

# **Ofcom Broadcast Bulletin**

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## Introduction

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

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

- a) Ofcom's Broadcasting Code ("the Code"), which, can be found at: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>.
- b) the Code on the Scheduling of Television Advertising ("COSTA") which contains rules on how much advertising and teleshopping may be scheduled in programmes, how many breaks are allowed and when they may be taken. COSTA can be found at: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/advert-code/>.
- c) certain sections of the BCAP Code: the UK Code of Broadcast Advertising, which relate to those areas of the BCAP Code for which Ofcom retains regulatory responsibility. These include:
  - the prohibition on 'political' advertising;
  - sponsorship and product placement on television (see Rules 9.13, 9.16 and 9.17 of the Code) and all commercial communications in radio programming (see Rules 10.6 to 10.8 of the Code);
  - 'participation TV' advertising. This includes long-form advertising predicated on premium rate telephone services – most notably chat (including 'adult' chat), 'psychic' readings and dedicated quiz TV (Call TV quiz services). Ofcom is also responsible for regulating gambling, dating and 'message board' material where these are broadcast as advertising<sup>2</sup>.

The BCAP Code is at:

<http://www.bcap.org.uk/Advertising-Codes/Broadcast-HTML.aspx>

- d) other licence conditions which broadcasters must comply with, such as requirements to pay fees and submit information which enables Ofcom to carry out its statutory duties. Further information on television and radio licences can be found at: <http://licensing.ofcom.org.uk/tv-broadcast-licences/> and <http://licensing.ofcom.org.uk/radio-broadcast-licensing/>.

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

<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/>

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

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<sup>1</sup> The relevant legislation is set out in detail in Annex 1 of the Code.

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

## Notice of Sanction

### Playboy TV/Benelux

*For the provision of the ODPSs known as “Demand Adult” and “Playboy TV” from 31 May 2012 to 24 July 2012*

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#### Introduction

The ODPS Demand Adult and Playboy TV (“the Services”) provided by Playboy TV/Benelux Limited were at the time of the breaches set out below notified to ATVOD as providing adult entertainment.

#### Summary of Decision

Between 31 May 2012 and 24 July 2012 users of Demand Adult and Playboy TV were able to access sexually explicit R18 equivalent material, without a system in place that would effectively restrict those under 18 from accessing it. ATVOD, which is responsible for regulating the editorial content of certain ODPSs like Demand Adult and Playboy TV concurrently with Ofcom, originally found the websites in breach of Rule 11 of the ATVOD Rules which states:

Rule 11 “If and on-demand programme service contains material which might seriously impair the physical, mental or moral development of persons under the age of eighteen, the material must be made available in a manner which secures that such persons will not normally see or hear it.”

ATVOD’s Guidance on Rule 11 explains the type of restrictions that a provider should put in place around R18 equivalent content to ensure that minors cannot usually access it. As the Services were not in compliance with Rule 11 during the period in question, ATVOD referred Playboy TV/Benelux Limited to Ofcom for consideration of a sanction on 13 August 2012<sup>1</sup>.

Ofcom decided that the breaches of ATVOD’s Rules were sufficiently serious, repeated and reckless that a financial penalty should be imposed in accordance with Ofcom’s Procedures for the consideration of statutory sanctions arising in the context of On-Demand Programme Services.

In accordance with Ofcom’s Penalty Guidelines, Ofcom decided it was appropriate and proportionate in the circumstances to impose a financial penalty of **£65,000** for Demand Adult for two breaches of ATVOD Rules; and **£35,000** for Playboy TV for one breach of the ATVOD Rules, on Playboy TV/Benelux Limited in respect of these breaches (payable to HM Paymaster General).

The full adjudications are available at:

[http://stakeholders.ofcom.org.uk/binaries/enforcement/vod-services/Demand\\_Adult.pdf](http://stakeholders.ofcom.org.uk/binaries/enforcement/vod-services/Demand_Adult.pdf) and  
[http://stakeholders.ofcom.org.uk/binaries/enforcement/vod-services/Playboy\\_TV\\_Sanction.pdf](http://stakeholders.ofcom.org.uk/binaries/enforcement/vod-services/Playboy_TV_Sanction.pdf).

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<sup>1</sup> Ofcom considers such referrals under its *Procedures for the consideration of statutory sanctions arising in the context of On-Demand Programme Services*, which can be found in full at <http://stakeholders.ofcom.org.uk/binaries/broadcast/tv-ops/vod/sanctions-procedures.pdf>.

## Notice of Sanction

### Strictly Broadband Limited

*For the provision of the ODPSs known as “Strictly Broadband” from 31 May 2012 to 1 August 2012*

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#### Introduction

The ODPS Strictly Broadband provided by Strictly Broadband Limited was at the time of the breaches set out below by notified to ATVOD as providing adult entertainment.

#### Summary of Decision

Between 31 May 2012 and 1 August 2012 users of Strictly Broadband were able to access sexually explicit R18 equivalent material, without a system in place that would effectively restrict those under 18 from accessing it. ATVOD, which is responsible for regulating the editorial content of certain ODPS like Strictly Broadband concurrently with Ofcom, originally found the website in breach of Rule 11 of the ATVOD Rules which states:

Rule 11            “If and on-demand programme service contains material which might seriously impair the physical, mental or moral development of persons under the age of eighteen, the material must be made available in a manner which secures that such persons will not normally see or hear it.”

ATVOD’s Guidance on Rule 11 explains the type of restrictions that a provider should put in place around R18 equivalent content to ensure that minors cannot usually access it. As Strictly Broadband was not in compliance with Rule 11 during the period in question, ATVOD referred Strictly Broadband to Ofcom for consideration of a sanction on 13 August 2012<sup>1</sup>.

Ofcom decided that the breaches of ATVOD’s Rules were sufficiently serious, repeated and reckless that a financial penalty should be imposed in accordance with Ofcom’s Procedures for the consideration of statutory sanctions arising in the context of On-Demand Programme Services.

In accordance with Ofcom’s Penalty Guidelines, Ofcom decided it was appropriate and proportionate in the circumstances to impose a financial penalty of **£60,000** on Strictly Broadband Limited in respect of the breaches of ATVOD’s Rules (payable to HM Paymaster General).

The full adjudication is available at:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/vod-services/Strictly-Broadband.pdf>.

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<sup>1</sup> Ofcom considers such referrals under its *Procedures for the consideration of statutory sanctions arising in the context of On-Demand Programme Services*, which can be found in full at <http://stakeholders.ofcom.org.uk/binaries/broadcast/tv-ops/vod/sanctions-procedures.pdf>.

## Notice of Sanction

### Arab Dream

*Al Mustakillah Television, 9 October 2011, 21:00 and 25 October 2011, 18:00*

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#### Introduction

Al Mustakillah Television is a news, current affairs and general entertainment service broadcast in Arabic. The licence for this service is held by Al Mustakillah Television Limited, a company based in the United Kingdom. The service is not present on any of the United Kingdom's broadcasting platforms. It is aimed at Arabic communities and can be received in North Africa, the Middle East and Europe.

#### Summary of Decision

Ofcom's Finding published on 23 April 2012 in Broadcast Bulletin 204<sup>1</sup> related to the broadcast of two episodes of the programme *Arab Dream* on 9 and 25 October 2011. These two programmes promoted the interests and policies of the Popular Petition for Freedom, Justice and Development ("the Popular Petition") in Tunisia, also known as 'Aridah Chaabia' and 'Al Aridah', in the run up to and immediately after the Tunisian General Election held on 23 October 2012.

Ofcom considered the programmes breached various due impartiality rules in the Code. Ofcom noted the Popular Petition was a manifesto<sup>2</sup> written by Dr Mohamed Elhachmi Hamdi ("Dr Hamdi"), who featured in both of these programmes and was also the Ofcom compliance contact for Al Mustakillah Television. Dr Hamdi is also sole director and majority shareholder of Al Mustakillah (Holdings) Limited, which held the licence for the Al Mustakillah Television at the time of the relevant Code breaches.

Ofcom found that two programmes breached Rules 5.4, 5.5, 6.1, 5.11 and 5.12 of the Broadcasting Code:

- Rule 5.4 Programmes in the services (listed above) must exclude all expressions of the views and opinions of the person providing the service on matters of political and industrial controversy and matters relating to current public policy (unless that person is speaking in a legislative forum or in a court of law). Views and opinions relating to the provision of programme services are also excluded from this requirement.
- Rule 5.5 Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved on the part of

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<sup>1</sup> Broadcast Bulletin 204, 23 April 2012, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb204/obb204.pdf>.

<sup>2</sup> The manifesto was adopted by the political party known as the Party of Progressive Conservatives in Tunisia. Ofcom understands that Dr Hamdi has recently given the Party of Progressive Conservatives permission to formally adopt the name of the Popular Petition Party. Ofcom also understands that Dr Hamdi was Secretary General of the Party of Progressive Conservatives from 4 February 2012 until his resignation on 10 June 2012.

any person providing a service (listed above). This may be achieved within a programme or over a series of programmes taken as a whole.

Rule 5.11 In addition to the rules above, due impartiality must be preserved on matters of major political and industrial controversy and major matters relating to current public policy by the person providing a service (listed above) in each programme or in clearly linked and timely programmes.

Rule 5.12 In dealing with matters of major political and industrial controversy and major matters relating to current public policy an appropriately wide range of significant views must be included and given due weight in each programme or in clearly linked and timely programmes. Views and facts must not be misrepresented.

Rule 6.1 The rules in Section Five, in particular the rules relating to matters of major political or industrial controversy and major matters relating to current public policy, apply to the coverage of elections and referendums.

In accordance with Ofcom's Penalty Guidelines, Ofcom decided it was appropriate and proportionate in the circumstances to impose a financial penalty of **£25,000** on AI Mustakillah Television Limited in respect of the Code breaches (payable to HM Paymaster General).

In taking this Decision Ofcom noted that on 20 November 2012 AI Mustakillah Television Limited surrendered its licence for the AI Mustakillah Television service.

The full adjudication is available at:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/AI-Mustakillah-TV.pdf>.



## Standards cases

### In Breach

#### Programme about the attack on Lieutenant-General Brar

*Sangat TV, 1 October 2012, 19:40*

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#### Introduction

Sangat TV broadcasts religious and general entertainment content in English and Punjabi, primarily directed towards the Sikh community in the UK, and is available on the Sky digital satellite platform. The licence for Sangat TV is held by Regis 1 Limited (“Regis 1” or “the Licensee”).

A complainant alerted Ofcom to a discussion programme on Sangat TV, stating that the programme was “congratulating” the attackers of Lieutenant-General Brar<sup>1</sup>.

The discussion programme concerned an attack that had taken place on 30 September 2012 on Lieutenant-General Brar. It was reported that whilst on a visit to London Lieutenant-General Brar and his wife had been attacked in a central London street by four men. Despite suffering knife injuries, Lieutenant-General Brar survived the attack. At the time of publication of this Decision, two men of Sikh origin<sup>2</sup> had been charged with wounding with intent to cause grievous bodily harm in relation to the attack on Lieutenant-General Brar.

