I've been abused. The guilt...She did things. She put things in...did Stacey stick things in?"* He then gets out of bed wearing Nessa's red lacy thong which reveals his buttocks;

- a scene where Nessa responds to a coach driver's offer of a meal by threatening to tell everyone on the coach about her *"trip to the doctors"* following a previous sexual liaison with the driver. She says he is *"riddled"* as she looks down at his genital area. In response the driver asks how everything is *"down there"* as he looks down and nods towards Nessa's genitals; and

- various examples of offensive language, for example*: "bloody"*, *"shit"*, *"takes the piss"*, *"cacking myself"*, *"prick"*, and *"bugger"*.

Ofcom considered the material raised potential issues under the Code because it was broadcast before the watershed and on a Saturday morning, when children were available to view. It therefore warranted investigation under Rule 1.3 of the Code:

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

We therefore sought the Licensee's comments as to how the material complied with this rule.

Response

UKTV stated that it believed the "subject matter of *Gavin and Stacey* is suitable for broadcast pre watershed as it portrays the relationship and subsequent marriage of two people." It went on to explain that "GOLD is a channel that is aimed at adults and *Gavin and Stacey* is a series that first transmitted 5 years ago, so there is an audience expectation already established with the programme and characters within."

With regard to the sexual references, UKTV considered that those remaining in the episode were "oblique enough for children not to fully understand the true meaning". They referred to their own audience research figures which indicated that the child index was well below the level "where one would expect a programme with a large audience to figure".

In addition, the broadcaster explained, edits were made to remove: the strongest language; milder language said in an aggressive manner; and, the stronger sexual content. Further, UKTV stated "the audience of *Gavin and Stacey* would expect some milder language from characters such as Smithy and Nessa and the language used in the episodes had been broadcast in other programmes pre-watershed on GOLD. without complaint." Therefore, in UKTV's view, the language would not have exceeded the audience's expectation.

In conclusion, UKTV said it "made a conscious effort to remove offensive language and any of the more explicit sexual scenes/references, leaving only some mild language and light, oblique sexual references." UKTV said that any sexual references that remained were not explicit.

In response to Ofcom's view that there was a breach of Rule 1.3 in this case, as set out in the preliminary view, UKTV in summary responded as follows.

In terms of audience expectations, when this episode of *Gavin and Stacy* was first shown on BBC Three in a post-watershed slot (and in its original unedited form), the audience of children aged 10 to 14 was 31,000 and UKTV was unaware of any complaints generated by this episode. Further, when subsequent episodes of *Gavin and Stacey* were originally broadcast on the BBC post-watershed, there was also a significant child audience in the 10 to 14 age group. Therefore children and parents would have been "aware of the themes and language in this series and that their expectations would have been suitably managed for the transmissions on GOLD."

In terms of the suitability of the content for pre-watershed broadcast, UKTV stated that in this episode there was "no sexual activity beyond kissing. There is no nudity barring a partially clothed bottom. The sounds of sexual intercourse have been edited from this version." The sequence in the hotel room "is not an aggressive or sexually threatening scene." UKTV also argued that Nessa's references to Smithy as "big boy"

referred to his build. In the broadcaster's view, children viewing in the 10 to 14 age group would have understood the sexual references which went beyond innuendo having had access to compulsory sex and relationship education in school, and references to "johnnies" in the episode provided "positive sexual health messages".

In response to the overall concern about the sexual themes in this pre-watershed episode, UKTV disagreed that these raised issues under the Code and "there was not widespread or significant offence caused". The broadcaster referred to other examples of programming scheduled pre-watershed which included similar themes and storylines that were, in some cases, stronger than *Gavin and Stacey*. UKTV added that as *Gavin and Stacey* is a comedy, which does not feature as a genre causing concern in the Ofcom research into pre-watershed content[1], it "disarms and reduces much of the potential offence compared to straightforward, conventional drama".

In conclusion, UKTV stated that it considered Ofcom's decision "harsh" given the content was not sexually explicit, it was broadcast on a channel aimed at adults with a proven low child audience and there is "potentially stronger and more explicit content on other channels at the same time."

Decision

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

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

Ofcom noted that this programme was originally broadcast post-watershed. The issue in terms of the Code was whether this re-versioned programme shown at 10:00 on a Saturday morning contained material that was unsuitable for children; and – if so – whether children were protected from it by appropriate scheduling.

We therefore considered first whether the material broadcast was suitable for children. In Ofcom's view, overall this episode clearly included themes and content aimed at an adult audience, as might be expected for a series originally produced for post-watershed transmission. These themes and content centred, in the first episode, on a narrative about two groups of friends meeting up for the first time, each couple having sex in a hotel room the first night after meeting, and the consequences for both couples afterwards.

The programme included a number of sexual references which were not necessarily sexually explicit but, in Ofcom's view, clearly exceeded comic innuendo and were aimed at a more adult audience. These references were made throughout this episode and the language used was central to the comedy and the characterisation, particularly of Nessa and Smithy. The sexual references were particularly integral to

[1] Research into parents' and teenagers' opinions and concerns on pre-watershed programming: see http://stakeholders.ofcom.org.uk/binaries/research/tv-research/ofcom-for-parents/prewatershed-tv-programming.pdf

the comedy scenes revolving around the couples returning to the hotel to have sex, for example:

- Smithy's comment to Gavin about condoms: *"you got any johnnies? I ain't going in there bareback,"* to which Nessa replied *"don't worry I've got a stash – ribbed"*.

- Nessa's response to Gavin:, *"why don't we cut to the chase and we'll all get some,"* as she reaches down towards Smithy's genital area. She then goes on to say, *"I hopes you hungry big boy,"* and slaps his backside as they go into the bathroom together for sex.

- Smithy's comments the following morning when it is made clear he had an unexpected sexual experience with Nessa when he recounts to Gavin in the hotel room what happened the night before and gets out of bed wearing only Nessa's red thong: *"I feel like I've been abused. The guilt...She did things. She put things in...did Stacey stick things in?"*

Ofcom considered UKTV's view that these sexual themes and sexual references in this episode were suitable for broadcast pre-watershed, particularly given the child audience comprised of 10 to 14 year olds who would have been informed enough and old enough to have fully understood the references in the storyline.

In response, Ofcom's considered that it was the overall tone and cumulative impact of the sexual language and references throughout the programme which resulted in this material being of a more adult nature and which made this episode unsuitable for scheduling on a Saturday morning, when it was reasonably likely that children would be in the audience. While Ofcom accepts that some of the audience of 10 to 14 year olds may have fully understood the sexual references and they and their parents may have considered this programme suitable viewing, Ofcom has a duty to protect all children under the age of 15 from potentially unsuitable content. Ofcom believes that a number of children would not have understood the references and nor would a number of parents considered this programme suitable viewing on a Saturday morning. In Ofcom's view, the sexual references in the programme were not "light" and "oblique" as suggested by UKTV but clearly aimed at a more adult audience, and these and the sexual themes were integral to the whole episode, which was not suitable for children.

We therefore went on to consider whether this material was appropriately scheduled.

The original post-watershed version of the programme was edited by the broadcaster in an attempt to make it suitable for pre-watershed broadcast, for example by removing some offensive language and explicit sexual references. Ofcom takes account of the Licensee's point that GOLD is "aimed at adults" and we consider that none or very few of the younger age group of children in the audience aged 4 to 9 years may have understood some of the sexual language and references used by the characters. Indeed, BARB audience data show that no children between the ages of 4 and 9 viewed this programme. BARB figures indicate however that some 13,000 children between the ages of 10 and 14 years old did watch this particular episode. In Ofcom's opinion, a number of older children within this age group viewing the material would have been capable of following the adult themes and content.

The programme included the frequent use of offensive language. This (taken together with the sexual themes and references) underlined that, despite the edits to the original programme, it still contained a considerable amount of content of an adult

nature. In Ofcom's view this programme required careful and cautious scheduling if it was to be shown pre-watershed and comply with the Code.

Ofcom had particular regard to the likely expectations of the audience for programmes broadcast at this time of day on a classic comedy channel like GOLD at 10:00 on Saturday morning when many children are available to view, some unaccompanied by an adult.

Ofcom considered UKTV's view that because a significant audience of 10 to 14 year olds had previously watched this episode and others on the BBC, when it was broadcast unedited and in a post-watershed slot, children and parents would have been aware of the themes and language and their expectations would have been suitably managed. It is Ofcom's opinion, that regardless of the previous post-watershed transmissions of this episode, viewers (and in particular parents) would not have expected such material to be broadcast at 10:00 on a Saturday morning, regardless of the comedy context or the fact there was a low child audience. The audience's expectation of what to expect in a post-watershed slot, when older children may be viewing with parents, differs greatly to the likely audience expectation for content broadcast during a Saturday morning when children may be viewing unaccompanied. At this time content is expected to be appropriate for all children under 15. The nature of the content and its scheduling, in a pre-watershed Saturday morning slot, meant that in Ofcom's view the likely expectations of the audience at this time were exceeded.

Each decision under Rule 1.3 depends on the individual circumstances and whether the context in each case is sufficient to justify the inclusion of more adult content at a time when children are available to view unaccompanied. In this case Ofcom considers the context did not justify the broadcast of this programme at 10:00 on a Saturday morning. Therefore it was not appropriately scheduled so as to protect children and breached Rule 1.3.

Ofcom notes that this programme was originally written and produced for a post-watershed audience. Ofcom has recently given guidance to all broadcasters that they "...should take particular care if they wish to show before the watershed content originally produced for a post-watershed audience. ... Some programmes or content, however, even if rigorously edited or carefully scheduled, may not be suitable for broadcast pre-watershed because of their adult themes or repeated offensive language (even if 'bleeped')."[2] In this case it was Ofcom's view that despite considerable editing this material still contained an overall adult sexual tone and was therefore not appropriately scheduled. All broadcasters need to be aware of the need to take great care when considering the scheduling pre-watershed of programmes originally produced for post-watershed transmission.

Breach of Rule 1.3

[2] http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/watershed-on-tv.pdf

In Breach

Live with Myleene

Channel 5, 9 May 2012, 11:10

Introduction

A number of presenters take it in turns to present the weekday magazine programme, *Live with….* On 9 May 2012, the programme was presented by Myleene Klass ("the presenter") and the television presenter Ben Shephard was one of the guests ("the guest"). The licence for Channel 5 is held by Channel 5 Broadcasting Limited or ("Channel 5 or "the Licensee").

A complainant was concerned that the guest promoted Nestlé cereals during his appearance on the programme.

Of the interview, which lasted about eight minutes in total, the guest spent approximately six minutes talking about eating a healthy breakfast during which he referred to:

- Nestlé's 'Battle of the Breakfasts' advertising campaign which he was fronting;
- the benefits of swapping current breakfast choices for Nestlé cereals; and
- the fact that further information was available on the website "battleofthebreakfasts.co.uk".

The following is a transcript of the majority of around the first four minutes of the interview:

MK: *"My first guest was a favourite for breakfast for ten years on GMTV, but he's recently scrutinised his own breakfast and wants you to do the same, after research shows that nine out of ten of us aren't getting enough wholegrain in our diet. And, he'll need the energy because he's running three marathons this summer. Please welcome Ben Shephard…. You strike me as the very healthy type. Three marathons are coming up and fourteen marathons in the past."*

BS: *"Well as a rule I eat pretty healthily and I've always kept myself quite fit, but when I was approached by Nestlé to get involved with the Battle of the Breakfasts alongside Louise* [Redknapp] *and Sara* [Cox]*, all of us have had experience of getting up first thing in the morning, like you do have to get up early and do a job. And there's that time when you're getting up in the morning and breakfast is all about convenience isn't it?! When you've got kids to get out of the house, ready for school, you grab whatever you can. And I was absolutely guilty, particularly when I was working at GMTV, of taking what was on offer, which would be pastries, cakes, croissants, pain au chocolat – all the stuff that's absolutely delicious and of course gives you that great energy buzz. But then I found massive, massive drops in energy, like slumps throughout the morning. And a bacon sandwich as well, I'm a huge sucker for a bacon sandwich. What we found when Juliet, who was our nutritionist, looked at the swaps that I could make, if I had some Cheerios or*

some Nestlé cereal, Shreddies for example[1], I was saving about 200 calories a day, and across a month [sic.] *I was saving about 10 grams of fats and six grams of saturated fat a day. Across a month I was saving two days worth of calories which is just a remarkable amount, just by swapping for what was actually pretty convenient anyway with cereal."*

MK: *"People know that breakfast is the most important meal of the day, we're all told this, but how many of us are really paying attention to that."*

BS: *"I was rubbish, I was truly rubbish at it as well because that time when you've really got to get everyone out of the house, or you've got to get out of the house for work, that five more minutes in bed is so much more important than fuelling your body. Having said that, since having the boys, because my boys are six and five now and we sit around and we have breakfast now and we have some cereal. They love it because we all have a bit of food before we go out, they actually get to make the cereal as well, although it tends to go all over the kitchen, but it's a bit of independence for them and we sit around and it's made a huge difference. And I know as well, the balance that I get energy wise has changed dramatically, in terms of swapping what I was eating to what I'm trying to eat now, that my energy reserves go – I go much better 'til lunchtime and then I'm not trying to stuff myself at lunchtime, 'cos I've not eaten all day."*

MK: *"Yeah, but if you're keeping as fit as you are, surely you can allow yourself the odd bacon sarnie and the pain au chocolat."*

BS: *"Yeah, you're absolutely right, we're not saying that you can't do it ever, but it's appreciating the changes, like small swaps you can make can have a big difference…. If you go to the website battleofthebreakfasts.co.uk there's some brilliant examples of what you can swap in, 'cos the other thing in the mornings is inspiration as well, 'cos you're usually so tired you can barely think anyway…. So there's tons of ideas of what you can swap on the website, that will give you, hopefully, a much more balanced start to the day – balanced breakfast and save those calories and stuff."*

MK: *"OK, so it's all on the website there."*

The interview continued for approximately three minutes with the presenter asking the guest to estimate how many calories were in each of three different breakfasts which were under cloches on the table in front of them, i.e. muesli with yoghurt; a fast food chain's breakfast muffin; and pancakes with maple syrup and blueberries. Again the guest talked about the benefits of eating a healthy breakfast.