Ofcom noted that this half-hour programme consisted of eight panellists, including a presenter, discussing issues surrounding the attack. It was broadcast the day after the attack on Lieutenant-General Brar. We commissioned a transcript of the programme, translated into English by an independent translator. Having carefully considered the transcript, we noted in the programme the following statements by various panellists:

*“If they [who assaulted Lieutenant-General Brar] were Sikhs, I congratulate them.”*

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*“But I must say that whoever – I call him my brother – has done this [assault on Lieutenant-General Brar] deserves to be congratulated because when I heard this news today, happiness surged in me.”*

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<sup>1</sup> Lieutenant-General Brar had been the commander of the Indian armed forces who led Operation Blue Star, the Indian Army’s controversial military operation against the Golden Temple at Amritsar in June 1984. The Golden Temple is highly revered as a sacred site by the Sikh community, and Operation Blue Star was aimed at removing a number of Sikhs, who were arguing for an independent Sikh homeland, and who were occupying the Golden Temple at that time. It is reported that, according to the Indian Government, 400 people died in the operation, including 87 Indian soldiers. However, these figures are disputed as being too low by some members of the Sikh community.

<sup>2</sup> Barjinder Singh Sangha, a resident of Wolverhampton, and Mandeep Singh Sandhu, a resident of Birmingham.

*“Whatever nation [Lieutenant-General Brar’s attackers] belong to, they will be our diamonds.”*

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*“The General came to London with great pride, and whoever did this [the attack on Lieutenant-General Brar] has done so for the Sikh community and for humanity because the raid on the Golden Temple was not just an attack on the Sikh nation; it was an attack on faith.”*

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*“Ask any young person, whichever faith they are from, any young person whom I know would give up everything they have got to be in their [the assailants’ of Lieutenant-General Brar] shoes, to have done that job [the attack on Lieutenant-General Brar], to be of service; ask any young person, go to any Gurdwara<sup>3</sup>, all young people would aspire to take revenge, to do something for our faith. And I think that those young persons, or those people, from whichever faith, whatever they have done, it is a thankful thing.”*

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*“I fully agree with what [another panellist] said that whoever attacked us has hurt us emotionally and hence become a natural target [of hate]. There is no doubt about it.”*

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*“I have received calls from Canada and they all say that the punishment given to [Lieutenant-General Brar] was the right thing to do. I received between 25 and 30 calls and all of them said that he deserved to be punished.”*

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*“People like him [i.e. Lieutenant-General Brar] are murderers. Those who kill sinners like him are great saints. He has to face the consequences of his sins. He took away so many lives unjustly and so cruelly by using his army. They [the victims] were innocent and they had gone to the Temple to celebrate the advent of our Fifth Guru. Murderers like him will keep receiving their punishment and it has happened in the past.”*

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*“I will repeat what I said earlier that those who did it deserve congratulations. Those brothers, whoever they are, have done a great job because the [Indian] government did not provide justice to us and Wahayguru [God] provided this justice. [Lieutenant-General Brar] has been punished for what he had done and we are very happy.”*

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*“We thank those young men whoever they are and of whatever faith; I wish they remain free despite all the [CCTV] cameras because our nation needs*

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<sup>3</sup> A Gurdwara is a Sikh place of worship.

*those who serve it. My feeling is that the time has come; young people have seen enough; enough of the beatings; and they have seen and read the writings written with the blood of the martyrs. It has affected them and more and more young people are getting ready in our nation and in other nations.”*

Ofcom noted that Sangat TV broadcast an interview with Lieutenant-General Brar a couple of days after 1 October 2012, which appeared to have been recorded sometime before the date of the attack.

Ofcom considered that the above statements raised issues warranting investigation under Rule 3.1 of the Code, which states that:

“Material likely to encourage or incite the commission of crime or to lead to disorder must not be included in television or radio services.”

It is important to note in relation to Rule 3.1 that Ofcom is required to consider the *likely* effect of material included in a service. This is fundamentally different from the test that would apply for bringing a criminal prosecution.

We sought the Licensee’s comments on the broadcast of the statements above under Rule 3.1 of the Code.

## **Response**

The Licensee stated Sangat TV’s “commitment...to providing programming which promotes Peace and Community Cohesion”. Regis 1 added that: “‘Sangat’ means ‘congregation of like minded people’ in the Sikh context. Sangat TV is therefore run ‘by the people for the people’. This is a unique concept which gives immense power to the ‘common man’ and a much desired freedom of speech and expression, which is everyone’s right.”

In relation to Rule 3.1, the Licensee made a number of comments.

Regis 1 said that the various statements made in the programme “were not made by Sangat TV staff/Presenters and are not the views of Sangat Television, its presenters, staff or trustees”. In addition, the Licensee said that the presenter in this case “had briefed all guests about the current situation and also discussed protocols and agreed that they would all send out a message of peace and community cohesion during the live broadcast”.

Following the broadcast of this programme, Regis 1 said that “we realise that the comments of this programme were in non-compliance [with the Code] and we were unable to control the live broadcast”. However, the Licensee said that this case was “a highly exceptional situation”, and when considered “in isolation or out of context may make it look inappropriate”.

Furthermore, Regis 1 said that the interview with Lieutenant-General Brar broadcast on Sangat TV a couple of days after the attack and “community reaction” to the attack on Lieutenant-General Brar provided the “true context of the whole situation [and] represents a very true and fair reflection of the actual state of affairs within the Sikh community”. In this regard, the Licensee made several related points concerning the strength of feeling amongst the Sikh community concerning the attack on Lieutenant-General Brar and the subsequent interview with Lieutenant-General Brar broadcast on Sangat TV:

- Regis 1 said that the Sikh community “has suffered huge losses of every kind while defending their human rights and universal values of mankind against state oppression and state terrorism”. In this regard, the Licensee provided documentation to Ofcom detailing the lobbying activities, undertaken by Kesri Lenar<sup>4</sup> on behalf of the Sikh community. Such lobbying has sought to raise awareness in the UK Parliament about what Regis 1 termed to be “the genocide of Sikhs and the gross violation of Human Rights in India, over several decades”;
- the Licensee also said that: “[T]he Sikh community is extremely unhappy with...Lieutenant General Brar’s...role in the 1984 Indian army attack on the Golden Temple at Amritsar. Sikhs believe that there has been no justice for Sikhs, especially in India, and people like Lieutenant-General Brar are seen as traitors within the Sikh community.” In addition, Regis 1 said that “Sikhs believe that Lieutenant-General Brar, who is seen as the perpetrator in this case (by ordering the attack [on the Golden Temple in 1984]), is an ideal candidate for trial in the international criminal courts”; and
- Regis 1 added that: “Any victim, who suffered, directly or indirectly, as a result of the 1984 genocide, is naturally, even after nearly 30 years, going to be overwhelmed with high emotions and anger when they recall and speak about what happened. This does not mean that they are encouraging or inciting criminal intent or actions.”

The Licensee said that: “Sangat TV is still relatively new and is trying its best to develop and become more established. However, this is not easy for a non-profit making organisation especially within the highly competitive, business minded, commercial and profit making channels that we are competing with.” Furthermore, Regis 1 added that: “As a charity and a very independent media [organisation], we believe that most complaints against are likely to be politically motivated and fabricated in an attempt to de-rail us.”

The Licensee said that it was “taking every step to avoid the repeat of such errors”, and that: the programme would not be repeated; “a special personal interview with [Lieutenant-General] Brar [had been broadcast in the days following the programme] aimed to present...a fair and balanced approach to all of our viewers”; and Regis 1 would introduce “procedures that will ensure that these type of views/comments are never broadcast on Sangat TV”. Such procedures would include:

- educating and training all presenters and reporters using actual cases and practical examples;
- “terminating live programmes immediately in the event of any inappropriate or derogatory comments being suggested or made”;
- minimising the numbers of potentially “controversial” political programmes;
- reviewing editorial policy to take into account issues raised by Ofcom; and

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<sup>4</sup> Kesri Lehar (‘The Wave for Justice’) describes itself as “a grass roots campaign seeking justice for all and to end human rights abuses perpetrated by the Union States Government of India”.

- requiring all presenters and programme contributors to sign a formal agreement stating that they “understand the ground rules and boundaries while on air and that they take full responsibility for any personal comments that they may make and deal with any subsequent consequences that may arise”.

In conclusion, the Licensee said that: “We sincerely feel and understand the need for avoiding any further escalation of these historic ongoing conflicts within the community by ensuring that majority of our programmes are informative, factual and educational.”

## Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives. These include that, under section 319(2)(b), “material likely to encourage or incite the commission of crime or lead to disorder is not included in television or radio services”, which is reflected in Section Three of the Code. Rule 3.1 of the Code gives effect to the standards objective set out in section 319(2)(b) of the Act.

In considering the issues relating to this Decision Ofcom has taken careful account of the broadcaster’s and audience’s right to freedom of expression. This is set out in Article 10 of the European Convention on Human Rights (“the ECHR”). Article 10 provides for the right of freedom of expression, and as the Legislative Background to the Code states this “encompasses the audience’s right to receive creative material, information and ideas without interference” by public authority.

Ofcom noted that the programme consisted of eight panellists, including a presenter, was broadcast the day after the attack on Lieutenant-General Brar, and discussed issues surrounding the attack.

We considered the material against Rule 3.1 of the Code. Rule 3.1 states:

“Material likely to encourage or incite the commission of crime or to lead to disorder must not be included in television or radio services.”

Ofcom is mindful of the long-standing sensitivities within the Sikh community following Operation Bluestar that took place in Amritsar in June 1984<sup>5</sup>. In particular, we are mindful of the ongoing criticism by some in the Sikh community towards Lieutenant-General Brar, and his role in Operation Bluestar.

In considering the material under Rule 3.1 we are required to assess the *likelihood* of it encouraging or inciting the commission of crime or of it leading to some form of disorder, in this case a violent attack against Lieutenant-General Brar, other members of the Indian armed forces who had taken part in Operation Bluestar, or those who supported this military operation. This is fundamentally different from the test that would apply for bringing a criminal prosecution. We therefore considered whether these statements were likely to encourage or incite criminal action against Lieutenant-General Brar or other individuals, because of their involvement with Operation Bluestar; or to lead to disorder. As part of this assessment, we considered whether the caller’s statement amounted to a direct or indirect call to action.

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<sup>5</sup> See Footnote 1.

In considering the programme under Rule 3.1, Ofcom had concerns about a number of statements in the programme, as outlined in the Introduction, which warmly praised the attack on Lieutenant-General Brar, and the individuals who had carried it out.

Some statements specifically saw the attackers as carrying out a positive act on behalf of the Sikh community. For example:

*“The General came to London with great pride, and whoever did this [the attack on Lieutenant-General Brar] has done so for the Sikh community and for humanity because the raid on the Golden temple was not just an attack on the Sikh nation; it was an attack on faith.”*

Some of the panellists stated their view that Lieutenant-General Brar, by virtue of his past actions, deserved to be attacked and congratulated his attackers. For example:

*“I fully agree with what [another panellist] said that whoever attacked us has hurt us emotionally and hence become a natural target [of hate]. There is no doubt about it.”*

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*“I have received calls from Canada and they all say that the punishment given to [Lieutenant-General Brar] was the right thing to do. I received between 25 and 30 calls and all of them said that he deserved to be punished.”*

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*“People like him [i.e. Lieutenant-General Brar] are murderers. Those who kill sinners like him are great saints. He has to face the consequences of his sins. He took away so many lives unjustly and so cruelly by using his army. They [the victims] were innocent and they had gone to the Temple to celebrate the advent of our Fifth Guru. Murderers like him will keep receiving their punishment and it has happened in the past.”*

\*\*\*\*

*“[Lieutenant-General Brar] has been punished for what he had done and we are very happy.”*

We considered that the various statements were likely to encourage or incite the commission of crime. Our reasons for this are set out in the following paragraphs.