The interview concluded with approximately one minute of the presenter and the guest discussing the charitable cause that the guest was intending to support through running three marathons in three days.

Channel 5 confirmed to Ofcom that neither it, the programme producer, nor any person connected with either[2], received payment or other valuable consideration for the inclusion of the references to Nestlé during the programme, and that therefore the references had not been subject to any product placement arrangement.

[1] Both Cheerios and Shreddies are cereals made by Nestlé.

[2] "Connected person" is defined in Part 1 of Schedule 2 of the Broadcasting Act 1990.

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

9.4: "Products, services and trade marks must not be promoted in programming."

9.5: "No undue prominence may be given in programming to a product, service or trade mark. Undue prominence may result from:

- the presence of, or reference to, a product, service or trade mark in programming where there is no editorial justification; or
- the manner in which a product, service or trade mark appears or is referred to in programming."

We asked the Licensee how the material complied with Rules 9.4 and 9.5.

Response

Channel 5 said that neither it, nor any of its representatives, had any "deliberate motivation or any arranged pre-meditated interest in promoting… [Nestlé] or its range of cereals".

Channel 5 submitted that live programming places unique pressures on production teams and presenters. It explained that the production team always submits scripts "well in advance" so that they can be reviewed for any potential compliance issues by the Legal team.

The Licensee explained that Ben Shephard was invited to appear as a guest on the programme as he is a well-known television presenter. It stated that during the interview the guest mentioned that he was fronting a campaign for Nestlé cereal, which the Licensee considered to be "normal territory and quite commonplace, as recognised in the guidance to rule 9.4 of the Code in relation to guest 'plugs'"[3]. Channel 5 said that the programme's policy, when dealing with celebrity guests, is to ensure that any references to a product or service are editorially brief and conducted in compliance with the Code, "whilst the majority of the interview is taken up with generic chat."

The Licensee said that the production team was aware of Ben Shephard's involvement in Nestlé's Battle of the Breakfasts advertising campaign. The guest was fully briefed by the production team before he appeared on the programme and "made very aware of the issues relating to undue prominence". In particular, he was told verbally and in writing that "he could only make one reference to his campaign relationship with Nestlé." The Licensee said that the production team considered that the guest understood what was being asked of him, particularly given that he is a presenter with many years of live television experience.

Channel 5 submitted that there was strong editorial justification for a piece on eating a healthy breakfast including generic references to the benefits of doing so. The Licensee considered that there was editorial justification to refer once to the existence of Nestlé's advertising campaign.

However, Channel 5 acknowledged that during the interview, the guest made more than one reference to Nestlé and referred to some of Nestlé's cereal brands by name. The Licensee pointed out that because this was a live programme, the

[3] See guidance to Code Rule 9.4:
http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf

production team had “very little time to react”. Channel 5 said that the production team used the ‘talkback system’ to instruct the presenter to “move on and change the subject which she duly did”.

The Licensee said that since being notified of this complaint by Ofcom, it has drafted a new commercial references guidance document that “specifically and very clearly outlines what can and cannot be done”. The Licensee said that the document has been distributed to everyone working on the programme and that it is monitoring the programme “closely” to ensure it is being followed. The production team have also been given “clear and unequivocal direction” regarding the importance of complying with Section Nine of the Code at all times.

Decision

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

Article 19 of the EU Audiovisual Media Services (AVMS) Directive requires, among other things, that television advertising is kept visually and/or audibly distinct from programming.

The purpose of this is to prevent programmes becoming vehicles for advertising and to protect viewers from surreptitious advertising. Further, Article 23 of the Directive requires that television advertising is limited to a maximum of 12 minutes in any clock hour.

The above requirements are reflected in, among other rules, Rules 9.4 and 9.5 of the Code, which prohibit products, services or trade marks in programming being promoted or given undue prominence in programming.

With regards to the promotion of products and services in programmes, it is common for celebrity guests on chat shows and magazine-style programmes to refer to their latest venture. This is often an autobiography or an artistic endeavour, e.g. a film or play, and the reference is usually relatively brief. Sometimes other products or services are also referred to but there is often sufficient editorial justification for the reference to avoid concerns arising under Section Nine of the Code. However, the more commercial the guest’s venture and the more prominent the references to it within a programme, the greater the risk that such references may appear to be, in effect, promotional selling messages in breach of Rule 9.4, or unduly prominent in breach of Rule 9.5, or both.

It is the broadcaster’s responsibility to ensure that any references to commercial products/services are appropriately limited so as not to become unduly prominent. Ofcom acknowledges that unexpected situations may arise in the case of a live broadcast.

However, in this case, it appeared to Ofcom that the interview had been planned so that the guest could discuss the benefits of eating a healthy breakfast. Channel 5 submitted that the guest had been briefed about undue prominence before the programme and the references were made in a short space of time and the production team had “very little time to react”. However, Ofcom noted the following:

i) Approximately six minutes of the eight minute interview consisted of the guest discussing the benefits of eating a healthy breakfast, and in particular, cereals. He referred to cereals being convenient, low in fat, low in calories, staving off hunger and sustaining energy levels. The presenter did not attempt to move the discussion away from healthy breakfasts.

ii) The production team had planned and set up on the table in front of the presenter and the guest three different breakfasts under cloches, i.e. muesli with yoghurt; a fast food chain's breakfast muffin; and pancakes with maple syrup and blueberries. The presenter used these illustrative breakfasts to continue the discussion about eating a healthy breakfast by asking the guest to guess how many calories were in each breakfast.

iii) The programme description on Channel 5's website said that Ben Shephard was on the programme to discuss his involvement with promoting healthy breakfasts in the context of Nestlé's advertising campaign called Battle of the Breakfasts:

> "Part 1: He was a favourite breakfast accompaniment on GMTV, but now he's on a mission to revamp your morning meal. Ben Shephard explains why he has gone head-to-head with Louise Redknapp and Sara Cox in his latest venture – Battle of the Breakfast Shows."[4]

From the above points Ofcom inferred that the production team had planned for the guest to appear on the programme to discuss the benefits of eating a healthy breakfast, despite being aware of the fact that he was representing Nestlé's 'Battle of Breakfasts' campaign which promotes Nestlé cereals as a healthy alternative to other breakfasts. Ofcom noted that the Licensee explained that the guest was told verbally and in writing that "he could only make one reference to his campaign relationship with Nestlé."

Ofcom noted that, in addition to a number of generic references to the benefits of eating cereal, the guest made the following three references to Nestlé and/or its 'Battle of the Breakfasts' advertising campaign:

- *"…when I was approached by Nestlé to get involved with the Battle of the Breakfasts…"*

- *"What we found when Juliet, who was our nutritionist, looked at the swaps that I could make, if I had some Cheerios or some Nestlé cereal, Shreddies for example, I was saving about 200 calories a day and across a month* [sic.] *I was saving about 10 grams of fats and six grams of saturated fat a day. Across a month I was saving two days worth of calories which is just a remarkable amount, just by swapping for what was actually pretty convenient anyway with cereal."*

- *"If you go to the website battleofthebreakfasts.co.uk there's some brilliant examples of what you can swap in, 'cos the other thing in the mornings is inspiration as well 'cos you're usually so tired you can barely think anyway…. So there's tons of ideas of what you can swap on the website, that will give you, hopefully, a much more balanced start to the day, balanced breakfast and save those calories and stuff."*

[4] http://www.channel5.com/shows/live-with/episodes/wednesday-9-may-3

Ofcom considered that there was insufficient editorial justification for these three commercial references in the programme. Ofcom found these references to be unduly prominent in breach of Rule 9.5 of the Code.

Ofcom acknowledged the Licensee's response that it did not have a "deliberate motivation or any arranged pre-meditated interest in promoting this brand or its range of cereals". However, Ofcom considered that the overall effect of the live interview was to promote and endorse Nestlé cereals. The cumulative effect of the manner and frequency of these repeated references, including specific references to the benefits of named Nestlé cereals, was that the brand and its products were promoted during the interview, in breach of Rule 9.4 of the Code.

Ofcom welcomed the fact that since being notified of the complaint, the Licensee has improved its compliance procedures, particularly those around commercial references in live programming.

Breaches of Rule 9.4 and 9.5

In Breach

Promotion of Satinder Sartaaj concerts

Brit Asia TV, 30 March 2012, 16:00

Introduction

Brit Asia TV is a music channel broadcast on the Sky platform. It describes itself as a channel "aimed at young British Asians".

During routine monitoring, Ofcom noted that programming on Brit Asia TV appeared to promote concerts by the Indian Punjabi singer Satinder Sartaaj. Ofcom noted the following:

- an advertisement promoting the Satinder Sartaaj concert tour. It advertised that tickets could be purchased on the door, at ChilliTickets.co.uk or by calling a telephone number which was provided in on-screen text; and

- during the music video programming, on-screen text which repeatedly stated *"Satinder Sartaaj"* followed by the same telephone number which appeared in the advertisement promoting the Satinder Sartaaj concert tour. This on-screen text appeared throughout eight of the nine videos broadcast during a period of approximately 40 minutes.

The licensee for Brit Asia TV is Mr D S Bal ("the Licensee"). The Licensee confirmed to Ofcom that neither it, the programme producer, nor any person connected with either[1], received payment or other valuable consideration for the inclusion of the references to Satinder Sartaaj during the programming, and that therefore the references had not been subject to any product placement arrangement.

Ofcom therefore considered the programming raised issues warranting investigation under Rule 9.4 of the Code which states:

> "Products, services and trade marks must not be promoted in programming."

We asked the Licensee for its comments on how the material complied with Rule 9.4.

Response

The Licensee said that the on-screen text *"Satinder Sartaaj"* followed by a telephone number was broadcast to encourage viewers to take part in the programme *Q&A with Satinder Sartaaj* which was filmed at The Public in West Bromwich and was broadcast on Brit Asia TV on 13 April 2012. The Licensee continued that it did not offer viewers anything in return for participating in the programme, nor did it receive any monies from viewers who took part.

The Licensee added that it is a small channel with limited resources, and the telephone number broadcast during this programme is a general number that it uses for multiple purposes. In this instance, the channel was "promoting a show which was recorded and televised".

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[1] "Connected person" is defined in Part 1 of Schedule 2 of the Broadcasting Act 1990.

The Licensee said that it did not broadcast the number in order to sell tickets for the Satinder Sartaaj event.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure specific standards objectives, one of which is "that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with."

Article 19 of the EU Audiovisual Media Services (AVMS) Directive requires, among other things, that television advertising is kept visually and/or audibly distinct from programming. The purpose of this is to prevent programmes becoming vehicles for advertising and to protect viewers from surreptitious advertising. Further, Article 23 of the Directive requires that television advertising is limited to a maximum of 12 minutes in any clock hour.

The above requirements are therefore reflected in, among other rules, Rule 9.4 of the Code, which prohibits the promotion of products, services or trade marks in programming.

In this case, Ofcom noted that during the music video programming there was on-screen text which repeatedly stated *"Satinder Sartaaj"* followed by a telephone number. This on-screen text appeared throughout eight of the nine videos broadcast during a period of approximately 40 minutes.

Ofcom noted the Licensee's explanation that the telephone number broadcast during this music programming is a general number that it uses for multiple purposes, and that in this instance the on-screen text was broadcast to encourage viewers to take part in the programme *Q&A with Satinder Sartaaj* which was filmed at The Public in West Bromwich and was broadcast on Brit Asia TV on 13 April. However, the on-screen text *"Satinder Sartaaj"* which accompanied the telephone number did not make clear the purpose of the number.

Further, Ofcom noted that the telephone number was the same number as that broadcast during the advertisement for the Satinder Sartaaj concert tour, which was advertised as a way of purchasing concert tickets, and was broadcast around the music programming in which the on-screen text appeared. Ofcom considered that in these circumstances, viewers would be likely to understand the on-screen text to be promoting the number to call to purchase tickets to the concerts.

Ofcom therefore concluded that the on-screen text promoted the concerts during programming, in breach of Rule 9.4.

Ofcom noted that in October 2011, a breach of Rule 9.4 of the Code was recorded for a similar promotion of Satinder Sartaaj concerts during programming on Brit Asia TV[2]. Ofcom is therefore very concerned that that the Licensee has broadcast similar non-compliant content and will continue to monitor Brit Asia TV to ensure compliance with the Code.

Breach of Rule 9.4

[2] Published 10 October 2011:
http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb191/obb191.pdf

Resolved

This Morning

ITV1, 3 May 2012, 11:30

Introduction

This Morning is a daytime magazine programme broadcast live in weekday mornings on ITV1. Two complainants alerted Ofcom to the broadcast of the most offensive language in this programme.