We considered that cumulatively these statements were an indirect call to action to members of the Sikh community to take violent action against Lieutenant-General Brar, other members of the Indian armed forces who had taken part in Operation Bluestar, or those who supported this military operation. In this case, the various panellists praised, in unequivocal terms, a serious knife attack on a retired member of the Indian armed forces, and the individuals who had carried out this attack in a London street on an Indian citizen. Given that Sangat TV is especially aimed at members of the Sikh community in the UK, we considered that there was a likelihood that some members of the audience may have seen the panellists' endorsements of the act of violence against Lieutenant-General Brar the previous day as implicit encouragement to repeat such an attack, or to carry out similar attacks against other individuals, such as members of the Indian armed forces connected with Operation Bluestar or supporters of the operation. We considered that the potential for the

panellists' remarks encouraging criminal acts was increased by the various panellists stating that Lieutenant-General Brar was a legitimate target for violence due to his past actions, and that the attackers were performing a positive act on behalf of the Sikh community.

In considering the likelihood of these statements overall encouraging or inciting the commission of crime or leading to disorder, we also carefully considered the context within which these statements were broadcast. We noted that the programme was targeted at the Sikh community in the UK. The Licensee should therefore have been aware of the effect of these statements on a Sikh audience in the UK, in particular those who might be more impressionable and receptive to extreme views like those expressed by the various panellists.

Regis 1 should have been particularly aware of the sensitivities involved in any discussion about the attack on Lieutenant-General Brar, given that the programme was broadcast on the day after the attack. The attack had clearly demonstrated that individuals taking violent and potentially criminal action against Lieutenant-General Brar or others involved in Operation Bluestar in the UK (or elsewhere) was not just a remote possibility. On the day after the attack, emotions in the Sikh community were clearly running very high, and therefore in our view the potential for some members of the audience to interpret the programme content praising the attack as constituting some form of indirect call to action was correspondingly higher. We also considered that the likelihood for the statements to encourage crime was increased by: the fact that the attack on Lieutenant-General Brar took place within the UK; the attack was carried out by members of the Sikh community living in the UK; and Sangat TV broadcasts to members of the UK Sikh community. The possibility of individuals taking similar violent action in revenge for Operation Bluestar, and believing it was justified, in our view was therefore materially stronger.

We also noted that some of the panellists' statements appeared to legitimise young members of the Sikh community empathising with, and potentially replicating, the actions of Lieutenant-General Brar's attackers. For example, we noted the following:

*"Ask any young person, whichever faith they are from, any young person whom I know would give up everything they have got to be in their [the assailants' of Lieutenant-General Brar] shoes, to have done that job [the attack on Lieutenant-General Brar], to be of service; ask any young person, go to any Gurdwara, all young people would aspire to take revenge, to do something for our faith. And I think that those young persons, or those people, from whichever faith, whatever they have done, it is a thankful thing."*

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*"We thank those young men [who attacked Lieutenant-General Brar] whoever they are and of whatever faith; I wish they remain free despite all the [CCTV] cameras because our nation needs those who serve it. My feeling is that the time has come; young people have seen enough; enough of the beatings; and they have seen and read the writings written with the blood of the martyrs. It has affected them and more and more young people are getting ready in our nation and in other nations."*

Whether or not Rule 3.1 is breached relates to a range of factors, but one of the most important is the nature of the audience. In our view, we considered it likely that young and impressionable Sikhs could have been encouraged by statements like those immediately above to commit criminal acts.

We noted that at no point did any of the panellists condemn the attackers for taking the law into their own hands. We did note that within the programme one panellist did urge members of the Sikh community to remain “*calm and peaceful*” (see underlined in quotation below):

*“People like him [i.e. Lieutenant-General Brar] are murderers. Those who kill sinners like him are great saints. He has to face the consequences of his sins. He took away so many lives unjustly and so cruelly by using his army. They [the victims] were innocent and they had gone to the Temple to celebrate the advent of our Fifth Guru. Murderers like him will keep receiving their punishment and it has happened in the past. However, we should not get too emotional and keep things in balance. We need to remain calm and peaceful so that the government here [in the UK] has no reason to check us.”*

We also noted certain other statements by other panellists in the last few minutes of the programme:

*“We need to think rationally and think about everything because we have caused much damage to ourselves...We need to change our way of thinking and act in such a way as to enhance our achievements and reduce our damages.”*

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*“We need to remain patient, peaceful and calm. We have suffered great losses. Our young people here [in the UK] can have their convictions, they are our strength no doubt, they are passionate, but they need to seek guidance from the intellectuals so that they should take those steps which do not cause harm to us”.*

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*“I want the young people to work rationally. We need their strength but to be used wisely. I say to young people, “Do prepare your forces but use them only where they are needed – not unnecessarily.””*

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*“Whatever happened today, do not let it deteriorate the situation. Only those nations survive and develop which analyse events and happenings and see how they can benefit from these. You need to tell the whole world that no one is more peace-loving than Sikhs. The Sikhs seek welfare of the whole world and they pray for it.”*

However, although these comments could be interpreted as advocating calm and restraint among members of the Sikh community, we did not consider these statements provided sufficient balance to counter the fact that the overwhelming majority of the programme contained unequivocal comments that: praised the violent attack on Lieutenant-General Brar by individuals using knives; stated that the attackers had carried out a service to the Sikh community; and implied that it would be understandable if young members of the Sikh community should seek to replicate the attack. In particular, as already pointed out, at no point in the programme did the presenter or any of the other panellists condemn the attack against Lieutenant-General Brar.



In reaching our Decision, we also took into account the Licensee's representations in relation to this programme. First, Regis 1 raised the importance of freedom of expression in the context of Sangat TV being "run "by the people for the people"". In response, as mentioned above, in reaching our Decision in this case, Ofcom has taken careful account of the broadcaster's and audience's right to freedom of expression, as set out in Article 10 of the ECHR. Ofcom recognises that it is essential that broadcasters are able to criticise and hold to account individuals and governments, but in doing so they must comply with the Code.

Second, the Licensee said that the statements "were not made by Sangat TV staff/Presenters and are not the views of Sangat Television, its presenters, staff or trustees". In response, we point out that as the relevant licensee with editorial responsibility for Sangat TV, Regis 1 had ultimate responsibility for the contents of all programmes it broadcasts, irrespective of whether programme contributors were employees of, or otherwise connected to, the channel. It is clear in our view that the Licensee failed to have adequate editorial control of what was being broadcast.

Third, we noted Regis 1's representation that the presenter in this case "had briefed all guests about the current situation and also discussed protocols and agreed that they would all send out a message of peace and community cohesion during the live broadcast". In response, Ofcom considered that despite any pre-transmission briefing that had taken place, the Licensee's compliance procedures were clearly inadequate to ensure that content that was likely to encourage or incite the commission of crime or lead to disorder was not broadcast. Furthermore, we noted Regis 1's admission that "we were unable to control the live broadcast". Ofcom recognises the practical issues for compliance with the Code presented by live programming. However, the Licensee had allowed the material to be broadcast uninterrupted and had provided no evidence to Ofcom to show that it had any proper procedures or systems in place for monitoring live content to ensure compliance with the Code or to take urgent and robust action when required. For instance, in the circumstances: it would have been open to the presenter to challenge or condemn the various comments being made by the panellists, or issue a formal warning to the panellists; or, if the panellists continued to make statements that constituted potential issues under Rule 3.1, the Licensee could have considered terminating the live transmission.

Fourth, we noted Regis 1's representation that the fact that it had broadcast "a special personal interview" with Lieutenant-General Brar in the days following the programme broadcast in this case, coupled with the "community reaction" to the attack on Lieutenant-General Brar, provided the "true context of the whole situation [and] represents a very true and fair reflection of the actual state of affairs within the Sikh community". In particular, the Licensee pointed to: the strong feelings and lobbying activities amongst the UK Sikh community concerning what the Licensee described as the Indian Government's actions against the Sikh community in India (including alleged "genocide") over a number of years; the Sikh community's negative views about the actions of Lieutenant-General Brar during Operation Bluestar; and that an individual "who suffered, directly or indirectly, as a result of the 1984 genocide, is naturally, even after nearly 30 years, going to be overwhelmed with high emotions and anger when they recall and speak about what happened", and that "[t]his does not mean that they are encouraging or inciting criminal intent or actions".

We disagreed with Regis 1's representations on these points. The fact that Lieutenant-General Brar was subsequently featured in an interview on Sangat TV was not sufficient to mitigate the effect of the broadcast of a number of statements in a live broadcast on the day after the attack that, in our view, were likely to have

encouraged or incited the commission of crime, or led to disorder. Further, as mentioned above, we acknowledge the strong feelings that Operation Bluestar, and those connected with it, including Lieutenant-General Brar, prompt among many members of the Sikh community. We also recognise that Sangat TV is a channel aimed at the Sikh community in the UK which will want to provide that community with programming referring to issues about which the Sikh community are concerned. However, the Licensee (responsible at all times for ensuring compliance with the Code), in transmitting material under an Ofcom licence, must ensure that any live discussion it broadcasts in relation to the attack on Lieutenant-General Brar is not featured in such a way that it would be likely to incite or encourage viewers to undertake criminal acts. In this regard, we disagreed with Regis 1's assertion that individuals who might be "overwhelmed with high emotions and anger when they recall and speak about what happened" during Operation Bluestar did not mean that such individuals were "encouraging or inciting criminal intent or actions". Rather, and for the reasons stated above, we considered that various statements in the programme were an indirect call to action to members of the Sikh community to take violent action against Lieutenant-General Brar, other members of the Indian armed forces who had taken part in Operation Bluestar, or those who supported this military operation.

Fifth, we noted the Licensee's representation that "Sangat TV is still relatively new and is trying its best to develop and become more established" as a charity-based channel within a competitive commercial broadcast marketplace. In response, we recognise the practical challenges facing licensees from the not-for-profit sector. However, every Ofcom licensee must comply with the Code. In this context, if necessary and appropriate, licensees should seek professional compliance advice or informal guidance from Ofcom in order to help them meet their obligations under the Code.

Sixth, we noted Regis 1's representation that complaints against Sangat TV are "likely to be politically motivated and fabricated in an attempt to de-rail us". In response, in reaching its Decisions, Ofcom is solely concerned with whether content complies with the Code. We only investigate broadcast content if, following an initial independent assessment by Ofcom, the content complained about raises potential issues under the Code.