This episode featured an interview with three sisters who had recently published an autobiography entitled "Click Click" which chronicled their experiences of sexual abuse at the hands of their father during childhood. Each interviewee gave a frank account on air of particular incidents featured in the book. They also explained the title for book: their father used to summon them for sexual acts by clicking his fingers twice. Towards the end of the interview, presenter Philip Schofield asked what the sisters' reaction would be to someone clicking their figures at them now, for example when asking for service in a restaurant. One of the interviewees replied: *"we'd break your fucking hand".*

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

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

Before reaching a preliminary view in this case, Ofcom did not consider it necessary to seek comments from ITV Broadcasting Limited ("ITV"), which complied the programme on behalf of the ITV Network for ITV1, as to how it complied the programme with this rule.

Response

ITV confirmed it had no representations to make on the preliminary view.

Decision

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

Rule 1.14 of the Code states that "the most offensive language must not be broadcast before the watershed…". Ofcom research on offensive language[1] notes that the word "fuck" and similar words are considered by audiences to be amongst the most offensive language. The use of the word "fucking" in this programme broadcast before the watershed was therefore a clear breach of Rule 1.14.

However, in this particular case Ofcom noted the emotionally charged nature of the discussion and the presenter's swift apologies to viewers in order to mitigate the

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

offence that this remark may have caused. Taking these factors into account, Ofcom considers the matter resolved.

Resolved

Resolved

The Secret Millionaire

Channel 4, 18 May 2012, 09:00

Introduction

The Secret Millionaire is a factual programme in which millionaire benefactors substitute their luxury lifestyles to go undercover in deprived areas to find out who needs their help.

Two viewers alerted Ofcom to the broadcast of offensive language in this programme, considering that it was inappropriate for transmission in the morning.

Ofcom viewed a recording and noted the following examples of offensive language used by the millionaire benefactor appearing in the programme at the times indicated:

09:07: Benefactor surveys the property where he is staying, moving from the back yard to the bedroom and says, *"...wire up there and everything, I don't know if that's to stop people getting out or getting in?* [walks into bedroom] *Fucking hell, it's getting worse, I ain't sure I'm going to be sleeping in here tonight".*

09:24: When he tries to open a can of beans and the ring pull snaps off, he says, *"Oh, fucking hell."*

Ofcom considered this material raised issues warranting investigation under Rule 1.14, which states:

> "The most offensive language must not be broadcast before the watershed...".

In Section One the Code makes clear under the heading 'Meaning of "the watershed"' that "material unsuitable for children should not, in general, be shown before 21:00 or after 05:30."

Ofcom therefore requested comments from the Licensee about how the broadcast of this material complied with Rule 1.14.

Response

Channel 4 explained that *The Secret Millionaire* series was originally scheduled at 21:00 on Channel 4. The content of each episode varies according to the locations and contributors involved – many contain just one or two instances of strong language, some contain more, some only have a small amount of mild language, and some have no offensive language at all. In order to bring the series to a wider audience, some of the episodes had been edited and certified as being suitable to be broadcast for 'all times'. Channel 4 stated that this episode had been incorrectly given an 'all times' certificate although it contained the strong language.

Channel 4 said that the first instance of offensive language was noted by staff during the broadcast. This was immediately checked and verified as strong language, by

which time the second instance had aired. The remainder of the episode was checked to ensure there were no further instances of strong language. Channel 4 broadcast an apology at the next available opportunity, with an announcement before the third part of the programme, *"Back to the Secret Millionaire now on 4. Apologies for any strong language you might have heard earlier in the programme".* When the episode was repeated an hour later on Channel 4+1, the two instances of strong language identified were dipped.

Channel 4 confirmed that after this broadcast on 18 May the episode was correctly certified as only being suitable for broadcast after the watershed. All other episodes of *The Secret Millionaire* with 'all times' certificates had also been checked, but none were found to contain offensive language. Channel 4 added that as an additional safeguard, all post-watershed content broadcast for the first time before the watershed would be viewed in full for compliance regardless of any internal Channel 4 certification.

Decision

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

Rule 1.14 of the Code states that the most offensive language must not be broadcast before the watershed. Ofcom research on offensive language[1] clearly notes that the word "fuck" and derivatives of this word are considered by audiences to be among the most offensive language. In this case two examples of the most offensive language were broadcast between 09:00 and 09:30 as a result of this episode being wrongly classified as suitable for broadcast at any time.

Ofcom however took into account that: Channel 4 identified the error immediately on transmission, inserted an apology during the broadcast, took steps to dip the sound during the repeat on Channel 4+1, and took various further measures afterwards to ensure there was no recurrence of this problem. Ofcom therefore considers the matter resolved.

Resolved

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

Not in Breach

Keith Lemon's LemonAid

ITV1, 28 April 2012, 18:15

Introduction

Keith Lemon's LemonAid is a weekly Saturday early evening entertainment programme broadcast on ITV1 presented by Keith Lemon. The programme involves a number of different elements, including studio audience competitions. ITV Broadcasting Limited ("ITV" or "the Licensee") was responsible for compliance of this broadcast on behalf of the ITV network for ITV1.

During the programme, three children accompanied by their parents took part in a competition, 'A Right Dog's Dinner', for the chance to win a puppy as a prize.

A total of 237 viewers complained to Ofcom that awarding a puppy as a prize to a child in an entertainment show promoted an irresponsible attitude to animal welfare and pet ownership.

Ofcom's duties to regulate standards on television and radio were decided by Parliament and are set out in the Communications Act 2003 ("the Act"). These standards were then set out by Ofcom in the Code. The Code does not contain any rules dealing specifically with the treatment of animals or pets in broadcasts because Ofcom was not given any duties or power to do so under the Act. Ofcom's consideration of potential issues in this area is normally limited to assessing under Section Two of the Code whether a broadcaster applied generally accepted standards in its portrayal of the treatment of animals in a particular broadcast.

Ofcom considered that the offer of a puppy as a prize in this programme raised potential issues warranting investigation under Rule 2.3 of the Code. This states:

> "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context... Appropriate information should also be broadcast where it would assist in avoiding or minimising offence."

Ofcom therefore asked ITV to comment on how this broadcast complied with this rule.

Response

ITV regretted that the programme had generated a number of complaints from viewers but did not accept that it had promoted an irresponsible attitude to animal welfare or pet ownership. ITV explained that the families that took part in the competition were all selected with care, and were considering buying a puppy prior to appearing on the programme. Appropriate checks were carried out before the families took part in the studio game, and again before the puppy shown in the programme was finally given into the care of its new owners.

The programme producers employed an independent qualified vet to make a home visit to each prospective family, and to report on their suitability. The families selected

for the programme were all deemed to be capable of caring for a puppy well, and were fully equipped to meet all its needs.

In order to demonstrate to viewers the need for responsible dog ownership, the parents participated in the studio game with their children. ITV said that while the details of the checks that had been made beforehand on these families were not described in the programme because this was not editorially appropriate in an essentially light hearted entertainment item of this kind, the general principle that owning a dog is a serious commitment was conveyed clearly to the viewer by the dialogue which took place with the adult contributors before the game commenced, as follows:

Keith Lemon to (parent 1):	*"You want a dog?"*
Parent 1:	*"Yes."*
Keith Lemon (to parent 2):	*"You're serious about this?"*
Parent 2:	*"We do, yes."*
Keith Lemon (to parent 3):	*"It's a big commitment, you're alright with that yes?"*
Parent 3:	*"I'm very good with big commitments."*

ITV confirmed that although only one puppy was shown in the programme, there were in fact other puppies at the studios, appropriate to the preferences of the three families. A full risk assessment was carried out to ensure the welfare of these puppies at all times, with advice being obtained from the puppy breeders providing the animals.

ITV said the Pug puppy shown in the programme was in no discomfort or risk of harm for the very brief period that it was on stage in the studio. This puppy was sourced from an independent breeder registered with the Kennel Club. After the puppy was shown to the family in the studio by celebrity guest Peter Andre, it was returned to the care of the breeder, who then met with the family to check their suitability as owners. The breeder provided guidance to the family on how to prepare before taking the puppy home, met them again the following weekend when the actual re-homing process took place, and carried out a thorough hand over. ITV said the breeder will remain in contact with the family to help with any questions the family may have in looking after their new puppy.

The Licensee was satisfied that the puppy was very well looked after prior to, during and after the programme. Nevertheless, ITV acknowledged the concerns expressed by viewers in relation to a puppy being offered as a prize, and said it would be mindful of this in future programming.

Decision

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, 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. These objectives are reflected in Section Two of the Code.

Rule 2.3 requires broadcasters to ensure that the broadcast of potentially offensive material must be justified by the context.

Ofcom accepts that this material may have caused offence to some viewers who object in principle to a puppy being given away as a prize in an entertainment programme. However, Ofcom noted that at no time was the puppy shown during the broadcast to be in discomfort or distress. Further, and importantly, the broadcaster demonstrated that it took a number of very extensive measures to ensure the welfare of the puppy shown on screen and given as a prize, and of other puppies in the studios. Through these measures, in Ofcom's view, the Licensee demonstrated its awareness of, and fulfilled, its obligations to ensure the welfare of all the puppies involved with this programme. The broadcaster therefore applied generally accepted standards to this content so as to ensure that any potential offence was justified by the context.

Ofcom notes that ITV took the editorial decision not to inform viewers of the measures it took to ensure the welfare of the puppies. This may have contributed to the concerns of some viewers about giving away a puppy as a prize. If viewers had been made aware of some of the steps taken by the Licensee, this would have provided assurance that careful consideration had been given to the puppies' welfare. Ofcom therefore advises broadcasters, where the welfare of animals featured in a programme may cause concern to viewers, to consider broadcasting appropriate information to help protect viewers from offence that may result from withholding that information.

Not in Breach of Rule 2.3

Broadcast Licence Condition Cases

Broadcasting licensees' Relevant Turnover returns

Ofcom is partly funded by the licence fees it charges television and radio licensees. In setting these fees, Ofcom is under a statutory obligation to ensure that the aggregate amount of fees that are required to be paid by licensees is sufficient to meet the cost of Ofcom's functions relating to the regulation of broadcasting. The principles which Ofcom applies when determining what fees should be paid by licensees are set out in the Statement of Charging Principles. Chief among these principles is that for all television and for national and local analogue radio licensees, the fees they are required to pay are based on a percentage of their turnover from related activities. This is known as Relevant Turnover.

In order to enable Ofcom to charge licensees the appropriate fee, each licensee is required each year to submit to Ofcom a statement of its Relevant Turnover for the last but one calendar year. This provision of information is a licence requirement2. As well as enabling the charging of fees, this information is also used by Ofcom to fulfil its obligations regarding market reporting. It can therefore be seen that submission of Relevant Turnover is an extremely important requirement upon all relevant broadcasting licensees. Failure by a licensee to submit an annual Relevant Turnover return when required represents a serious and fundamental breach of a broadcast licence, as the absence of the information contained in the return means that Ofcom is unable properly to carry out its regulatory duties.

In Breach

The following licensees have failed to submit their Relevant Turnover returns, despite repeated requests for this information. These licensees have therefore been found **in breach** of their licences. **As a consequence of this serious and continuing licence breach, Ofcom is putting these licensees on notice that their present contravention of their licences is being considered for the imposition of a statutory sanction, including licence revocation**.

Licensee	Service name
Pakistan Television Corporation Limited	PTV-Global
Dhammakaya International Society of the UK	Dhamma Media Channel
DM Digital TV Ltd	DM Digital
Electra Entertainment Limited	Channel Zero
INX Media UK Limited	9XM
Miniweb Technologies Limited	TV Keys
Celestial Television Networks Limited	Celestial Action Movies
Daystar Television Network Limited	Daystar
New OBE Channel Limited	OBE
Passion Broadcasting Television Services Ltd	Passion TV
TV Enterprises Ltd	NTAI

Resolved

The following licensees failed to submit their Relevant Turnover return in accordance with the original deadline, but have subsequently submitted a late return. For these licensees, we therefore consider the matter **resolved**.

Licensee	Service Name
ATN Bangla UK Limited	ATN Bangla UK
Portland Broadcasting Limited	TelevisionX HD
Advanced Media Centre Ltd	K+
Ahlebait TV Networks Limited	Ahlebait TV
Al Ehya Digital Television Limited	Noor TV
Creamdove Limited	Wedding TV
Fox News Channel LLC	Fox News Channel
Genesis TV Limited	Genesis
Greener Technology Limited	BEN TV
Middlesex Broadcasting Corporation Ltd	MATV (Punjabi)
Middlesex Broadcasting Corporation Ltd	Matv Music
Poker Channel Limited	Poker Channel
Sage Media Limited	Al Hiwar TV
The Jewellery Channel Limited	The Jewellery Channel
Divine Television Foundation Limited	Divine TV
Fadak TV	Fadak TV
The Africa Channel Limited	The Africa Channel
Trans-Europe Media Limited	NUR TV
Nollywood Movies Limited	Nollywood Movies
Hidayat Television Limited	Hidayat TV
Bloomberg LP	Bloomberg DTPS
Square 1 Management Limited	Big Deal 2
A&A Inform Limited	Russian Hour

Community Radio licensees

Late and non-payment of licence fees

Ofcom is partly funded by the licence fees it charges television and radio licensees. Ofcom is under a statutory obligation to ensure that the aggregate amount of fees that are required to be paid by licensees is sufficient to meet the cost of Ofcom's functions relating to the regulation of broadcasting. The principles which Ofcom applies when determining what fees should be paid by licensees are set out in the Statement of Charging Principles[1]. The detailed fees and charges which are payable by broadcasting licenses are set out in Ofcom's Tariff Tables[2]. The payment of a fee is a licence requirement[3]. Failure by a licensee to pay its licence fee when required represents a serious and fundamental breach of a broadcast licence.

In Breach

The following licensee failed to pay its annual licence fee in full, in accordance with the original deadline, despite repeated requests to do so. This licensee was therefore found in breach of its licence. **As a consequence of this serious and continuing licence breach, Ofcom put the licensee on notice that the contravention was being considered for the imposition of a statutory sanction, which could include licence revocation**. [N.B. This finding was first published on our website on 2 July. Since then the Licensee has paid in full.]

Licensee	Licence Number	Service Name
GTFM (South Wales) Ltd	CR004	GTFM Pontypridd

Resolved

The following licensees failed to pay their annual licence fees in full, in accordance with the original deadline, but have subsequently paid. We therefore consider the matter **resolved**.

Licensee	Licence Number	Service Name
Sunny Govan Community Media Group	CR018	Sunny Govan Community Radio
All FM Limited	CR023	ALL FM 96.9
Afro Caribbean Millennium Centre	CR037	New Style Radio 98.7 FM
OnFM Ltd	CR074	OnFM
Teesdale Community Broadcasting Limited	CR082	Radio Teesdale
Pulse Community Radio Ltd	CR138	Pulse 98.4 Community Radio
House of Abraham	CR198	Inspire FM
In2beats	CR200	In2beats FM
Betar Bangla Ltd	CR222	Betar Bangla Radio

[1] http://stakeholders.ofcom.org.uk/binaries/consultations/socp/statement/charging_principles.pdf

[2] http://stakeholders.ofcom.org.uk/binaries/research/Tariff_Tables_2001112.pdf

[3] For example, Broadcasting Act licence Schedule Part 2, Condition 3

Fairness and Privacy Cases

Not Upheld

Complaint by Ms C

Sky News, Sky News Channel, 25 November 2011

Summary: Ofcom found that Ms C's complaint of unfair treatment and of unwarranted infringement of privacy in connection with the obtaining of material included in the programme and in the programme as broadcast should not be upheld.

The programme included a report on evangelical churches in the UK which, according to the report, claimed that people with HIV could be cured through God's 'healing' and would thereafter no longer need to take their medication. It included secretly filmed footage of Ms C as she attended a service at The Synagogue - Church of All Nations during which 'healings' took place.

Ofcom found that:

- The programme did not result in unfairness to Ms C in that it did not either say or imply that she was specifically associated with HIV or that she was in any way complicit in the advice being given by the church to some HIV patients.

- Ms C's privacy was not unwarrantably infringed either in connection with the obtaining of material included in the programme or in the programme as broadcast because the filming of Ms C by BSkyB and the inclusion of surreptitiously filmed footage of her undisguised face in the programme was warranted in the particular circumstances of this case.

Introduction

On 25 November 2011, *Sky News* included a report on evangelical churches in the UK which, according to the report, were telling members of their congregations with HIV to stop taking their medication because God could cure them. The report was introduced by the following words: *"Sky News has discovered that people in Britain are dying as a result of churches claiming to cure HIV"*. It included undercover footage recorded at The Synagogue - Church of all Nations in London ("the SCOAN"). The footage included church members telling undercover reporters that there were numerous testimonies of people with HIV who had been cured by God and that when their *"immune levels"* returned to a normal level they would no longer need to take medication. The report also showed footage of preachers allegedly using divine intervention to cure members of the congregation of their illnesses. In this footage, the complainant, Ms C, could be seen standing and watching the preachers. She was standing either on or next to the dais on which the 'healing' by the preacher was taking place. She was shown from behind initially, but her face became clearly visible as she turned around. Ms C was neither named nor referred to in the programme.

Following the broadcast of the programme, Ms C complained to Ofcom that she was treated unjustly or unfairly in the programme as broadcast, and that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programme and in the programme as broadcast.

Summary of the complaint and broadcaster's response

The details of Ms C's complaint are set out below, followed by the response to particular points provided by the Licensee, British Sky Broadcasting Ltd. ("BSkyB").

Unjust or unfair treatment

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

a) As a result of appearing in the news report, Ms C was associated with HIV and was portrayed as being complicit in the advice being given by the church to some HIV patients.

By way of background to her complaint, Ms C said that she had attended the church in order to be prayed for, but that she did not have HIV and was unaware that the church was giving any advice about HIV.

Ms C also said that: the footage of her was recorded surreptitiously; her face was undisguised in the footage which was broadcast despite the fact that she had not consented to the use of this material; and, her character was defamed by being associated with the practices of the church elders. In this context Ms C said the report focussed on "church members allegedly telling HIV positive churchgoers to refrain from taking medication [advice which] has fatal consequences" yet she was the only non-church worker shown. Ms C added that because of her inclusion in the programme with her face undisguised she was now "associated with this dreadful disease"; that people have assumed that she is HIV positive; and, that she believed that some people think her children could be HIV positive as well.

In response, BSkyB said that Ms C, who appeared momentarily towards the end of the report, was predominantly filmed from behind, and, although she was in close proximity to the 'healing' being carried out on another person, it was evident from the report that she was not the subject of the 'healing' that was taking place. BSkyB added that the report did not assert, or even imply, that Ms C had HIV and it argued that her brief and incidental appearance (during which there were no references either to her or to HIV) would not have led a reasonable viewer to make these assumptions.

The broadcaster also argued that the report did not imply that Ms C was complicit in the advice being given by the church. Rather, she was shown to be precisely what she indicated she was in her complaint, i.e. a person attending a church service. BSkyB said that the programme showed the individuals who were centrally involved in the practices highlighted in the report being confronted and questioned by the programme makers, while other individuals who appeared not to be directly involved (including Ms C) were merely shown in the background.

The broadcaster also said that Practice 7.3 of Ofcom's Broadcasting Code ("the Code"), which deals with how to obtain "informed consent" from people who have been invited to contribute to a programme, did not apply in Ms C's case because: she was not invited to make a contribution to the programme; her participation in it was minor; and, she was not named or referred to or focussed upon.

The broadcaster added that Ofcom's guidance notes relating to section seven of the Code state that, in relation to obtaining 'informed consent' under Practice 7.3,

"there may be times when it is unnecessary to follow each and every point, for instance in the production of a news item". BSkyB argued that this was the case here in that the broadcast in question was a news item and the nature of the story meant that undercover journalism was necessary in order to serve a strong public interest (i.e. exposing the advice the SCOAN was giving to members of its congregation with HIV) though the filming and broadcast of this report.

Ms C made no substantive comments regarding Ofcom's preliminary view on each of the heads of her complaint.

However, BSkyB commented on Ofcom's preliminary view that Ms C was treated unfairly in that there was no adequate public interest justification for the broadcast of footage of her undisguised face (footage which was obtained surreptitiously). BSkyB considered this preliminary conclusion to be flawed. In summary, BSkyB argued that this preliminary conclusion was contradictory in that, having concluded that the programme did not imply that Ms C was specifically associated with HIV or that she was in any way complicit in the advice being given by the church to some HIV patients and therefore that she was not portrayed unfairly in the programme as broadcast in this respect, Ofcom then found that she was treated unfairly by not having her identity obscured. The broadcaster said that this approach added unnecessary complexity to Ofcom's application of Rule 7.1 and asked Ofcom to explain clearly why it considered that in the circumstances of this case it was appropriate to apply this rule to make adverse findings against BSkyB, based solely on the fact that the programme makers did not pixellate Ms C's face.

Unwarranted infringement of privacy

In summary, Ms C complained that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programme in that:

b) She was not aware that she was being filmed while she was being prayed for and as such filming took place without her consent.

In response, BSkyB challenged Ms C's assertion that she was not aware that she was being filmed while she attended the church and consequently her claim that her privacy was unwarrantably infringed. It said that:

- on three occasions undercover reporters observed events in the church, during which everyone attending was required by the SCOAN to sign television consent forms which permitted SCOAN itself and/or Emmanuel TV to film the event and to use the footage "for the promotion of the Gospel". Accordingly, BSkyB believed that Ms C would have signed one of these forms on her visit to the church. (BSkyB provided Ofcom with an example of a SCOAN television consent form, but noted that it did not supply a copy of any consent form signed by Ms C).

- the report showed Ms C standing next to the SCOAN cameraman who recorded the 'healing' and projected it onto very large screens in the church, which Ms C was facing and on which she appeared. Therefore, Ms C should have known that she was being filmed and that the material would potentially

appear online and on the Emmanuel TV[4] Channel (as described in the SCOAN television consent forms).

In addition, BSkyB said that it did not need to obtain consent from Ms C because: it was likely that Ms C had signed a form consenting to SCOAN and/or Emmanuel TV filming the event; and, that Practice 8.8 of the Code (which concerns gaining permission from the relevant authority or management when filming in institutions or organisations) indicates that "individual consent of employees or others whose appearance is incidental or where they are essentially anonymous members of the general public will not normally be required".

BSkyB also said that, in any case, any infringement of Ms C's privacy was warranted in that the broadcasting of the programme was justified on the public interest grounds of "protecting health or safety and exposing misleading claims made by individuals or organisations". BSkyB added that there was clearly a strong public interest in exposing the church's advice to HIV patients that they need not take their medication because they could be cured by God through 'healing' and prayer, given the potentially devastating effects of such advice.

Ms C also complained that her privacy was unwarrantably infringed in the programme as broadcast in that:

c) Footage of her with her face undisguised (which was recorded using hidden cameras) was included in the programme despite her not having given consent for this footage to be included in the programme and her not being the intended subject of the report.

In response, BSkyB said that within this report it disguised the identity of people with HIV who were the main focus of an image and of a child, but did not do so for people, like Ms C, whose inclusion was incidental. It added that, in light of its view that Ms C was likely to have signed a SCOAN television consent form and must have been aware of the presence of the SCOAN cameraman, it did not consider that it was necessary for it to disguise her identity by pixellating her image.

BSkyB acknowledged that the images of Ms C were recorded surreptitiously but said that given the strong public interest grounds for filming and exposing the claims of the church officials this was warranted.

Ofcom's preliminary view was that Ms C's privacy was unwarrantably infringed in the programme as broadcast because the inclusion of surreptitiously filmed footage of her undisguised face was not warranted by the public interest. In summary, in commenting on this preliminary view, BSkyB said that Ofcom had failed to pay sufficient regard to the threshold question of whether Ms C had a legitimate expectation of privacy in the first place and had failed to explain satisfactorily why Ms C had such an expectation in the circumstances of this case. In particular, BSkyB noted that (i) Ms C was attending a non-exclusive event in a public place which was being overtly filmed by the church itself for possible widespread consumption on the internet and television; (ii) the information conveyed in relation to Ms C was peripheral and did not carry the meanings she contended; and (iii) Ms C knew she was being filmed, was

[4] The Emmanuel Television Channel is a television service providing religious programming which is operated by the SCOAN. It is available via satellite and the internet.

prominently in the line of the overt camera and made no attempt to disguise herself from it.

BSkyB also said that Ofcom failed to pay sufficient regard to its duty to act in a proportionate manner and give appropriate consideration to the practical impact of its decisions and the potential "chilling" effect that a breach finding could have on public interest reporting. BSkyB said that if broadcasters were required to pixellate the faces of every bystander, even in circumstances where the bystander had no or 'limited' expectations of privacy, it would not only slow down the production of news items and programmes, and increase the costs of production, but would also reduce the impact of the footage.

Decision

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

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

In reaching its Decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript, both parties' written submissions and both the main SCOAN website and the SCOAN London website. Ofcom also took careful account of the representations made by BSkyB in response to Ofcom's preliminary view on this complaint and concluded that the further points it raised merited a re-consideration of the outcome of this complaint. The complainant did not make any substantive representations on Ofcom's preliminary view.

Unjust or unfair treatment

In considering Ms C's complaint of unfair treatment Ofcom assessed whether the broadcaster's actions were consistent with its obligation to avoid unjust or unfair treatment of individuals in programmes as set out in Rule 7.1 of the Code. In doing so it paid particular regard to Practice 7.9 of the Code, which states that before broadcasting a factual programme broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

a) Ofcom first considered Ms C's complaint that she was treated unjustly or unfairly in that, as a result of appearing in the news report, she was associated with HIV and was portrayed as being complicit in the advice being given by the church to some HIV patients.

   Ofcom observed that the report focused on the advice that people ministering at the SCOAN were giving to individuals with HIV who had come to the church. The report, which included secretly filmed footage recorded inside the SCOAN, opened with images of preachers performing 'healings' on individuals who had attended the church. These images were accompanied with the following

comment: *"These preachers claim they can cure anything through God...Even the incurable – HIV. But it's a message that can kill"*.

The report included footage of an undercover reporter having the following conversation with one female preacher at the church:

Reporter: *"I've been unwell for a very long time".*

Preacher: *"Okay".*

Reporter: *"Erm… I have HIV".*

Preacher: *"Okay".*

Preacher: "You know what you're embarking on now that's just a process, alright. All I can say is that, you know, you can go on the internet, there's numerous testimonies okay, of people who by God's grace are now healed and set free. And are living exactly as you said, you know they've got children, and erm, they're perfectly happy".