In reaching our Decision, we also took account of the Licensee's: admission that the programme did not comply with the Code; undertaking that the programme would not be repeated; and statement that it would introduce various "procedures that will ensure that these type of views/comments are never broadcast on Sangat TV". In this regard, we noted Regis 1 intended to minimise the number of potentially "controversial" political programmes that it would broadcast. Concerning this point, we consider that it is perfectly possible to broadcast – and indeed Ofcom would encourage the broadcast of – challenging programmes that touch on controversial political issues, that nevertheless comply with the Code, and in particular Rule 3.1. We also noted that the Licensee would be requiring all presenters and programme contributors to sign a formal agreement stating that they "take full responsibility for any personal comments that they may make and deal with any subsequent consequences that may arise". In relation to this point, it is a fundamental feature of the Code that individual licensees remain editorially responsible for all content that they broadcast. This includes any comments that individual presenters and programme contributors may make. By making agreements with presenters and/or programme contributors, broadcasters cannot pass their responsibilities to comply with the Code to others.

Despite the steps taken by Regis 1, in light of all of the above considerations, Ofcom reached the view that the broadcaster had broadcast material likely to encourage or to incite the commission of crime or to lead to disorder.

Accordingly, Ofcom found the programme to have breached Rule 3.1 of the Code.

The breach of Rule 3.1 in this case is a serious contravention of the Code. Ofcom views any incident where a licensee has allowed content to be broadcast that is likely to encourage or incite the commission of crime or to lead to disorder as a significant contravention of the Code.

**Ofcom therefore puts the Licensee on notice that we will consider this breach of the Code for the imposition of a statutory sanction.**

**Breach of Rule 3.1**

## In Breach

### Global Khatm-E-Nabuwat Movement

*Takbeer TV, 9 June 2012, 22:00*

### Khatm-E-Nabuwat

*Takbeer TV, 3 July 2012, 22:00*

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#### Introduction

Takbeer TV broadcasts religious and general entertainment content mainly in Urdu, directed towards the Sunni Muslim community, and is available on the Sky satellite platform. The licence for Takbeer TV is held by Takbeer TV Limited (“Takbeer TV” or “the Licensee”).

Ofcom received a complaint about the following two programmes:

- *Global Khatm-E-Nabuwat Movement*, broadcast on 9 June 2012, which was a two and a quarter hour ‘phone-in’ programme, where a four-person panel answered telephone callers’ questions on issues of Islamic theology. The complainant considered that the programme encouraged callers to make “derogatory and extreme” statements about the Ahmadi community<sup>1</sup>; and
- *Khatm-E-Nabuwat*, broadcast on 3 July 2012, which was a two hour programme that showed the proceedings of a symposium<sup>2</sup> on Islamic themes held in Luton. The complainant considered that the programme contained statements that were derogatory about the founder of the Ahmadi movement, Mirza Ghulam Ahmad, and members of the Ahmadi community more generally.

Ofcom commissioned a transcript of both programmes, translated into English by an independent translator. Having carefully considered the transcript, we considered that both the programmes in this case focused on issues of Islamic theology, and as such the programmes were clearly “religious programmes”<sup>3</sup> for the purposes of the rules in Section Four of the Code. We noted the following statements in the programmes:

#### 9 June 2012 programme

Caller: *“My message to people is that these people [Ahmadis] deceive others and they can never be your sincere friends; stay away and save your faith.”*  
Mr Sialvi [the presenter]: *“Thank you.”*

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<sup>1</sup> This is a comparatively small Islamic movement founded by Mirza Ghulam Ahmad Qadiani that grew out of mainstream Islam in the nineteenth century, whose followers believe themselves to be true Muslims. Followers of Mirza Ghulam Ahmad are known as Ahmadis or Qadianis or Ahmadiyya.

<sup>2</sup> The symposium was called the *Aalmi Khatn-E-Nabuwat Symposium*.

<sup>3</sup> Section Four defines a “religious programme” as: “[A] programme which deals with matters of religion as the central subject, or as a significant part, of the programme.”

Caller: *“These Qadianis, you want to bring them to Islam, the disease [of not being a true believer in Islam] has gone deeper into them and you are treating their sickness; Allah will reward you for this. These are naïve people; they do not know what Mirza Ghulam Qadiani was.”*

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Mr Qari [a panellist – to an Ahmadi caller]: *“You look like a sheep but your intentions are monstrous.”*

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Caller: *“I went to see their [the Ahmadi’s] town Rabwah...[O]n one side they have made “paradise” and on the other side they have made “hell”; see how stupid they are that they have made paradise and hell on earth. At least our people have been bestowed with brains by Allah...In Punjabi we say, Mirza [Ghulam Qadiani] died in a shit cubicle.”*

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Caller [reciting the following poem]:  
*“The whole world knows that Mirza [Ghulam Qadiani] died in a shit cubicle. Satan made him follow the wrong path – unfortunate mischief maker. He pretended that he was a prophet – liar one-eyed Mirza.”*

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Mr Qari: *“When Maulvi Muhammad Din Sialvi [the presenter of the programme] raises the voice of truth and justice, on every Saturday at 2:00 pm<sup>4</sup>, it is like putting [a] foot on the tails of all those snakes [Ahmadi’s] and they jump up and try to bite; they pretend that they are Muslims but they are biting at the faith of innocent Muslims.”*

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Mr Qari [in response to an Ahmadi caller who had said to the panellists on the show that God would “grab them”, i.e. punish them]: *“When someone is operated upon, he is given anaesthesia but Allama Sialvi is a surgeon who dissects without giving anaesthesia; when you cut someone’s belly, one has to scream and shout. Now don’t scream but just listen”<sup>5</sup>.*

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Caller: *“Mr Sialvi, your colleague said that you are operating on them [Ahmadi’s] without giving them anaesthesia; I want to say that you are operating on them for piles and so the pain is greater because they are being operated [on] for piles. May Allah reward you well and give you more courage.”*

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<sup>4</sup> Ofcom understands that the presenter of this programme (Maulvi Muhammad Din Sialvi) presents a programme on Takbeer TV at 14:00 on Saturday afternoons.

<sup>5</sup> As discussed later in this Decision, from the context of the programme we interpreted this to mean that Ahmadi beliefs were being likened, by the panellist, to a form of harmful illness or medical condition that required, in the panellist’s view, “dissection” by the presenter, Mr Sialvi.

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Caller: *“The truth has to prevail; false prophets will keep coming until the Day of Judgement; Prophet Muhammad told us that 30 such prophets will come and he told us this so that we should launch jihad against these lying monsters; if we die in this cause, we will be fortunate because Allah does not need us for this purpose; if he wants he can eliminate these Mirzais<sup>6</sup> by using worms and vermin.”*

### 3 July 2012 programme

Mr Sialvi [the presenter]: *“Baba Sahib<sup>7</sup> asked me to read the [Ahmadi] books; I said, “Do not read them; never read them, stay away from them as far as you can... These books are replete with filth.”... The word “Qadiani” is so detestable that you should never even use the word “ex-Qadiani” for the person who has abandoned it. It will hurt that person... We should never use such a detestable word for one who has become a Muslim”.*

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Mr Sialvi [reciting the following poem]:  
*“No one will come from the skies  
To save Muhammad’s religion  
To remove the filth of Qadiani religion  
No one will come from the skies  
To fulfil your love for Muhammad  
You will have to keep your promises of love of Muhammad  
And bring the Muslim nation to one path  
And crush the enemies of the nation  
Let us spill our blood in love of Muhammad  
Sacrifice our homes in love of Muhammad  
Sacrifice our children in love of Muhammad.”*

We considered<sup>8</sup> that the programmes as a whole raised issues warranting investigation under the following rules of the Code:

- Rule 4.1: “Broadcasters must exercise the proper degree of responsibility with respect to the content of programmes which are religious programmes.”
- Rule 4.2: “The religious views and beliefs of those belonging to a particular religion or religious denomination must not be subject to abusive treatment.”

We therefore sought Takbeer TV’s comments on how the material complied with Rules 4.1 and 4.2 of the Code.

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<sup>6</sup> ‘Mirzais’ is a derogatory term for members of the Ahmadi community.

<sup>7</sup> This is a reference to another contributor to this programme.

<sup>8</sup> Ofcom did also consider the content in the two programmes against Rule 3.1 of the Code which states: “Material likely to encourage or incite the commission of crime or lead to disorder must not be included in television or radio services.” After careful assessment, however, Ofcom concluded that the material did not raise issues under Rule 3.1.

## Response

The Licensee expressed its apology “to all those viewers how were offended due to some comments made during these programmes”.

By way of background, Takbeer TV said that its objective is “to help dispel myths and misconceptions about the religion of Islam”. In addition, the programmes in this case were: presented by a “renowned Muslim scholar” (Allama Muhammad Din Sialvi); and were “commissioned to educate and strengthen the religious beliefs of Sunni Muslim families settled in UK” and were “never intended to abuse, offend or incite hatred for any other Muslim sect or community”. In addition, the Licensee said that: “As a public channel, our ethics policy demands that all programme presenters must advocate morality, tolerance and respect for all other religions. Presenters are always advised to condemn and discourage callers who are disrespectful, using morally unacceptable and inappropriate language.”

Takbeer TV also stated that: “[As a broadcaster] we understand that Ofcom recognizes that freedom of expression and freedom of religion enables religious broadcasters to: position their faith, within their programs, as the correct religious path; and to criticize other religions, and different traditions within the same religion.”

### 9 June 2012 programme

The Licensee stated its view that the Ahmadi community “has a fundamental difference of belief whereby according to them “Prophet Mohammad (PBUH) was not the last Prophet of God” but they say there were and will be prophets after him to follow”. Takbeer TV added that for members of the Sunni community “it is [a] very sensitive matter as they believe otherwise”. Therefore, in this programme “emotions ran high and such remarks were made during the ‘Live’ Programme”. The Licensee also said: “[W]e condemn all such remarks and will ask the producer and the presenter of the programme to take appropriate measures and ensure such callers must not be encouraged to pass such unacceptable comments while on air.”

In relation to Rule 4.1, Takbeer TV said that the presenter Mr Sialvi had sought “to soften and contextualise the abuse of comments made by...two callers” due to previous training he had received from Takbeer TV on “how to moderate and deal with any caller making offensive remarks on a live show”. The Licensee said that this training was “pursuant to previous questions that had been raised internally at Takbeer TV expressing concerns as to how to deal with abuse on live shows”.

### 3 July 2012 programme

Takbeer TV said that this programme was not broadcast “from our TV studio but it was produced at another location”<sup>9</sup>. In addition, whilst proclaiming their own religious beliefs and opposing those of the Ahmadi community “the presenter and the speakers became emotional and went over board and made comments they shouldn’t have”. The Licensee said that it condemned “all such remarks and have instructed the producer and the presenter of the programme to take a serious note of the matter and ensure to put controls in place so such content is always evaluated against [the Code]...before it is aired”.

In relation to Rule 4.1, Takbeer TV said that the presenter Mr Sialvi had “helped to somewhat deal with the issue of the abuse”. However, the Licensee: stated its belief

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<sup>9</sup> Ofcom is aware that this programme was broadcast from a public venue in Luton.

that “with the additional stringent measures, such offence can be controlled”; and said that it had decided to put into place more training sessions for presenters who take live calls to “help them to deal with such instances”.