Reporter: *"And they've got the same problem as me?"*

Preacher: *"Yes… yeah".*

In addition, the report showed footage of another female preacher saying the following to the undercover reporter:

"If it is God's plan to bring your blood level, you know your immune levels back to normal, you know, and without having to be propped up with medication for the rest of your…which is we know what the medical profession, that's the best they can do isn't it."

The report also included footage of Lord Fowler, the former Secretary of State for Health and Social Security, saying:

"It is bad advice, it is foolish advice, and it is tragic advice because the consequences of this kind of advice could only be that people pass on HIV and can only be seriously bad for the individual concerned, including death."

The reporter then said that: *"medical professionals have sent us evidence of at least six people who've died having stopped taking their medication because churches told them they'd been healed".*

Towards the end of the report, the reporter was shown confronting one of the women preachers at the church about the advice she had given regarding the curing of HIV through divine 'healing'. This was followed by images of the 'healing' of another individual with the accompanying comments: *"There's plenty of evidence to suggest faith can help people deal with illness…But here, it appears faith is being abused".*

During this last section of the report, Ms C could be seen standing and watching the individual undergoing 'healing'. Ofcom noted that Ms C was shown from behind initially, but that her face was clearly visible as she turned around. Although her appearance in the report was brief (she could be seen from behind for approximately four to five seconds and her face was visible for approximately

three seconds) she would have been identifiable to people to whom she was already known. Ms C was neither named nor referred to in the programme.

In Ofcom's opinion, viewers of this report would have understood that the programme was alleging wrongdoing on the part of the SCOAN and its preachers in that they claimed that any disease, including HIV which is incurable, could be cured through God's 'healing'; and, that once individuals with HIV had been "cured" through this 'healing', they would no longer need to take their medication. Ofcom also considered that the gravity of the potential consequences of such advice was made clear in the report by the reporter's comment that the message given by the preachers *"can kill"*, Lord Fowler's description of the consequences of this advice and the inclusion in the report of the information that advice of this nature from churches had in the past lead to the deaths of several people with HIV.

Ofcom also noted that, while Ms C was shown in the report, her participation was minor, she was neither named nor referred to in the programme and she personally was not linked by image or words with the SCOAN, its preachers or the advice they gave. In Ofcom's opinion viewers would have regarded Ms C as simply one of a number of people who had attended the church and witnessed a 'healing' session on the day in question. In addition, Ofcom did not consider that the report associated Ms C with HIV. This was because: Ms C was not shown undergoing 'healing' herself; the report did not include any comments about or in relation to Ms C specifically; the report made it clear that the preachers concerned claimed they could *"cure anything through God"* (i.e. not solely HIV); and, during the section of the report showing Ms C no reference to HIV was included.

Taking account of the factors set out above, Ofcom concluded that the programme did not either say or imply that Ms C was specifically associated with HIV or that she was in any way complicit in the advice being given by the church to some HIV patients. Nor was it likely in Ofcom's view that viewers would have, from the footage shown, considered her participation in the 'healing' other than that of a bystander.

Accordingly, Ofcom considered that the broadcaster had taken reasonable care to satisfy itself that the programme did not present, disregard or omit material facts in a way that resulted in unfairness to Ms C and that the manner of her inclusion in the programme was unlikely to have materially and adversely affected viewers' understanding of Ms C in a way that was unfair to her.

Ofcom recognised that Ms C also complained that she was treated unfairly in that footage of her undisguised face, which was filmed surreptitiously, was broadcast without her consent.

Ofcom observed that, from the submissions made by both parties, it was clear that Ms C was not invited to contribute to the programme and, as set out above, Ofcom considered that her participation in the programme was minor. In light of these conclusions it is Ofcom's view that Practice 7.3 of the Code (which concerns the steps a broadcaster should take to ensure that it has secured "informed consent" from anyone who has been invited to make a contribution to a programme) is not relevant to the consideration of this element of Ms C's complaint.

However, in considering this element of the complaint Ofcom also considered Practice 7.14 of the Code which states that broadcasters or programme makers should not normally obtain or seek information, audio, pictures or an agreement to contribute through misrepresentation or deception. (Deception in this context includes surreptitious filming or recording.) This Practice also states that:

- it may be warranted to use material obtained through misrepresentation or deception without consent if it is in the public interest and cannot reasonably be obtained by other means;
- where there is no adequate public interest justification, for example some unsolicited wind-up calls or entertainment set-ups, consent should be obtained from the individual and/or organisation concerned before the material is broadcast; and
- if the individual and/or organisation is/are not identifiable in the programme then consent for broadcast will not be required.

Ms C was identifiable from the content broadcast and in Ofcom's view did not consent to being filmed by BSkyB (see also head b) below). In accordance with Practice 7.14, Ofcom therefore considered whether BSkyB had a sufficient public interest justification for the use (i.e. broadcast) of the surreptitiously obtained footage of Ms C.

As set out in the Decision at head c) below (unwarranted infringement of privacy in the broadcast of material), Ofcom concluded that the broadcast of footage obtained surreptitiously at the church and the infringement of her limited expectation of privacy was warranted. The public interest arguments included the provision to viewers of evidence of the claims made to the undercover reporters, the practices of the preachers at the SCOAN and the performance of 'healings' on members of the congregation. (See the Decision at head c) below for Ofcom's full reasoning.)

Similarly, in Ofcom's view, in the context of applying Practice 7.14 of the Code, the broadcast of the footage of Ms C obtained through surreptitious filming was in the public interest and it did not result in any unfairness to her.

In light of its conclusions regarding Practices 7.9 and 7.14 of the Code (i.e. that Ms C was not presented in a way that resulted in unfairness to her and that the inclusion of surreptitiously filmed footage of her in the programme was warranted by the public interest) Ofcom found that Ms C was not treated unfairly in the programme as broadcast.

Unwarranted infringement of privacy

Ofcom then turned to Ms C's complaints that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programme and in the programme as broadcast.

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

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

b) Ofcom considered the complaint that Ms C's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme in that she was not aware that she was being filmed while she was being prayed for and as such filming took place without her consent.

In considering this head of complaint, Ofcom had regard to Practice 8.5 of the Code which states that any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent, unless it is warranted. Ofcom also had regard to Practice 8.13 of the Code. Practice 8.13 states that surreptitious filming or recording should only be used where it is warranted. Normally, it will only be warranted if:

- there is *prima facie* evidence of a story in the public interest; and
- there are reasonable grounds to suspect that further material evidence could be obtained; and
- it is necessary to the credibility and authenticity of the programme.

Ofcom first assessed whether or not the surreptitious filming at the SCOAN by BSkyB was justified by the public interest (as set out in Practice 8.13) in the circumstances in which it took place.

Ofcom noted that, in its response, BSkyB said that the programme makers had sent undercover reporters to observe events in the church on three occasions prior to recording this footage. In addition, Ofcom recognised BSkyB's argument there was a strong public interest in exposing the church's alleged advice to HIV patients that they need not take their medication because they could be cured by God through 'healing' and prayer, given the potentially devastating effects of such advice. Ofcom also observed that, without filming this material surreptitiously, the footage would not have been available for BSkyB to broadcast and thereby serve the public interest by providing viewers with evidence of the claims made to the undercover reporters, the practices of the preachers at the SCOAN and the performance of 'healings' on members of the congregation.

In light of these observations, Ofcom considered that the programme makers had *prima facie* evidence of a story in the public interest, and reasonable grounds to suspect that further material evidence could be obtained by filming surreptitiously at the SCOAN event in the circumstances outlined above, and that the surreptitious filming was necessary to the credibility and authenticity of the final news report.

For these reasons, Ofcom concluded that the decision to record the material surreptitiously had been proportionate and was justified.

Ofcom then went on to consider the extent to which Ms C had a legitimate expectation of privacy in respect of the recording of the footage at the SCOAN which included her.

Ofcom observed that Ms C was secretly filmed during a church service at the SCOAN. The secretly filmed footage showed Ms C as she stood watching a preacher perform a 'healing' session on another individual. Ms C was either on or

very close to the dais on which the 'healing' session took place. This footage contained no personal information about Ms C other than the fact that she had attended a church service at the SCOAN during which the preachers performed 'healing' on some people attending the service who were suffering from medical problems, including HIV.

Ofcom recognised that observance of one's faith can be reasonably regarded as sensitive and personal and that in some circumstances it can attract an expectation of privacy. However, Ofcom also noted that Ms C was filmed attending a church to which any member of the public may have had access.

Nonetheless, Ofcom noted that Ms C was filmed without her knowledge (i.e. surreptitiously) while practising her faith. Ms C stated that she herself was being "prayed for" at the relevant time. It is apparent from the footage that Ms C was filmed while she was watching, at close range, one of the 'healing' sessions which was the focus of the filming (and subsequently the broadcast report) in question. Some of these 'healing' sessions were sensitive to the extent that those attending for 'healing' were suffering from potentially serious medical problems, including HIV. In Ofcom's view, these factors increased the likelihood that those attending the 'healing' sessions (particularly those being 'healed' or in very close proximity to the 'healing') would have had a legitimate expectation of privacy.

Ofcom took account of BSkyB's argument that it was likely that Ms C had signed a SCOAN television consent form and must have been aware of the presence of the SCOAN cameraman and therefore that she did not have a legitimate expectation of privacy with regard to the filming (and subsequent use) of the footage. However, it considered that even if Ms C had signed such a form, a distinction can be drawn between being filmed openly by a church's cameraman and being filmed surreptitiously by a news organisation. In particular, where someone is filmed openly, they have the opportunity to moderate their behaviour, facial expression and speech, if they choose to do so, and can potentially ask the cameraman to stop recording them, or decide to physically move out of the range or focus of the cameraman. None of these choices are open to a subject being filmed surreptitiously. In the circumstances of this case, Ofcom nevertheless accepted BSkyB's argument that the covert filming had occurred simultaneously with the overt filming by the SCOAN cameraman. In particular, there was no evidence that BSkyB had separately recorded Ms C covertly at a time when she was not being overtly filmed by the SCOAN cameraman (the broadcaster acknowledged that it might have been possible to draw a distinction between the covert and overt filming, if this had been the case). Ofcom accepted that Ms C was therefore aware that the specific footage in question was being filmed (albeit by the church's cameraman rather than BSkyB's), and this fact limited Ms C's expectation of privacy with regard to the obtaining of the footage by BSkyB.

Having taken all the factors noted above into account, Ofcom concluded that - on balance and in the particular circumstances of this case - Ms C had a legitimate expectation of privacy with regard to the filming of her attendance at the SCOAN by BSkyB. However, her expectation was considerably limited by the fact that the filming took place in a location to which other members of the public had access and because she would have been aware that she was being filmed by SCOAN's own cameraman.

Given this conclusion, Ofcom went on to consider whether the intrusion into Ms C's privacy was warranted.

In this context "warranted" has a particular meaning. It means that, where broadcasters wish to justify an infringement of privacy as warranted, they should be able to demonstrate why, in the particular circumstances of the case, it is warranted. If the reason is that it is in the public interest, then the broadcaster should be able to demonstrate that the public interest outweighs the right to privacy[5].

With respect to Practice 8.5 of the Code, Ofcom observed that there was no evidence that Ms C did give consent for the filming of her attendance at the SCOAN service. However, Ofcom considered that, in light of its conclusion that *Sky News* was justified in filming surreptitiously at the SCOAN event in the circumstances as set out above, it was also justified in filming footage of Ms C at this event because anyone filming in these circumstances would be likely to capture footage of people who are not the focus of the material in question, for example, in this instance Ms C.

Given all the factors referred to above, Ofcom concluded that the broadcaster's right to freedom of expression and to receive and impart information and ideas without interference, outweighed Ms C's legitimate, albeit limited, expectation of privacy in relation to being filmed without her knowledge or consent in the circumstances of this case. Consequently, it concluded that, on balance and in the particular circumstances of this case, the intrusion into Ms C's limited expectation of privacy by the surreptitious recording of her was warranted.

Ofcom therefore found that there was no unwarranted infringement of Ms C's privacy in connection with the obtaining of material included in the programme.

c) Ofcom then considered the complaint that Ms C's privacy was unwarrantably infringed in the programme as broadcast in that footage of her with her face undisguised (which was recorded using hidden cameras) was included in the programme despite her not having given consent for this footage to be included in the programme and her not being the intended subject of the report.

In considering this head of complaint, Ofcom had regard to Practice 8.6 of the Code which states that, if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted. Ofcom also had regard to Practice 8.14 of the Code which states that material gained by surreptitious filming or recording should only be broadcast when it is warranted.

Ofcom took note of BSkyB's position that Ms C had no legitimate expectation of privacy as they argued she was attending a non-exclusive event in a public place which was being overtly filmed by the church itself for possible widespread public consumption on the internet and on television and that Ms C knew she was being filmed by the church's cameraman, if not BSkyB's cameraman. BSkyB argued that it had pixellated some of the identities of people who appeared in the programme and who in BSkyB's view did have a legitimate expectation of privacy such as to require that their identity be obscured. BSkyB stated that the reason for this pixellation was because they were participants in the 'healing' activities in the church and were known to be HIV positive, or in one case a child.

[5] Examples of public interest would include revealing or detecting crime, protecting public health or safety, exposing misleading claims made by individuals or organisations or disclosing incompetence that affects the public.

As explained at head b) Ofcom did not agree that Ms C had no expectation of privacy. Ofcom recognised that observance of one's faith can be reasonably regarded as sensitive and personal and that in some circumstances it can attract an expectation of privacy. Ofcom considered that Ms C was filmed without her knowledge while practising her faith. Ms C stated that she herself was being "prayed for" at the relevant time. Ms C was filmed while she was watching, at close range, one of the 'healing' sessions which was the focus of the filming (and subsequently the broadcast report) in question. Some of these 'healing' sessions were sensitive to the extent that those attending for 'healing' were suffering from potentially serious medical problems, including HIV. In Ofcom's view, these factors increased the likelihood that those attending the 'healing' sessions (particularly those being 'healed' or in very close proximity to the 'healing') would have had a legitimate expectation of privacy. Ofcom concluded that Ms C did have a legitimate expectation of privacy. However, Ofcom also considered that her expectation was considerably limited by the fact that the filming took place in a location to which other members of the public had access and because she would have been aware that she was being filmed by SCOAN's own cameraman.

With regard to Practice 8.6, Ofcom observed that there was no evidence that Ms C gave consent for the broadcast of the material in question (i.e. the footage of her attendance at the SCOAN service).

Given this conclusion, Ofcom went on to consider whether the intrusion into Ms C's privacy by the broadcast of the footage was warranted. As noted above, in order to justify an infringement of privacy as warranted, a broadcaster should be able to demonstrate why in the particular circumstances of the case it is warranted.

As noted in head b) of the Decision above, in Ofcom's view the inclusion in the report of a direct illustration of the claims being made and the practices of the preachers at the SCOAN church served the public interest. This was because this illustration helped materially to impress upon viewers that the SCOAN and other churches like it were making misleading claims which could result in severely damaging the health of the individuals concerned or even in their deaths through encouraging them to stop taking their medication. Ofcom also noted that the specific footage of Ms C was part of a section of footage which strongly emphasised the key point that the report was making about the potentially dangerous results of the claims being made by the SCOAN and some other churches regarding HIV.

In addition, Ofcom noted that while it would have been possible for the programme makers to have pixellated Ms C's face and thereby to have disguised her identity, BSkyB argued that the routine pixellation of all bystanders' faces would place a disproportionate burden on broadcasters in similar circumstances in the future by slowing down the production of news items; increasing the costs of production and reducing the impact of footage of this type.

In balancing the complainant's rights with those of both the broadcaster and the general public Ofcom also took account of the very limited nature of Ms C's expectation of privacy. In particular, Ofcom noted that the event during which Ms C was filmed was open to the public; was filmed by the church; and, Ms C would have been aware that this filming was taking place. Ofcom also observed that, as noted in the Decision at head a) above, it considered that Ms C's participation in the programme (as a result of the inclusion of the footage in question) was minor.

Given all the factors referred to above, Ofcom concluded that the broadcaster's right to freedom of expression and both the audience's and the broadcaster's right to receive and impart information and ideas without interference, outweighed Ms C's legitimate, albeit considerably limited, expectation of privacy. Consequently, it concluded that, on balance and in the particular circumstances of this case, the intrusion into Ms C's privacy by the broadcast of the surreptitious recording of her was warranted.

Ofcom therefore found that there was no unwarranted infringement of Ms C's privacy in the programme as broadcast.

Accordingly, Ofcom found that Ms C's complaint of unfair treatment and her complaint of unwarranted infringement of privacy in connection with the obtaining of material included in the programme and in the programme as broadcast should not be upheld.

Not Upheld

Complaint by Ms Charlotte Allwood

Anglia Tonight, ITV1 (Anglia), 30 November 2011 and 1 December 2011

Summary: Ofcom has not upheld this complaint of unjust or unfair treatment and unwarranted infringement of privacy in the obtaining of material included in the programme and in the programme as broadcast, made by Ms Charlotte Allwood. Footage of Ms Allwood was featured as part of a news story broadcast on *Anglia Tonight*, about proposals to open a topless hairdressing salon in Norwich in the UK. The footage of Ms Allwood was originally filmed at a topless hairdressing salon in Sydney, Australia. Following the broadcast of the programme, Ms Allwood complained that she was treated unjustly or unfairly in the programme and that her privacy was unwarrantably infringed in the obtaining of material included in the programme and in the programme as broadcast.

Ofcom found the following:

- Ms Allwood was not portrayed in the programme in a way that was unfair to her.

- Ms Allwood appeared to be fully aware that she was being filmed in Australia and, although she and the other hairdressers were described as being *"topless"*, the circumstances in which she was filmed did not give rise to a legitimate expectation of privacy in the obtaining of material included in the programme.

- Ms Allwood did have a legitimate expectation of privacy that footage filmed would not be subsequently broadcast to a wider audience. However, on balance, this was warranted by the broadcaster's right to freedom of expression.

Introduction

On 30 November 2011, ITV1 (Anglia) broadcast at 18:30 hours an edition of its regional news programme, *Anglia Tonight*. This edition included a promotional trailer for a report to be shown the following evening about proposals for the opening of a topless hairdressing salon in Norwich. The trailer included footage of a topless hairdressing salon in Sydney, Australia which featured a number of *"half naked"* women cutting men's hair.

On the following day, 1 December 2011, *Anglia Tonight* included a longer report about the proposals for a topless hairdressing salon in its 18:30 hour edition of the programme. Extended footage was shown of the topless hairdressing salon in Sydney which was identified as being called *"Hot Cuts"*.

In both the trailer and the report, similar footage of the women from the *"Hot Cuts"* salon was broadcast. One of the women shown was the complainant, Ms Charlotte Allwood, who was shown a number of times from various angles. At one particular point in the footage included in the 30 November trailer, Ms Allwood was shown to hold up a mirror in front of her chest to enable a male customer to see the back of his head. Ms Allwood was not heard speaking in the programme and was not named, however her face was clearly visible from the footage. This particular footage of Ms Allwood holding up a mirror was not shown in the 1 December programme. While other footage of Ms Allwood was included in the 1 December programme, she was not heard speaking and her face was not visible.

Following the broadcast of the programmes, Ms Allwood complained to Ofcom that she was treated unjustly or unfairly in the programme and that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programmes and in the programmes as broadcast.

Summary of the complaint and the broadcaster's response

In summary, Ms Allwood complained that she was treated unjustly or unfairly in the programme, and that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programmes as broadcast, in that:

a) Ms Allwood complained of unjust and unfair treatment in that footage of her face and body was included in the *Anglia Tonight* programme without her consent. Ms Allwood said that she had not given her authorisation to be filmed and that it had been completely humiliating for her to be broadcast in such a way.

In response, ITV said that when it became aware of the plans for a topless hairdressing salon in Norwich, the programme's reporter spoke to the business that had made the planning application and was informed that the idea had been inspired by an Australian business offering the service. The research led the programme makers to a video on the video sharing website "YouTube", concerning the Australian topless hairdressing salon which had been broadcast on an edition of the Australian Channel 10's Morning News report. Consequently, ITV contacted Channel 10 to obtain permission to use the clip in its own broadcast. ITV assumed that the footage featured women resident in Australia who would be unlikely to be known to or identified by *Anglia Tonight* viewers, and that the women had all consented to the original filming for the purposes of the television broadcast.

ITV said that following the receipt of Ms Allwood's complaint, further enquiries with Channel 10 were made who confirmed that all the women did know that they: were going to be filmed; had consented to it; and, in particular Ms Allwood, had participated actively in the filming by holding up the mirror to her chest. Channel 10 also told ITV that the footage would have been made available to view on its "YouTube" page on the internet since the original broadcast 18 months ago, and that it was not aware of any previous dispute regarding consent.

ITV added that there appeared to be a conflict between Ms Allwood's and Channel 10's recollection as to whether Ms Allwood had consented to the footage being broadcast. Ms Allwood had told Ofcom that she had stated at the time of filming that she did not want to be shown in the footage if it was to be broadcast, though Channel 10 disagreed with this.

ITV said that they readily accepted that Ms Allwood may well have been embarrassed by the broadcast of the footage in the UK and were sympathetic to her distress. Consequently, ITV said that they would not be broadcasting any of this footage featuring Ms Allwood again without her prior consent.

ITV added that they believed it was legitimate for the programme makers to assume that informed consent had been given by all participants identified in the footage. Once Ms Allwood had complained to ITV, they had taken all possible steps to address Ms Allwood's concerns.
ITV said that although there is some controversy about the acceptability of topless hairdressing, it is not an illegal activity, and there was no criticism of the

conduct of the women themselves in performing this service. Therefore in the circumstances, ITV did not believe that as a matter of fairness, they required Ms Allwood's specific consent to re-broadcast the footage contained in the original Channel 10 report. In any event, ITV said that they did not consider that in the circumstances, the inclusion of the footage amounted to unfair or unjust treatment of Ms Allwood.

b) Ms Allwood had not given her authorisation to being filmed and had clearly stated at the time of filming that she did not want to be filmed in the making of the programme [i.e. the original footage].

In response, ITV said that there is a straightforward conflict of evidence between Ms Allwood and Channel 10, as outlined in head a) above. However, ITV suggested that the footage itself did not on its face give the impression that Ms Allwood did not consent to being filmed at the time.

ITV said that Channel 10 believed that informed consent had been given at the time of filming and therefore ITV was also of the same opinion. If there was any infringement of Ms Allwood's privacy in connection with the obtaining of material included in the programme, ITV submitted that it was warranted on account of the nature of the footage and its availability online. Further the means of obtaining the material were proportionate in the circumstances and re-use of the footage was also justified in illustrating the type of business that was being proposed in Norwich. Therefore, in all the circumstances, Ofcom did not consider that Ms Allwood's privacy was unwarrantably infringed in the programme as broadcast.

In summary, Ms Allwood complained that her privacy was unwarrantably infringed in the programmes as broadcast in that:

c) Footage of her face and body was included in the programmes without her consent.

Ms Allwood said that she had stated clearly at the time of being filmed that she did not want to be shown in the footage if it was to be broadcast. However, the footage had now been broadcast on *Anglia Tonight* without her permission. Ms Allwood said that it had been completely humiliating for her to be broadcast in such a way as this was not her career.

In summary and in response, ITV said Ms Allwood was not directly referred to in the report but was simply shown as one of several topless hairdressers working for a salon in Australia and no intrinsically private information was revealed about Ms Allwood in the programme.

ITV said that the reporting of the hairdressing business in Australia was not new and the footage complained of had been broadcast in Australia and was available on the internet. In addition, ITV said that it had no prior notice of any issue regarding consent of the participants in the footage. As soon as ITV were informed that there was a dispute over the consent of this particular participant, they agreed to remove the shot of Ms Allwood's face, to reduce any embarrassment caused to Ms Allwood. ITV thought that they had addressed Ms Allwood's immediate and principal concern, by removing the shot of her face, however it was an unfortunate and innocent oversight that the main report the following day, still featured an unidentified rear shot of Ms Allwood.

ITV said that the programme did not go beyond what was already in the public domain. In addition, for the reasons already given in head a) and b), ITV did not believe that it required either Ms Allwood's consent to broadcast the footage or that broadcasting it constituted an unwarranted infringement of privacy.

Decision

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

Unfair Treatment

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 preliminary view on the individual heads of complaint detailed below.

a) Ofcom first considered Ms Allwood's complaint that she was treated unjustly or unfairly in that footage of her face and body was broadcast without her consent. Ms Allwood said that she had not given her authorisation to be filmed and that it had been completely humiliating for her to be broadcast in such a way.

In considering this part of the complaint, Ofcom had regard to Practice 7.8 of the Code which states that broadcasters should ensure that the re-use of material, i.e. material originally filmed or recorded for one purpose and then used in a programme for another purpose or used in a later or different programme, does not create unfairness. This applies both to material obtained from others and the broadcaster's own material. We also had regard to Practice 7.9, which states that before broadcasting a factual programme, including programmes examining past events, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

In relation to the trailer, Ofcom noted that a rear shot of Ms Allwood and another hairdresser was shown while they were cutting a customer's hair. One shot showed Ms Allwood in profile and another showed Ms Allwood directly facing the camera holding up a mirror to the back of her customer's head and smiling. Ofcom noted that the newsreader, who was introducing the footage, referred to the hairdressers as "saucy snippers" and "sexy scissor sisters".

Ofcom observed from the full news item broadcast on 1 December that the rear shots of Ms Allwood were featured in the report, although the shot of Ms Allwood holding up the mirror was not included. Ofcom noted that the report described the women as "half naked hairdressers in Sydney, Australia" and focussed on what local, established hairdressers and members of the public thought about the prospect of a topless hairdressing salon in Norwich. Ofcom noted the following opinions given by members of the public, which broadcast in the programme:

Man 1: *It is not what you're looking for when you go for a haircut is it.*

Man 2: *It will be fantastic, I usually cut my hair at home but I think I would come here if that is the case, definitely.*

Man 3: *The reason I come here is to get my hair cut, not to look at women's breasts.*

Man 4: *It will be fantastic because, like, there's always the brush against your face when the young lady is cutting your hair anyway that is a bit exciting.*

Ofcom also noted at the end of the news report that the newsreaders stated:

Newsreader 1: *There are many stories that I have something to say about afterwards but this is one that I have been completely banned from having a comment on.*

Newsreader 2: *He is not allowed to say anything on this and I cannot tell you how much banter there's been in the office about that story today, none of which I can repeat.*

Newsreader 1: *All of it constructive of course.*

Newsreader 2: *None of it constructive.*

Ofcom took into consideration that the tone of the news item was generally light-hearted throughout. We also noted that there was no criticism or judgments made about any of the women featured in the footage, including Ms Allwood. Any doubts or possible issues raised in the programme were directed at the possibility and effects of a similar business being established in Norwich, rather than the women themselves who were providing the service.