Concerning Rule 4.2, in relation to both programmes, the Licensee asserted that: “[W]hilst we accept our actions may have caused offence to the Qadiyani community...Takbeer TV is not guilty of any “abusive treatment” rendered to the Qadiyani community.” According to the Licensee this was because in both programmes the presenter “did not restrain any response that may have been forthcoming from the Qadiyani community, having said that Takbeer TV does not agree with any of the abuse that has been iterated by the callers on both occasions”.

By way of mitigation, the Licensee asked Ofcom to take into account that Takbeer TV is “a small community channel with very limited resources”. Furthermore, the Licensee said that: “[The programmes] were not based around global abuse of the Qadiyani community. It was only in the exceptional instance of the live calls that the offensive words were iterated.”

In relation to both programmes, Takbeer TV said that it understood, and regretted, that the programmes “may not be fully complying with” the Code. In particular, whilst the Licensee said that the presenter, Mr Sialvi, did attempt to challenge what was being said to some degree, “we understand that it was not enough”. Therefore, the Licensee stated that it was reviewing its monitoring procedures and “implementing more stringent controls”. For example, Takbeer TV said that “to avoid this in future a directive has been issued to all our presenters, preachers and other program contributors to remain more measured in their criticism of other religions to ensure compliance with the” Code. In particular, Takbeer TV said it had instructed programme contributors that when “criticizing other religions or different traditions within the same religion, such criticism must be done in a way so as to accord due respect to other religious communit[ies], and should not spill over into pejorative abuse”.

In addition, the Licensee said that all presenters and producers of the programme would be “briefed and supplied with copies of the relevant Ofcom codes and guidance notes to understand, comply and remain within the limitations of the respective codes applicable to their programmes”. However, Takbeer TV said that: “Clearly, it will be impossible to eliminate such possibilities [i.e. potential breaches of the Code] in absolute terms, but the channel will take its best measures to ensure that all actions [are] taken to avoid such repetition.”

Furthermore, the Licensee outlined various changes to its compliance procedures, as follows:

- the setting up of a programme approval committee (“PAC”), comprised of key programming staff to “ensure that all programmes are best judged and evaluated under Ofcom codes for the compliance, suitability to viewers, content, and editorial control”. Takbeer TV said that “unless the programme approval committee is satisfied, we no longer air any new or old programmes”;
- the introduction of “[f]requent random checks [on programming]...to keep strict editorial control”. The Licensee added that: “If any producer and presenter are found in breach of the codes they are immediately subjected to disciplinary procedures of the company”;



- subject to financial viability, the possible introduction of “live call delay technology” where all live telephone calls into programmes “will be delayed by [a] few seconds before they go on air [which would] enable our producers to stop any inappropriate calls or comments before they are aired”; and
- the suspension of the programme *Khatm-e-Nabuwat* until the programme is “fully re-evaluated” by the PAC. According to Takbeer TV, after this re-evaluation had taken place, the “appropriate presenters...are also prepared to undertake a public apology to the said community for the inappropriate remarks made”. Such an apology would be made at the “same time as the programmes broadcast containing the offence is aired...to ensure that the audience hearing the apology would be the same make up as the one” that heard the offensive comments in the original broadcasts.

In conclusion, the Licensee said: “It has never been our intention as [a] responsible broadcaster to abuse, offend or incite hatred for any other religious belief, community or society.” Furthermore, Takbeer TV said that it had “taken a very serious stance on this issue”; that it had “advised” both the presenter and producer of the programmes “to fully understand, comply and remain within the limitations set out in the Code”; and that it would continue to monitor its procedures “to maintain high standards of programme content”.

## 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. These include that: “[B]roadcasters [must] exercise the proper degree of responsibility with respect to the content of programmes which are religious programmes.” Section 319(6)(b) provides that this standards objective should secure that religious programmes do not involve “any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination”. These duties are reflected in Section Four of the Code.

In considering the issues relating to this Decision Ofcom has taken careful account of the broadcaster’s and audience’s right to freedom of expression. This is set out in Article 10 of the European Convention on Human Rights (“the ECHR”). Article 10 provides for the right of freedom of expression, and as the Legislative Background to the Code states this “encompasses the audience’s right to receive creative material, information and ideas without interference” by public authority.

Ofcom has also had regard to Article 9 of the ECHR. Article 9 states that everyone “has the right to freedom of thought, conscience and religion”. This Article goes on to make clear that freedom to “manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of...health...or for the protection of the rights and freedoms of others”.

Ofcom noted that the programme broadcast on 9 June 2012 consisted of a presenter, Allama Muhammad Din Sialvi, and three other panellists answering questions on religious matters put to the panel by audience members calling in by telephone.

We also noted that the programme broadcast on 3 July 2012 showed the proceedings of a symposium<sup>10</sup> on Islamic themes held in Luton. Contributors to the programme included the various speakers on the symposium panel, including Allama Muhammad Din Sialvi.

As mentioned above, we considered that both these programmes broadcast on a channel aimed at a Muslim audience were “religious programmes”.

We considered the material against Rules 4.1 and 4.2 of the Code.

#### Rule 4.1

Rule 4.1 states:

“Broadcasters must exercise the proper degree of responsibility with respect to the content of programmes which are religious programmes.”

Section Four of the Code sets out that a “religious programme” is one “which deals with matters of religion as the central subject, or as a significant part, of the programme”. In Ofcom’s opinion this programme was clearly a religious programme because it consisted of a presenter answering viewers’ questions about various issues related to Islamic theology and Islamic teachings.

Broadcasters can transmit programmes taking a critical view of a particular religion or broadcasting opinions that some viewers may find offensive, provided they do so with a proper degree of responsibility.

The various statements about the Ahmadi community made in these programmes set out above were made in the context of religious programmes made for a predominantly Muslim audience. The Code does not seek to prevent followers of one religion from being able to express views rejecting or criticising people of differing views or beliefs. However, Rule 4.1 does require the Licensee to exercise the proper degree of responsibility when, for example, hyperbole or more extreme views are broadcast in religious programmes which could be deemed offensive to people in the audience who hold different views and beliefs.

We noted from the Licensee’s representations that it understood, and regretted, that the programmes “may not be fully complying with” Rule 4.1 of the Code. We also noted Takbeer TV’s representations that as a result of training that he received, the presenter, Mr Sialvi, had sought to “soften and contextualise the abuse of comments made by...two callers” in the programme broadcast on 9 June 2012. However, we considered that these interventions were insufficient to ensure compliance with the Code, as Mr Sialvi failed to challenge or otherwise soften a number of other abusive statements, outlined in the Introduction above. We noted that the Licensee accepted that whilst Mr Sialvi did attempt to challenge what was being said to some extent “we [the Licensee] understand that it was not enough”. Further, we noted that Takbeer TV said that in relation to the programme broadcast on 3 July 2012, despite Mr Sialvi’s training, “additional stringent measures” would be necessary to ensure that “such offence can be controlled”. In any case, we considered in relation to the programme broadcast on 3 July 2012 that it was the presenter Mr Sialvi himself, rather than members of the audience, who had been responsible for making the problematic statements outlined in the Introduction above.

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<sup>10</sup> See Footnote 2.

We were concerned, therefore, that in the context of the requirements of Rule 4.1 Takbeer TV did not provide Ofcom with sufficient evidence of relevant steps it had taken demonstrating that it had exercised the proper degree of responsibility with respect to the content of the programme in this case. In Ofcom's opinion, the Licensee – like all licensees – when broadcasting religious programmes must have robust systems in place to ensure that its output complies with the Code.

For example, in relation to the programme broadcast on 9 June 2012, the Licensee suggested that the fact that the programme was broadcast live was some form of defence or mitigation for the breach of the Code. Ofcom recognises that live broadcasting does pose challenges for effective compliance. These challenges, however, can be overcome through a proper risk assessment and by taking appropriate measures before and during a broadcast. In this case Takbeer TV did not provide any specific details to Ofcom of the procedures it had in place in June and early July 2012 to ensure that its live programming – and in particular this broadcast – complied with the Code. With live broadcasting the Licensee needed to have robust compliance arrangements in place to monitor the output as it was transmitted and take swift action if necessary. In particular in relation to the programme broadcast on 3 July 2012, Takbeer TV did not sufficiently demonstrate what compliance procedures it had in place to ensure programmes produced at locations away from the Licensee's studios complied with the Code.

In reaching our Decision, we took into account the Licensee's representation that it was reviewing its monitoring procedures and "implementing more stringent controls", including the establishment of the PAC and the possible introduction of "live call delay technology". However, given the above, we considered that the broadcaster did not exercise the proper degree of responsibility with respect to the content of these two religious programmes. The programmes were, therefore, in breach of Rule 4.1 of the Code.

#### Rule 4.2

Rule 4.2 states:

"The religious views and beliefs of those belonging to a particular religion or religious denomination must not be subject to abusive treatment."

The Code does not seek to prevent followers of one religion from being able to express views rejecting or criticising other religions in any way, but broadcasters must ensure religious programmes comply with the Code and specifically the requirements for religious programmes set out in Section Four. The Code has been drafted in the light of the Human Rights Act 1998 and the ECHR. In particular, the right to freedom of expression encompasses the audience's right to receive material, information and ideas without interference as well as the right to freedom of thought, conscience and religion and the right to enjoyment of human rights without discrimination on grounds such as religion.

The Ahmadiyya movement and Ahmadi Muslims were clearly a legitimate topic for theological discussion in a religious programme aimed at members of the Muslim community. As such, within this editorial context, it would be legitimate to discuss the Ahmadiyya movement and critique the differences in their teachings on prophethood compared to mainstream Islam. Such an approach is rooted in the broadcaster's and the audience's right to freedom of expression and their right to freedom of religion.

However, Rule 4.2 requires that if religious programmes engage in this sort of debate involving the Ahmadiyya movement and Ahmadi Muslims the material broadcast should not include comments and references which might reasonably be considered to subject the religious views and beliefs of the Ahmadiyya religion to abusive treatment. Ofcom considers “abusive treatment” in religious programmes under Rule 4.2 to include statements which revile, attack or vehemently express condemnation towards another religion without sufficient justification by the context. The Code does not prohibit legitimate criticism of any religion or its founder, but such criticism must not spill over into pejorative abuse.

We considered that during the two programmes, there were a number of statements that were abusive of the religious views and beliefs of Ahmadi Muslims.

### *9 June 2012 programme*

In this programme, members of the Ahmadi community were described as, for example: having a “disease” and “sickness” which needed “treating”; having “monstrous” intentions; being “lying monsters”; and worthy of elimination by Allah “by using worms and vermin”. We considered that these statements amounted to abusive treatment of the Ahmadiyya religion and the Ahmadi community more generally.