Ofcom also took into account that the programme makers had sourced the footage from a broadcaster in Australia. The Australian broadcaster had included the footage in a news report about a topless hairdressing salon in Sydney. The context in which the footage was used by ITV was in a news item to report that planning permission was being sought for a topless hairdressing salon, similar to the one in Sydney, in Norwich. ITV had therefore re-used the footage for a purpose which was broadly similar to that for which it was originally filmed. In Ofcom's view, the purpose for which ITV used the footage therefore did not create any unfairness to Ms Allwood.

Ofcom acknowledged that while the broadcast of the footage may have caused some embarrassment to Ms Allwood, there was nothing contained in the programme which portrayed her in a way which was unfair to her.

We noted that Ms Allwood complained that footage of her was included in the programme without her consent. However, a failure to obtain consent will only constitute a breach of section 7 of the Code where it results in unfairness. For the reasons stated above, Ofcom did not consider that the programme portrayed Ms Allwood unfairly, so it was not necessary for Ofcom to consider whether Ms Allwood had consented to the footage being broadcast (although this is considered under head (c) below).

Ofcom therefore found no unfairness to Ms Allwood.

Unwarranted infringement of privacy

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

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

b) Ofcom first considered the complaint that Ms Allwood's privacy was unwarrantably infringed in the obtaining of material included in the programme. Ms Allwood said that she had not given her authorisation to be filmed and had clearly stated at the time of filming in Australia that she did not want to be filmed in the making of the programme [i.e. the original footage].

   In considering this part of the complaint, Ofcom also had regard to Practice 8.5 of the Code which states that any infringement of privacy in the making of the programme should be with the person's and/or organisation's consent or be otherwise warranted.

   Although ITV did not film the original footage of Ms Allwood, Ofcom noted Ms Allwood was not filmed in a state of distress or in a sensitive situation. In addition Miss Allwood was clearly aware that she was being filmed. Therefore Ofcom took the view that Miss Allwood was not filmed in any circumstances which would give rise to a legitimate expectation of privacy. Ofcom also took into account that ITV had obtained the material from the internet, having been made aware of it by a contact at Channel 10. Therefore, Ofcom considered that the footage was already in the public domain and been so for a considerable length of time, during which it could have been be accessed by any member of the public.

   Taking the above factors into account, and in the circumstances of the case, Ofcom considered that Ms Allwood did not have a legitimate expectation of privacy in the obtaining of the material included in the programme. Having found that Ms Allwood did not have a legitimate expectation of privacy in connection with the obtaining of material, it was not necessary for Ofcom to go on to consider whether any expectation of privacy was infringed.

c) Ofcom next considered Ms Allwood's complaint that her privacy was unwarrantably infringed in the programme as broadcast in that footage of her face and body was included in the programmes without her consent.

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

Ofcom also took account of Practice 8.10 of the Code, which states that broadcasters should ensure that the re-use of material originally filmed for one purpose or recorded for one purpose and then used in a programme for another purpose or used in a later or different programme does not create an unwarranted infringement of privacy. This applies to material obtained from others as well as the broadcasters' own material.

In considering whether Ms Allwood's privacy was unwarrantably infringed in the programme as broadcast, Ofcom first considered whether Ms Allwood had a legitimate expectation of privacy that the footage filmed of her would not feature in the programmes as broadcast to a wider audience.

Ofcom noted from the programme broadcast on 30 November 2011 that Ms Allwood's face and bare shoulders were visible in the programme for approximately five seconds. Ofcom acknowledged that the footage shown was brief and that Ms Allwood was not named. However, it considered that Ms Allwood was identifiable from the broadcast.

Ofcom noted that following a complaint that ITV received from Ms Allwood about the trailer broadcast on 30 November 2011, the footage in which Ms Allwood was shown facing the camera was removed from the news item broadcast on 1 December 2011 and only footage of the back of Ms Allwood could be seen. Ofcom took the view that Ms Allwood was not identifiable from this image alone in this programme.

Ofcom took account of the fact that the filming appears to have taken place in a hairdressing salon, which was open to members of the public. We also considered that Ms Allwood was not the focus of the reports, that she was not named or otherwise identified, and that she was not shown in a state of distress or in a situation that could be reasonably considered, in Ofcom's opinion, particularly private or sensitive in nature. It also considered that although the accompanying commentary to the reports described her (and the other hairdressers) as being *"topless"* the programmes only showed her face, shoulders, her back and the back of her head.

Ofcom took into consideration that Miss Allwood had not provided her consent to appear in this particular broadcast and that Miss Allwood had stated that she had made it clear at the time of the original filming that she did not want to be included in any footage that was to be broadcast. Consequently, Ofcom considered that Ms Allwood was not aware that the footage would be subsequently broadcast in this programme and had not provided her consent to be featured in any programme. In addition, because the footage was originally filmed in Australia, Ofcom considered that it was unlikely that Ms Allwood would have expected to see the footage of her being broadcast in the UK without her knowledge or consent.

Ofcom also had regard to the fact that the footage had already been made available on the internet and had been broadcast in Australia. Ofcom therefore considered that the footage was already in the public domain and that any member of the public could access it.

Ofcom took the view that there may be circumstances in which the use of material obtained from the internet and already available to the public would give rise to a legitimate expectation of privacy. In the particular circumstances of this case, and taking into account all the factors set out above, Ofcom considered that although Ms Allwood had a legitimate expectation of privacy that the footage would not be broadcast in the programmes, her expectation was limited because the footage had already been broadcast in Australia and was available on the internet.

Having found that Ms Allwood had a limited legitimate expectation of privacy in relation to the broadcast of the footage of her, Ofcom went on to consider the broadcaster's competing right to freedom of expression and the need for broadcasters to have the freedom to broadcast matters of genuine public interest without undue interference.

Ofcom recognised that there was a genuine public interest to the local community in the programmes' reporting on the proposals for the opening of a topless hairdressing salon in Norwich. We noted that the reports included the views of some of the local residents who voiced their concerns at the possible effect on the city's reputation in an area which they thought was *"sleazy enough"*. In this context, Ofcom considered that the footage of the "Hot Cuts" hairdressing salon in Australia was used to illustrate the story.

In balancing the broadcaster's freedom of expression against Ms Allwood's limited expectation of privacy, Ofcom also had regard to our view that the infringement into her privacy was minimal. In particular, Ofcom noted that Ms Allwood was not the focus of the report and that she was not named or otherwise identified. We also considered that although the accompanying commentary to the reports described her (and the other hairdressers) as being *"topless"* the programmes only showed her face, shoulders, her back and the back of her head. Ofcom also took into account the fact that the footage had already been placed in the public domain.

On balance and given all the factors set out above, Ofcom concluded that the broadcaster's right to freedom of expression and to impart information and ideas and the audience's right to receive this information without interference outweighed Ms Allwood's limited expectation of privacy. Ofcom therefore found that the use of the footage (which was already in the public domain) was warranted and that therefore there was no unwarranted infringement of Ms Allwood's privacy in the programme as broadcast.

Accordingly, Ofcom's decision is that Ms Allwood's complaint of unjust or unfair treatment and unwarranted infringement of privacy in obtaining of material included in the programmes and in the programmes as broadcast should not be upheld.

Other Programmes Not in Breach

Up to 18 June 2012

Programme	Broadcaster	Transmission Date	Categories
Advertisements	4Music	27/02/2012	Advertising minutage
BBC News	BBC News Channel	24/04/2012	Offensive language
Hollyoaks	Channel 4	03/05/2012	Drugs, smoking, solvents or alcohol
Sky News	Sky News	24/04/2012	Offensive language
The Wright Stuff	Channel 5	26/04/2012	Disability discrimination/offence

Complaints Assessed, not Investigated

Between 5 and 18 June 2012

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
£1000 Song Competition	Magic 105.4FM	06/06/2012	Competitions	1
5 Live Sport	BBC Radio 5 Live	30/04/2012	Race discrimination/offence	1
8 Out of 10 Cats	Channel 4	11/06/2012	Generally accepted standards	1
8 Out of 10 Cats Jubilee Special (trailer)	Channel 4	04/06/2012	Generally accepted standards	1
A League of Their Own	Sky1	01/06/2012	Due impartiality/bias	1
A Short History of Everything Else (trailer)	Channel 4	10/06/2012	Offensive language	1
Adam Alcock at Breakfast	Wish FM	25/05/2012	Competitions	1
Adult programming	Various	n/a	Sexual material	1
Advertisements	DM Digital	n/a	Advertising content	1
Alan Carr's Summertime Specstacular	Channel 4	08/06/2012	Generally accepted standards	1
Alan Carr's Summertime Specstacular	Channel 4	08/06/2012	Race discrimination/offence	3
Alan Carr's Summertime Specstacular	Channel 4	08/06/2012	Scheduling	5
Alan Carr's Summertime Specstacular	Channel 4	09/06/2012	Generally accepted standards	2
Battle of the Brides	Sky Living	07/06/2012	Generally accepted standards	1
Battle of the Brides	Sky Living	13/06/2012	Generally accepted standards	1
BBC News	BBC 1	08/05/2012	Religious/Beliefs discrimination/offence	1
BBC News	BBC 1	09/06/2012	Outside of remit / other	1
BBC News at Six	BBC 1	06/06/2012	Violence and dangerous behaviour	1
BBC News at Six	BBC 1	08/06/2012	Generally accepted standards	1
BBC News at Ten	BBC 1	01/06/2012	Due impartiality/bias	1
BBC News at Ten	BBC 1 Scotland	29/05/2012	Due impartiality/bias	1
BBC news programming	BBC channels	n/a	Outside of remit / other	1
Bikesure's sponsorship of Isle of Man TT on ITV4	ITV4	n/a	Gender discrimination/offence	1
Boots Web MD's sponsorship of Embarrassing Bodies	Channel 4	05/06/2012	Generally accepted standards	2
Breakfast	BBC 1	02/06/2012	Due accuracy	1
Britain in a Day	BBC 2	11/06/2012	Sexual orientation discrimination/offence	1
Bruce Almighty	Gold	03/06/2012	Scheduling	1

Casualty	BBC 1	08/06/2012	Materially misleading	1
Celebrity Juice	ITV2	n/a	Generally accepted standards	1
Channel 4 News	Channel 4	06/06/2012	Generally accepted standards	1
Channel 4 News	Channel 4	12/06/2012	Due impartiality/bias	2
Channel 4 News	Channel 4	13/06/2012	Due impartiality/bias	1
Channel 4 News	Channel 4	n/a	Outside of remit / other	1
Channel 4's Comedy Gala	Channel 4	20/05/2012	Disability discrimination/offence	1
Channel 4's Comedy Gala	Channel 4	20/05/2012	Race discrimination/offence	3
Channel 4's Comedy Gala	Channel 4	20/05/2012	Generally accepted standards	1
China: Triumph and Turmoil	Channel 4	12/03/2012	Materially misleading	4
Christian O'Connell Breakfast Show	Absolute Radio	28/05/2012	Generally accepted standards	1
Come Dine with Me	Channel 4	12/06/2012	Race discrimination/offence	1
Come Dine with Me	Channel 4	12/06/2012	Religious/Beliefs discrimination/offence	1
Competition	The Vault	07/02/2012	Competitions	1
Dastar Day	Sikh Channel	23/09/2011	Due impartiality/bias	1
Dave's Morning Bit	Fire 107.6 FM	28/05/2012	Sexual material	1
Daybreak	ITV1	n/a	Advertising/editorial distinction	1
Desert Island Discs	BBC Radio 4	03/06/2012	Religious/Beliefs discrimination/offence	1
Dog the Bounty Hunter	Pick TV	20/05/2012	Offensive language	1
Don't Tell the Bride	Really	03/06/2012	Offensive language	1
Download FM	Download FM	10/06/2012	Offensive language	1
EastEnders	BBC 1	06/06/2012	Disability discrimination/offence	3
EastEnders	BBC 1	07/06/2012	Disability discrimination/offence	2
EastEnders	BBC 1	07/06/2012	Outside of remit / other	1
EastEnders	BBC 1	08/06/2012	Disability discrimination/offence	1
Eastenders	BBC 1	n/a	Generally accepted standards	1
Elite Nights	Elite TV	22/05/2012	Participation TV - Offence	1
Embarrassing Bodies	Channel 4	29/05/2012	Generally accepted standards	1
Embarrassing Bodies	Channel 4	05/06/2012	Nudity	2
Embarrassing Bodies	Channel 4	12/06/2012	Scheduling	1
Emmerdale	ITV1	21/05/2012	Sexual orientation discrimination/offence	1
Emmerdale	ITV1	25/05/2012	Disability discrimination/offence	1
Emmerdale	ITV1	17/06/2012	Offensive language	1
Entertainment News	BBC Red	23/05/2012	Violence and	1