In addition, in the programme broadcast on 9 June 2012, we noted that one of the panellists, Mr Qari, in response to an Ahmadi caller who had criticised the panellists for criticising the Ahmadi community, compared the presenter Mr Sialvi in his treatment of the Ahmadi community to “a surgeon who dissects without giving anaesthesia”. The full comment was as follows:

*“When someone is operated upon, he is given anaesthesia but Allama Sialvi is a surgeon who dissects without giving anaesthesia; when you cut someone’s belly, one has to scream and shout. Now don’t scream but just listen.”*

From the context of the programme we interpreted this to mean that Ahmadi beliefs were being likened, by the panellist, to a form of harmful illness or medical condition that required, in the panellist’s view, “dissection” by Mr Sialvi. We noted that this theme was further picked up by another caller who said later in the programme:

*“Mr Sialvi, your colleague said that you are operating on them [Ahmadis] without giving them anaesthesia; I want to say that you are operating on them for piles and so the pain is greater because they are being operated [on] for piles. May Allah reward you well and give you more courage.”*

We considered that in this comment the caller was equating Ahmadi beliefs to “piles”. In our view, by likening Ahmadi beliefs to a form of embarrassing medical condition causing pain which needs to be removed from the body, these statements were highly abusive to members of the Ahmadi community and their beliefs.

We also had concerns about comments from two callers to the 9 June 2012 programme, who referred to the Ahmadi founder, Mirza Ghulam Ahmad Qadiani, as having “died in a shit cubicle”<sup>11</sup>. The Code, and in particular Section Four of the Code relating to religious programmes, does not prohibit criticism about the founder of any

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<sup>11</sup> It is Ofcom’s understanding that anti-Ahmadi preachers have advanced the proposition that Mirza Ghulam Ahmad Qadiani died in a lavatory.

religion, or any other venerated persons associated with particular religions. However, the Code does not permit such sustained, repeated and derogatory references.

We noted that although both callers referred to Mirza Ghulum Ahmad Qadiani as having “*died in a shit cubicle*”, the presenter Mr Sialvi did attempt to challenge what was being said to some degree. For example, we noted the following exchange:

Caller: *“In Punjabi we say, Mirza died in a shit cubicle.”*

Mr. Sialvi: *“Let it go; we know what happened but when you say something, say it in a nice manner.”*

This was followed soon after by the following exchange between another caller and Mr Sialvi:

Caller: *“The whole world knows that Mirza died in a shit cubicle.”*

Mr Sialvi: *“Instead of condemning Mirza Ghulum Ahmad, if you praise Prophet Mohammed, it will be better for us.”*

Caller: *“But he must be condemned. Please listen.”*

Mr. Sialvi: *“Okay.”*

Caller: *“The whole world knows that Mirza died in a shit cubicle. Satan made him follow the wrong path – unfortunate mischief maker. He pretended that he was a prophet...”*

Mr Sialvi: *“Thank you but I have told you before as well not to recite such verses or say such things: we do not want to spread hatred but expose the truth and raise awareness among Muslim brothers.”*

We considered that Mr Sialvi’s remarks helped soften and contextualise the abusive comments being made by the two callers in question to a limited extent. However, we noted that these were the only instances where the presenter sought to challenge gratuitously abusive remarks being made by callers or contributors to the programme. For example, Mr Sialvi did not rebuke or otherwise challenge the panellist, Mr Qari, in any way, when the latter variously described the Ahmadis as: having “*monstrous*” intentions; “*snakes*”; and, as explained above, having beliefs that require a “*surgeon who dissects without giving anaesthesia*”. In Ofcom’s view, if the presenter, Mr Sialvi, in the programme broadcast on 9 June 2012, had robustly challenged the comments being made by the panellist, Mr Qari, and put the discussion into a wider context in a more fair and effective manner, he could have contributed more towards lessening the impact of the abusive comments made by Mr Qari.

In reaching our Decision, we took into account the Licensee’s various representations in relation to this programme. Firstly, Takbeer TV said that the difference in religious beliefs between the Ahmadi community and members of the Sunni community is a “very sensitive matter as they believe otherwise” and that as a consequence “emotions ran high”. Ofcom acknowledges the theological disputes which exist between different religions, or between different traditions within the same religion. We also acknowledge that the Code does not prohibit the members of

one religious tradition from criticising the beliefs of another religious tradition. However, theological differences do not permit broadcasters to broadcast statements that subject particular religions to abusive treatment.

Further, we noted the Licensee's representation that the statements were made in the context of a live broadcast. As already pointed out, Takbeer TV has provided no evidence to Ofcom to show that it had any appropriate procedures or systems in place for monitoring live content to ensure compliance with the Code or to take appropriate action when required.

Taking all the above into consideration, we considered that the 9 June programme subjected members of the Ahmadi community and their beliefs to abusive treatment.

### *3 July programme*

In the programme broadcast on 3 July 2012, we noted that the presenter, Mr Sialvi, stated that Ahmadi holy books were: "*replete with filth*"; and that "*the word "Qadiani" is...detestable*". He also described the Ahmadi religion as "*filth*". We considered that these statements amounted to abusive treatment of the Ahmadiyya religion and the Ahmadi community more generally.

In reaching our Decision, we took into account the Licensee's representations in relation to this programme. Firstly, Takbeer TV said that his particular programme was not broadcast "from our TV studio but it was produced at another location [Luton]". In response Ofcom points out that the Licensee had editorial responsibility for this programme. The fact that it was broadcast away from its studios did not remove or lessen Takbeer TV's responsibilities under the Code. All broadcasters should have systems in place to ensure compliance with the Code, irrespective of where programming is produced.

The Licensee said that whilst proclaiming their own religious beliefs and opposing those of the Ahmadi community "the presenter and the speakers became emotional and went over board and made comments they shouldn't have". As noted above, we are conscious of the strongly held beliefs that are held by different religious traditions which often manifest themselves in debates about the differences between such groups. However, such theological differences do not justify broadcasters transmitting statements that amount to abusive treatment of different religious groups.

We also took account of various representations made by Takbeer TV about both programmes. Firstly, we noted the Licensee's representation that, whilst it accepted that "our actions may have caused offence to the Qadiyani community...Takbeer TV is not guilty of any "abusive treatment" rendered to the Qadiyani community". The Licensee said that this was because in both programmes the presenter "did not restrain any response that may have been forthcoming from the Qadiyani community, having said that Takbeer TV does not agree with any of the abuse that has been iterated by the callers on both occasions". We disagreed with this assertion. For example, in relation to the programme broadcast on 9 June 2012, by allowing callers from the Ahmadi community to contact the programme, this was not in itself sufficient to ensure compliance with Rule 4.2. Also, as mentioned above, there were a number of abusive statements about Ahmadis and their religious leader that were not challenged, softened or contextualised in any way. Furthermore, the programme broadcast on 3 July 2012 was not a 'phone-in' programme, and in any case the statements made by the presenter, Mr Sialvi, that were abusive to the Ahmadi community were not challenged, softened or contextualised in any way.

Second, we noted the Licensee's request that Ofcom should take into account that Takbeer TV is "a small community channel with very limited resources", by way of mitigation. In response, we recognise the practical compliance challenges facing licensees from the community or not-for-profit sector. However, every Ofcom licensee must comply with the Code. In this context, it might be necessary and appropriate for licensees to seek professional compliance advice or informal (and free) guidance from Ofcom in order to help them meet their obligations under the Code.

Third, we took into account Takbeer TV's representation that: "[The programmes] were not based around global abuse of the Qadiyani community. It was only in the exceptional instance of the live calls that the offensive words were iterated." We interpreted this to mean that the abusive statements identified by Ofcom only constituted a small amount of the running time of the two programmes in this case, and only arose in the context of live telephone calls taken from members of the audience. In response to this point, the fact that the abusive statements identified in this case made up only a minor proportion of the two programmes did not mean that Rule 4.2 was complied with. Further, the abusive statements identified in the programme broadcast on 3 July 2012 did not result from live telephone calls from members of the audience, but were made by the presenter of the programme, Mr Sialvi.

Fourth, we noted the Licensee's argument that "clearly, it will be impossible to eliminate" the possibility of potential breaches of the Code. In response, Ofcom is of the view that it is a matter for each Licensee as to what level and type of compliance arrangements it has in place to ensure compliance with the Code. But all licensees must have appropriate arrangements in place at all times to ensure the Code is complied with. In deciding whether or not the Code has been breached in any particular case through a licensee broadcasting certain content, Ofcom will normally take account of the adequacy of the compliance arrangements. In relation to the present case, we considered it clear that the compliance arrangements for Takbeer TV were seriously deficient, and that it is incumbent on the Licensee to take urgent and meaningful steps to ensure as far as practicable that it does not broadcast content which is gratuitously abusive about the Ahmadi community again.

Fifth, we also took into account Takbeer TV's representation that "appropriate presenters" of *Khatm-e-Nabuwat* would be "prepared to undertake a public apology" after the programme had been "fully re-evaluated" by the PAC. This was so as to "ensure that the audience hearing the apology would be the same make up as the one" that heard the offensive comments in the original broadcasts. In response, although it would be an editorial matter for the broadcaster as to whether it should issue a public apology, and in what form, we considered that in order to mitigate any potential offence to the audience, there was nothing preventing the Licensee issuing a public apology prior to the "re-evaluation" of *Khatm-e-Nabuwat* by the PAC.

In reaching our Decision, we took into account: Takbeer TV's apology; the steps it was taking to "ensure...callers must not be encouraged to pass such unacceptable comments while on air"; the fact it had "instructed the producer and the presenter of the programme to take a serious note of the matter and ensure to put controls in place so such content is always evaluated against [the Code]...before it is aired"; and the Licensee's statement that it understood, and regretted, that the programmes "may not be fully complying with" Rule 4.2. In terms of specific steps to improve compliance, we also noted that Takbeer TV said that "to avoid this [problem] in future a directive has been issued to all our presenters, preachers and other programme contributors to remain more measured in their criticism of other religions to ensure

compliance” with the Code. In addition, other steps taken by the Licensee included the establishment of the PAC and the possible introduction of “live call delay technology”.

However, taking all the above into consideration, we considered that both the programmes subjected members of the Ahmadi community and their beliefs to abusive treatment and therefore were in breach of Rule 4.2 of the Code.

### Conclusion

In recording the breaches of Rule 4.2 in this Finding, we noted that this case followed earlier breaches of Rule 4.2 recorded on 18 June 2011<sup>12</sup> against the Licensee<sup>13</sup>. These earlier breaches concerned five editions of the programme *Tafheem Al Masyal*, broadcast between October 2010 and March 2011, which also contained a number of derogatory and abusive references to the religious views and beliefs of the Ahmadi community.

In Ofcom’s Broadcast Bulletin 184, published on 20 June 2011, we stated that Ofcom had been sufficiently concerned about the abusive treatment of Ahmadis on Takbeer TV that we had asked the Licensee to attend a meeting to explain its compliance arrangements. At this meeting in April 2011 Takbeer TV had apologised for any offence that had been caused by the programmes broadcast between October 2010 and March 2011. The broadcaster outlined the various improvements it had put in place in relation to its compliance processes. In addition, it provided Ofcom with a copy of a Code of Conduct that had been signed by Takbeer TV and a number of other Muslim television broadcasters. Compliance with this Code of Conduct was designed to ensure that the broadcasters involved would avoid gratuitous abuse of Ahmadis or adherents of other religions, and so help compliance with the Code. Further, in Broadcast Bulletin 184 we put the Licensee on notice that any further breaches of the Code in this area would lead to Ofcom considering a statutory sanction.