	Button		dangerous behaviour	
ET the Extra-Terrestrial	ITV2	10/06/2012	Offensive language	1
Euro 2012 Live	ITV1	08/06/2012	Generally accepted standards	1
Euro 2012 Live	ITV1	10/06/2012	Outside of remit / other	1
Euro 2012 Live	ITV1	11/06/2012	Generally accepted standards	2
Euro 2012 Live	ITV1	12/06/2012	Generally accepted standards	1
Euro 2012 Live	ITV1	13/06/2012	Generally accepted standards	1
Euro 2012 Live	ITV1	14/06/2012	Race discrimination/offence	2
Euro 2012 Live	ITV1	15/06/2012	Due impartiality/bias	1
Euro 2012 Live	ITV1	15/06/2012	Outside of remit / other	1
Euro 2012 Live	ITV1	15/06/2012	Religious/Beliefs discrimination/offence	1
Eurogeddon: Why England Shouldn't Win Euro 2012	ITV4	07/06/2012	Generally accepted standards	1
Extraordinary People: The Girl with 90% Burns (trailer)	Channel 5	04/06/2012	Generally accepted standards	1
Extraordinary People: The Girl with 90% Burns (trailer)	Channel 5	n/a	Generally accepted standards	1
F1: Grand Prix Qualifying	BBC 1	09/06/2012	Race discrimination/offence	1
Family Guy	BBC 3	17/12/2011	Religious programmes	1
Four in a Bed	More 4	15/06/2012	Generally accepted standards	1
Four Rooms	Channel 4	04/04/2012	Race discrimination/offence	1
Frank Mitchell	U105	31/05/2012	Generally accepted standards	1
Frank Skinner Live from the Birmingham NIA	Dave	31/05/2012	Sexual orientation discrimination/offence	1
French Open 2012	Eurosport	10/06/2012	Outside of remit / other	1
Fresh Hits	Brit Asia TV	21/05/2012	Offensive language	1
Gavin and Stacey	GOLD	10/06/2012	Offensive language	1
Great British Menu	BBC 2	07/05/2012	Animal welfare	1
Halfords' sponsorship of Happy Motoring on Dave	Dave	03/06/2012	Generally accepted standards	1
Halfords' sponsorship of Happy Motoring on Dave	Dave	n/a	Generally accepted standards	1
Harveys' sponsorship of Coronation Street	ITV1	n/a	Outside of remit / other	1
Have I Got News for You	BBC 1	01/06/2012	Disability discrimination/offence	1
Have I Got News for You	BBC 1	08/06/2012	Generally accepted standards	1
Have I Got News For You	Dave	10/06/2012	Nudity	1
Hollyoaks	Channel 4	14/06/2012	Sexual material	1
Hostel	Channel 5	31/05/2012	Generally accepted standards	1
ITV News and Weather	ITV1	08/06/2012	Generally accepted	1

			standards	
ITV News and Weather	ITV1	10/06/2012	Due impartiality/bias	1
ITV News at Ten and Weather	ITV1	11/06/2012	Generally accepted standards	1
ITV News at Ten and Weather	ITV1	12/06/2012	Violence and dangerous behaviour	1
Jaguar's sponsorship of England Cricket Live	Sky Sports 1	27/05/2012	Sponsorship credits	1
Jaguar's sponsorship of England Cricket Live	Sky Sports 1	21/05/2012	Sponsorship credits	1
James O'Brien	LBC 97.3FM	23/05/2012	Premium rate services	1
John Suchet	Classic FM	17/05/2012	Commercial communications on radio	1
Jubilee Coverage	BBC 1	03/06/2012	Outside of remit / other	1
Judge John Deed	Alibi	16/06/2012	Animal welfare	1
Justified (trailer)	Channel 5	13/06/2012	Scheduling	1
Kevin Bridges - The Story So Far	BBC 1	19/05/2012	Offensive language	1
Ladyboys	Sky Living	21/05/2012	Transgender discrimination/offence	1
Lewis	ITV1	23/05/2012	Drugs, smoking, solvents or alcohol	1
Lewis	ITV1	30/05/2012	Generally accepted standards	1
Live French Open Tennis	ITV4	02/06/2012	Generally accepted standards	1
Lorraine	ITV1	07/06/2012	Materially misleading	1
Marco Pierre White's Kitchen Wars	Channel 5	07/06/2012	Violence and dangerous behaviour	5
Marco Pierre White's Kitchen Wars	Channel 5	14/06/2012	Violence and dangerous behaviour	6
Match of the Day Live	BBC 1	09/06/2012	Race discrimination/offence	1
Match of the Day Live	BBC 1	09/06/2012	Race discrimination/offence	1
Match of the Day Live	BBC 1	13/06/2012	Generally accepted standards	1
Match of the Day Live	BBC 1	15/06/2012	Due impartiality/bias	1
Mike James: The Coffee Break	Dee 106.3 FM	03/05/2012	Commercial communications on radio	1
Morning Schedule	ITV1	n/a	Scheduling	1
My Parents Are Aliens	CITV	11/06/2012	Sexual material	2
My Strange Addiction	Discovery Home and Leisure	n/a	Scheduling	1
My Strange Addiction (trailer)	Discovery Real Time	05/06/2012	Generally accepted standards	2
Neighbours	Channel 5	13/06/2012	Generally accepted standards	1
News	BBC 1 / Sky News	13/06/2012	Violence and dangerous behaviour	1
News	Radio Ceredigion	11/06/2012	Due accuracy	1

Newsnight	BBC 2	23/05/2012	Outside of remit / other	1
Newsnight	BBC 2	30/05/2012	Race discrimination/offence	3
Newsnight	BBC 2	07/06/2012	Generally accepted standards	1
Newsround	CBBC	13/06/2012	Outside of remit / other	1
Panorama: Euro 2012: Stadiums of Hate	BBC 1	28/05/2012	Generally accepted standards	2
Predator trailer	Film4	10/06/2012	Scheduling	1
Programme promotions	Disney Channel	11/06/2012	Outside of remit / other	1
Programming	BBC channels	n/a	Product placement	1
Programming	BBC Radio 5 Live	07/06/2012	Generally accepted standards	1
Psychic Today	Big Deal	20/04/2012	Participation TV	1
Psychic Today	Big Deal	13/06/2012	Participation TV - Misleadingness	1
Punk'd	MTV	05/06/2012	Offensive language	1
QATAR Airways' sponsorship of Sky Weather	Sky News	n/a	Materially misleading	1
Real Radio Breakfast	Real Radio Yorkshire	31/05/2012	Disability discrimination/offence	1
Regional News and Weather	BBC 1	14/06/2012	Disability discrimination/offence	1
Sadie Nine	BBC Radio Essex	13/06/2012	Animal welfare	1
Safari Park Adventure 3D	Sky 3D	18/05/2012	Violence and dangerous behaviour	1
Secrets of Secrets	Ummah Channel	14/03/2012	Religious/Beliefs discrimination/offence	6
Silk	BBC 1	12/06/2012	Generally accepted standards	1
Silk	BBC 1	12/06/2012	Religious/Beliefs discrimination/offence	1
Sky Midnight News	Sky News	13/06/2012	Religious/Beliefs discrimination/offence	1
Sky News	Sky News	13/06/2012	Violence and dangerous behaviour	1
Sky News at Nine	Sky News	30/05/2012	Due impartiality/bias	1
Sky News with Charlotte Hawkins	Sky News	13/06/2012	Violence and dangerous behaviour	1
Sky Sport News	Sky Sports News	13/06/2012	Scheduling	1
Snog, Marry, Avoid?	BBC 3	21/05/2012	Transgender discrimination/offence	9
Snog, Marry, Avoid?	BBC 3	25/05/2012	Transgender discrimination/offence	1
Snog, Marry, Avoid?	BBC 3	27/05/2012	Transgender discrimination/offence	6
Spartacus: Blood and Sand	Pick TV	14/06/2012	Violence and dangerous behaviour	1
Sponsorship of football programmes by betting	Various	n/a	Sponsorship	1

companies				
Sports programming	BBC channels	n/a	Scheduling	1
Sports programming	ITV channels	n/a	Generally accepted standards	1
Sports programming	UTV channels	n/a	Outside of remit / other	1
Stand Up for the Week	Channel 4	01/06/2012	Generally accepted standards	1
Stand Up for the Week	Channel 4	03/06/2012	Race discrimination/offence	1
Stand Up for the Week	Channel 4	10/06/2012	Generally accepted standards	1
Stargate Universe	Pick TV	09/06/2012	Advertising minutage	1
Steve Allen	LBC 97.3FM	03/06/2012	Generally accepted standards	1
Steve Yabsley	BBC Radio Somerset	17/05/2012	Harm	1
Sunday Brunch	Channel 4	10/06/2012	Offensive language	1
Talk Shawk	DM Digital	16/04/2012	Participation TV - Harm	1
Talkback	Talksport	n/a	Format	1
The Big Bang Theory	Channel 4	10/06/2012	Offensive language	1
The Chris Moyles Show	BBC Radio 1	11/06/2012	Generally accepted standards	1
The Diamond Jubilee Concert	BBC 1	04/06/2012	Generally accepted standards	1
The Diamond Jubilee Concert	BBC 1	04/06/2012	Outside of remit / other	1
The Diamond Jubilee Concert	BBC 1	04/06/2012	Race discrimination/offence	8
The Diamond Jubilee Thames Pageant	BBC 1	03/06/2012	Advertising/editorial distinction	1
The Diamond Jubilee Thames Pageant	BBC 1	03/06/2012	Generally accepted standards	1
The Diamond Jubilee Thames Pageant	BBC 1	03/06/2012	Offensive language	1
The Diamond Jubilee Thames Pageant	BBC 1	03/06/2012	Outside of remit / other	3
The Hotel Inspector	Home+1	11/06/2012	Offensive language	1
The Jeremy Kyle Show	ITV1	31/05/2012	Generally accepted standards	1
The Jeremy Kyle Show	ITV1	08/06/2012	Sexual orientation discrimination/offence	1
The Matt Lucas Awards	BBC 1	11/05/2012	Religious/Beliefs discrimination/offence	1
The Men Who Made Us Fat	Yesterday	10/06/2012	Materially misleading	1
The Official 100 Bestsellers Of The Year So Far	Viva	08/06/2012	Offensive language	1
The Only Way is Essex	ITV2	13/06/2012	Violence and dangerous behaviour	1
The Only Way is Marbs	ITV2	13/06/2012	Race discrimination/offence	1
The Only Way is Marbs (Trailer)	ITV1	09/06/2012	Scheduling	1
The Only Way is Marbs (Trailer)	ITV1	13/06/2012	Scheduling	2

The Only Way is Marbs (Trailer)	ITV2	10/06/2012	Scheduling	3
The Queen's Diamond Jubilee	ITV1	05/06/2012	Race discrimination/offence	1
The Queen's Diamond Jubilee	ITV1	05/06/2012	Race discrimination/offence	1
The Real Radio Legends	Real Radio North East	30/05/2012	Race discrimination/offence	1
The Secret History of Our Streets	BBC 2	06/06/2012	Outside of remit / other	1
The Secret Millionaire	Channel 4	11/06/2012	Offensive language	1
The Voice UK	BBC 1	26/05/2012	Voting	1
The Wright Stuff	Channel 5	12/06/2012	Due impartiality/bias	1
This Morning	ITV1	23/05/2012	Generally accepted standards	1
This Morning	ITV1	30/05/2012	Generally accepted standards	2
This Morning	ITV1	06/06/2012	Race discrimination/offence	1
Timewatch	BBC 2	10/06/2012	Offensive language	1
Tony Horne	Tower FM 107.4	08/06/2012	Religious/Beliefs discrimination/offence	1
True Love (trailer)	BBC 1	05/06/2012	Sexual material	1
UEFA Champions League 2012	BBC 1 / ITV1	n/a	Outside of remit / other	1
Wimbledon (trailer)	BBC 1	16/06/2012	Generally accepted standards	1
Wonga.com's sponsorship of Channel 5 drama	Channel 5	n/a	Age discrimination/offence	1
Wonga.com's sponsorship of Channel 5 drama	Channel 5	n/a	Generally accepted standards	1
XTSY	XTSY	14/06/2012	Sexual material	1
You Cannot be Serious!	ITV1	09/06/2012	Sexual material	1
You've Been Framed!	ITV1	26/05/2012	Crime	1
You've Been Framed!	ITV2	01/06/2012	Race discrimination/offence	3
You've Been Framed!	ITV2	08/06/2012	Generally accepted standards	1
You've Been Framed!	ITV2	14/06/2012	Generally accepted standards	1
Zoe Ball	BBC Radio 2	06/06/2012	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 21 June and 4 July 2012.

Programme	Broadcaster	Transmission Date
Bhangra Top 10	Panjab Radio	30 March 2012
Big Brother	Channel 5	25 June 2012
Big Brother's Bit on the Side	Channel 5	04 July 2012
Bollywood Box Office	B4U Music	27 May 2012
Checkatrade.com's sponsorship of Cowboy Builders	Channel 5	12 June 2012
Cornwall with Caroline Quentin	ITV1	02 January 2012
Advertisements	DM Digital	22 December 2011
Advertisements	Horse and Country	Various
Advertisements	BuzMusik	14 June 2012
Advertisements	Sony TV	16 May 2012
Cowboy Traders	Channel 5	18 April 2012
Dzimta Valoda	REN TV Baltic	11 November 2011
Hollyoaks	E4	25 June 2012
Last Action Hero	Channel 5	17 June 2012
Love Shaft	Channel 4	Various
POAF Conference II	DM Digital	Various
Psychic Today	Psychic Today	06 May 2012
Psychic Today	Big Deal	06 May 2012
Storm Night	Storm	18 June 2012
Various	CNN	Various
World Business	CNBC International	Various

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/.