Given this background, we are greatly concerned that Takbeer TV has broadcast further programmes including content that constituted abusive treatment of the Ahmadi community, despite specific assurances given directly to Ofcom by the Licensee that it had improved its compliance processes to address Ofcom’s concerns.

In light of these previous assurances and Code breaches, Ofcom regards the current breaches of Rules 4.1 and 4.2 of the Code as serious.

**Ofcom therefore puts the Licensee on notice that we will consider these breaches for the imposition of a statutory sanction.**

### **Breaches of Rules 4.1 and 4.2**

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<sup>12</sup> See Broadcast Bulletin 184, 20 June 2011, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb184/obb184.pdf>.

<sup>13</sup> In Broadcast Bulletin 184, the breaches recorded in respect of Takbeer TV were against Channel S World Limited. In reaching its Decision in the present case, Ofcom noted that Channel S World Limited changed its name to Takbeer TV Limited in 2010. However, the Licensee in the earlier case and the present case are the same corporate entity: Company No. 05398413.



## In Breach

### Advertisement by Mayor of Tower Hamlets

*Channel S, ATN Bangla, Bangla TV, Channel i, NTV, 1 to 14 January 2012, various dates and times*

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#### Introduction

Ofcom received a complaint about an advertisement that featured Lutfur Rahman, the Mayor of the London borough of Tower Hamlets, and stated his aims for improving housing in the borough.

Ofcom has a statutory duty, under section 319(2)(g) of the Communications Act 2003 (“the Act”), to secure the standards objective “that advertising that contravenes the prohibition on political advertising set out in section 321(2) is not included in television or radio services”.

Political advertising is prohibited on radio and television under the terms of section 321(2) and 321(3) of the Act and, accordingly, Section 7 of the BCAP Code: the UK Code of Broadcast Advertising (“the BCAP Code”). Section 321(7) contains an exemption for advertising of a public service nature placed by or on behalf of a government department.

The relevant extracts of the Act and the BCAP Code are included at the end of this Finding.

For most matters, the BCAP Code is enforced by the Advertising Standards Authority (“the ASA”). Ofcom, however, remains responsible, under the terms of a Memorandum of Understanding between Ofcom and the ASA, for enforcing the rules on “political” advertising.

The advertisement was broadcast on the following five television channels (together “the Licensees”):

- Channel S, licensed, at the time of the broadcasts, to Channel S Global Limited (“Channel S”);
- NTV, licensed to Runners TV Limited (“Runners TV”);
- Channel i, licensed to Prime Bangla Limited (“Prime Bangla”);
- Bangla TV, licensed to Bangla TV (UK) Limited (“Bangla TV”); and
- ATN Bangla, licensed to ATN Bangla UK Limited (“ATN Bangla”).

The advertisement was 30 seconds long. It displayed a series of still photographs of local authority housing, demolition and construction work, and the interior of a council flat. The Mayor of Tower Hamlets, Lutfur Rahman, was shown twice, once in the cab of a mechanical digger and later with a couple inspecting a flat.

Accompanying these images was text saying:

*“Mayor of Tower Hamlets – Tower Hamlets, Let's make it happen – Tower Hamlets – Bringing council homes up to decent homes standard – 4000 new homes by 2014/15 – Better homes for Tower Hamlets – 9000 homes to be brought up to a decent standard by 2015 – Call: 020 7364 5020  
www.towerhamlets.gov.uk”*

Throughout the advertisement two Tower Hamlets council logos and an image of Lutfur Rahman's signature, underneath the words “Mayor of Tower Hamlets”, were also displayed.

The audio of the advertisement was in Bengali. As translated it said:

*“Tower Hamlets. Many new homes are being constructed. Old homes are being brought up to decent standards. In 2014/2015 4000 new homes will be built. In 2015 9000 homes will be a decent standard. Mayor Lutfur Rahman's objective is to improve the housing sector and overcrowding problems. He wants to ensure the entire borough's council tenants are living in decent conditions. For any enquiries please phone 0207 364 5020.”*

The advertisement ran on various dates on the different channels within the period 1 January 2012 to 14 January 2012. The advertisement was booked to be transmitted on average 15 times each day it was broadcast on each of the five channels.

Ofcom considered that the advertisement raised issues warranting investigation under the Act and under section 7 the BCAP Code.

We therefore sought comments from the Licensees as to how the advertisement had complied with the relevant rules. We also sought comments via the Licensees from the office of the Mayor of Tower Hamlets.

## **Responses**

### Channel S and Bangla TV

Channel S and Bangla TV made separate, but similar initial submissions.

These licensees explained, by way of background, that the position of Mayor of Tower Hamlets is that of an “Executive Mayor” directly elected by residents of Tower Hamlets. Directly elected mayors, they said, are council leaders who have been directly elected by the people that live in the local authority. This is in contrast to the “leader and cabinet” model in which the leader of the council is chosen by other elected councillors, the most common form of local government in the UK.

Channel S and Bangla TV stressed that they always seek to comply with Ofcom rules. They did not believe that the advertisement breached Section 321 of the Act or the corresponding rules in the BCAP Code. In that respect they each said:

*“The advert has been placed on behalf of the council to promote its services and policies. Housing is an important issue in this borough and the council has an obligation to let the public know about forthcoming development and ongoing work to address housing shortages and the quality of housing accommodation and as a community channel Channel S/Bangla TV has an obligation to its viewers to facilitate this process.”*

Channel S and Bangla TV also pointed out that there were no pending elections in the borough at the time of broadcast, and that, were it relevant, the period of 'purdah' on publicity for the London Mayoral elections in 2012 did not begin until late March 2012.

Generally, Channel S and Bangla TV said the advertisement did not seek support for any political party.

Channel S and Bangla TV said that the advertisement had been carried "in all Bengali electronic media as well as published in both mainstream and ethnic print media in the borough".

Subsequently, Channel S and Bangla TV made differing submissions to Ofcom.

### Channel S

Channel S told us that it did not believe the item to be advertising. It said that it had neither contracted with the office of the Mayor of Tower Hamlets nor accepted money to transmit the material. Channel S said that it regarded the item as "part of local Bengali community news" and as a "gap filler". Channel S did accept, however, that the "gap filler" had not been identified as such.

### Bangla TV

Bangla TV's later submissions referred to Tower Hamlets' own submissions (see below) and argued that the Mayor's Office had justified its "statutory right" to place public service advertising and a statutory obligation to "keep the residents informed".

We were told by Bangla TV that Ofcom had failed to understand the role of the Mayor as being "the sole part of the Executive" and under a duty to publish policy. The Mayor is a directly elected representative, Bangla TV said, "and he will be at the forefront of any advertisement or publicity, as he is the one who is solely accountable to the public".

Bangla TV pointed out that Tower Hamlets has the majority population of Bangladeshis in the UK and said that it was its obligation to cover issues directly affecting them.

Finally, Bangla TV said, it believed that Ofcom was receiving complaints from opponents of the Mayor and from competitor broadcasters.

### Runners TV (NTV)

Runners TV addressed the particular sections of the Act in turn.

In respect of the general objective under section 319(2)(g) for Ofcom to exclude "political" advertising from licensed services, Runners TV said that the advertisement was "taken for broadcast as a community message" and was not considered by Runners TV to be of a political nature.

Runners TV told us that the advertisement was transmitted in the interests of the residents of the Tower Hamlets area with the intention of promoting the service provided by Tower Hamlets housing. This was done, Runners TV said, without any political interest or motivation. Even though the Mayor of Tower Hamlets appeared in

the advertisement he had no direct interest in promoting himself for any political reasons.

On s.321(2)(a) – the prohibition on advertising by or on behalf of a body whose objects are wholly or mainly of a political nature – Runners TV told us that the advertisement was on behalf of the London Borough of Tower Hamlets with a view to promoting a public service message. The advertisement was not “passed on from” the Mayor of Tower Hamlets himself and, Runners TV argued, the motivation behind the advertising was therefore not of a political nature.

Further, on s.321(b) – the prohibition on advertising directed towards a political end – Runners TV said that Tower Hamlets Council was publicising the housing services provided to residents within the area; images of Mayor Rahman and his signature were used in that context simply because he supported the services’ promotion and not with any political end in mind. In this respect, Runners TV said, a comparison can be made to the London Mayor backing the London Olympics 2012.

In respect of s.321(3)(a) – influencing the outcome of elections or referendums – we were told by Runners TV that the advertisement contained nothing relating to any future elections or referendums in the United Kingdom or elsewhere. It reiterated its view that the advertisement was a public service message without political motive.

In relation to s.321(3)(g) – promoting the interests of a party or other group of persons organised for political ends – Runners TV argued that the advertisement did not promote any political individual or party interest or put forward any message that sought to influence the political choices of the community in Tower Hamlets. Runners TV again stressed that it believed the advertisement to be a public service message and not one with political effect.

As to each of the criteria given in 321(3)(b) to (f), Runners TV said variously that the advertisement: contained no reference to changing or influencing the law but offered residents information and a means of obtaining more; referred to existing council policy and therefore was not seeking to influence any local government policy or practice, and featured the Mayor only as a supporter of that established policy; sought to inform residents by explaining the local authority’s plans and offering an avenue for public enquiries; did not seek to influence those carrying out public functions; and did not address matters of controversy.

Runners TV further explained that the advertising was booked directly by the London Borough of Tower Hamlets’ media/communications department. Runners TV stressed that its compliance team had checked the advertisement and felt strongly that it was “in the interest of the community” rather than being a politically motivated message: there were no symbols of or references to political parties or their slogans or any comments from the Mayor of Tower Hamlets. Based on this judgement, Runners TV said, the advertisement was transmitted.

#### Prime Bangla (Channel i)

Prime Bangla told us that it viewed the advertisement as a “community message” rather than a political advertisement.

It said that the advertisement booking had been made by Tower Hamlets Council, not by the Mayor, and that it contained no details of any political associations or reference to any forthcoming election. These facts also led Prime Bangla to conclude that the item was not political in nature.

Prime Bangla argued that the advertisement raised no issues under any of the criteria listed as objects of a political nature and political ends within s.321(3) of the Act.

Prime Bangla confirmed that its compliance team had reviewed the advertisement and concluded that it was a “public interest message”. The inclusion of the Mayor’s image and signature was viewed as being an indication that Mr Rahman backed the “housing service promotion” not for political reasons but for the purpose of benefit to the local community, in the same way that the Mayor of London backs the Olympics.

Further, Prime Bangla summarised its submissions under a general defence that the advertisement fell within the Act’s exception for advertising of a public service nature placed by or on behalf of a government department. Prime Bangla said:

- the advertisement was in no way of a political nature: the advertisement did not promote any political party or person. The Mayor supported the publicised housing scheme but the advertisement did not promote him as a political person;
- the advertisement did not give any political promotion to any other party or person;
- in normal practice local government can publicize its activities;
- the advertisement was not directed towards any political end;
- the advertisement had no connection with any industrial dispute;
- the advertisement served the residents of Tower Hamlets; and
- the advertisement was of a public service nature.

Prime Bangla also drew attention to the fact that the advertisement was issued by Tower Hamlets which is a local government department.

Prime Bangla reiterated its commitment to strict adherence to Ofcom rules.

Finally, Prime Bangla stated that if Ofcom held the advertising to have breached the BCAP Code it offered a sincere apology for any mistake it may have made and wished to assure Ofcom that it had no intention to promote any political party or individual through the advertisement.

### ATN Bangla

ATN Bangla understood the relevant rules to exempt advertising “whose principal function is to influence voters in a local, regional, national or international election or referendum”, but that “[advertising] by central or local Government, as distinct from those concerning party policy, [is] subject to the Code”. [These quotes are taken from the CAP Code, the self-regulatory code for non-broadcast advertising and do not apply to broadcast advertising which is governed by the BCAP Code.]

ATN Bangla commented further that the advertisement was not placed by a political party and was not directed towards a political end. It said that the advertisement was placed by the London Borough of Tower Hamlets, therefore a local government

advertiser. The advertisement was intended to create awareness amongst the tenants of Tower Hamlets and was not “wholly and mainly” of a political nature.

We were told that the advertisement was thoroughly assessed by a senior member of the staff of ATN Bangla, who gave due consideration to the BCAP Code [see the comment in square brackets two paragraphs above about the CAP and BCAP codes]. The advertisement was judged to be promoting services provided by the London Borough of Tower Hamlets and thus was deemed to be in compliance with the sections of the BCAP Code cited [see the comment in square brackets two paragraphs above about the CAP and BCAP codes].

Further, ATN Bangla told us that it is committed to Ofcom compliance and had thoroughly examined the content of the above advertisement to ensure Ofcom compliance. Its ultimate decision was influenced by the legal interpretation of the London borough of Tower Hamlets. ATN Bangla had relied on Tower Hamlets because “[it was] given the assurance that the Council’s Legal Team, which consists of qualified lawyers, interpreted the relevant sections of the Communications Act 2003”. In that respect ATN Bangla drew Ofcom’s attention to the submissions made by the advertiser.

ATN Bangla offered its assurance that it has every intention to cooperate with the Ofcom Code and does its “level best to ensure compliance, but in the case of Tower Hamlets Council we were inclined to rely on its interpretation because it is a statutory body providing services to local people”.

Finally, ATN Bangla said that it believed public awareness to be the core message of the advertisement.

#### Advertiser’s response

Each of the Licensees was asked to obtain the advertiser’s comments. The comments were identical in each case.

The advertiser’s comments were supplied by Tower Hamlets’ Head of Communications (“Tower Hamlets” or “the advertiser”).

The advertiser said that the advertisement had been placed on behalf of the council to promote its services and policies. It said that housing is an important issue in the borough and that the council was keen to let the public know about “forthcoming development and ongoing work to address housing shortage and the quality of housing accommodation”.

Further, Tower Hamlets stressed that the council adheres to statutory guidelines published by the government in March 2011: The Code of Recommended Practice on Local Authority Publicity (“the Local Authority Code”). Tower Hamlets said that the Local Authority Code is issued under section 4 of the Local Government Act 1986 and provides the framework within which all council publicity should operate. The advertiser pointed out that Part 3 of the Communications Act 2003 [which contains the relevant provisions prohibiting ‘political’ advertising] is specifically mentioned in paragraph 6 of the Local Authority Code.

The Local Authority Code provides seven principles for local authority publicity. It should:

- be lawful;

- be cost effective;
- be objective;
- be even-handed;
- be appropriate;
- have regard to equality and diversity; and
- be issued with care during periods of heightened sensitivity.

In Tower Hamlet's view the Local Authority Code made it "quite clear that the publicity is permitted and it is guidance provided to the Local Authority by the Secretary of State for Localities".

The advertiser asserted that the advertisement adhered to these principles and represented a cost-effective method of reaching a large section of residents in the borough.

The purpose of the campaign, Tower Hamlets said, was to inform residents about the continuing plan to build more social housing to alleviate the significant housing pressures in the borough. According to Tower Hamlets, the advertisement was a statement of council policy that it will build 4,000 new homes and that 9000 properties will be improved to a decent standard.

The advertiser argued that the advertisement was clearly one of a public service nature, and fell within the exemption provided by s.321(7)(a) of the Act.

It said that the improvement of 9,000 homes to decent standard by 2015 was a very tight timetable: in order to improve all of the homes it needed access to its properties to obtain the grant for the works which is provided by [central] government. Were Tower Hamlets to fail to achieve the targets, it said, it would fail to obtain the government grant which amounts to many millions of pounds over the period of five years. It explained that a denial of access by residents means that that home does not get brought up to decent standard which will then cause additional cost to the taxpayer later on when the grant is no longer available and there is a re-letting.

The advertiser asserted that the purpose of the advertisement was to influence viewers of the benefits of the policy as it had great difficulty in accessing all of the Bengali population which represents 35% of the Tower Hamlets Borough population and a far higher figure of its local Council housing population. The only way of doing this, Tower Hamlets said, is to use all channels not just its East End Life newspaper.

The advertiser said further that residents have a right to know about impending and current housing works that are taking place. It also drew attention to paragraph 20 of the Local Authority Code: "[I]t is acceptable for local authorities to publicise the work done by individual members of the authority, and to present the views of those individuals on local issues."

On this occasion, Tower Hamlets said, a statement of council policy was being expressed and as such it deemed it to comply with the guidelines.

The advertiser argued that no mention was made in the advertisement of support for any political party or individual seeking election.

In respect of s.321(2)(a) the advertiser commented that the council's objects are not "wholly or mainly of a political nature". It said: "The council's work is driven by its Community Plan which it is obliged to publish and review on a regular basis. There are four themes in the plan:

- A great place to live
- A healthy and supportive community
- A prosperous community
- A safe and cohesive community."

The advertisement, Tower Hamlets said, was intended to support "objective 1" (providing quality affordable housing) of the first of these "themes".

On ss.321(2)(b) and 321(3) Tower Hamlets said that: "[T]he promotion of stated council policy and the policy's firm foundation in the strategic framework of the council means that the publicity is not "directed towards a political end", instead in the words of the publicity code (paragraph 31) it is intended to "seek to influence...the attitudes of the public in relation to matters of health, safety, crime prevention, race relations, equality, diversity and community issues."

The advertiser stressed that there were no pending elections in the borough at the time of broadcasts. Moreover, even if the advertisement were deemed to be of material relevance to the forthcoming London mayoral election, the advertiser said, the corresponding period of 'purdah' on publicity did not begin until late March 2012.

Tower Hamlets commented that the advertisement did not seek support for any political party. For the record, it said, the Mayor of Tower Hamlets did not stand for election as a member of any political party.

In respect of the list of examples of objects of a political nature or of political ends given in section 321(3), the advertiser said that the Mayor of Tower Hamlets is not a political party or a political group and does not fall at all within categories a) to g). The advertiser asserted that the advertisement did not serve to promote the image of a politician "when it is the duty of the Mayor of Tower Hamlets to publish policy as he is the sole part of the Executive".

Tower Hamlets maintained that Ofcom should understand "the role of the Mayor in terms of the Executive of the Borough and the community policies that we promote".

## **Decision**

Under the Act, 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 advertising that contravenes the prohibition on political advertising set out in section 321(2) is not included in television or radio services. [The full text of section 321 of the Act is given at the end of this Finding.]



Section 321(2) explains that an advertisement contravenes the prohibition on political advertising if it is:

- a) an advertisement which is inserted by or on behalf of a body whose objects are wholly or mainly of a political nature;
- b) an advertisement which is directed towards a political end; or
- c) an advertisement which has a connection with an industrial dispute.

An advertisement may therefore fall foul of the prohibition on political advertising either because of the character of the advertiser or because of the content or nature of the advertisement. Section 321(3) sets out an inclusive, non-exhaustive list of examples of “objects of a political nature” and “political ends”. The example list of political objects is:

- a) influencing the outcome of elections or referendums, whether in the United Kingdom or elsewhere;
- b) bringing about changes of the law in the whole or a part of the United Kingdom or elsewhere, or otherwise influencing the legislative process in any country or territory;
- c) influencing the policies or decisions of local, regional or national governments, whether in the United Kingdom or elsewhere;
- d) influencing the policies or decisions of persons on whom public functions are conferred by or under the law of the United Kingdom or of a country or territory outside the United Kingdom;
- e) influencing the policies or decisions of persons on whom functions are conferred by or under international agreements;
- f) influencing public opinion on a matter which, in the United Kingdom, is a matter of public controversy;
- g) promoting the interests of a party or other group of persons organised, in the United Kingdom or elsewhere, for political ends.

Section 321(7)(a) of the Act contains a general exception to the statutory scheme described above which operates by disapplying the previous subsections in relation to an advertisement of a public service nature placed by or on behalf of a government department.

These statutory provisions are reflected in Section 7 of the BCAP Code [the relevant rules are set out in full at the end of this Finding].

Ofcom therefore considered whether the advertisement complied with the relevant requirements of the Act and Section 7 of the BCAP Code.

We first considered whether the advertisement in this case fell within the general exception at section 321(7)(a) of the Act, namely whether the advertisement was of a public service nature and had been inserted by, or on behalf of, a government department.

Public service advertising has a long history and has been used for such varied purposes as encouraging healthy eating, promoting road safety, recruiting to the armed forces, communicating details of tax self-assessment and promoting anti-drug messages. In Ofcom’s view, the primary determinant of an advertisement of a public

service nature is that the advertisement's purpose is to inform and educate the public by means of imparting information which is in the public interest.

In this case, Ofcom noted that the Licensees and the advertiser had generally argued that the advertisement was of a public service nature and therefore permissible.

However, in Ofcom's view, the purpose of the advertisement was not to inform and educate the public. Ofcom considered that the purpose of the advertisement was to promote the Mayor in a positive light. The advertisement plainly sought to convey the aspirations of Mayor, Mr Rahman. The figures given for new and refurbished housing were prospective targets:

*"Bringing council homes up to decent homes standard – 4000 new homes by 2014/15 – Better homes for Tower Hamlets – 9000 homes to be brought up to a decent standard by 2015"*

Ofcom was of the view that the claims of future achievements in local housing could have conveyed no benefit to viewers and offered no information on which viewers could act for themselves.

We noted that the telephone number and website address given at the end of the advertisement did provide a means for residents to make enquiries, but these contact details occupied relatively little of the advertisement, and were clearly not the focus of it, nor were they offered with any clear call to action about what viewers might hope to gain by making contact with the council. In light of the rest of the content of the advertisement, Ofcom did not consider that the inclusion of these contact details was, in itself, sufficient to result in the advertisement being of a public service nature.

Mindful of the advertiser's argument that denial of access by residents might undermine the improvement works, Ofcom noted that nothing in the advertisement alerted viewers who were council tenants to any need to permit access to the local authority or gave any information about how or when permission might be sought and how it might be granted.

Further, Mr Rahman's appearance in the advertisement had no connection to the aims of the advertising as stated by the advertiser.

Ofcom therefore concluded that the advertisement was not of a public service nature and did not fall within the exception at section 321(7)(a) of the Act.

Ofcom then turned to consider whether the advertisement had contravened the provisions set out in section 321 of the Act, and section 7 of the BCAP Code. In particular, in light of our view that the purpose of the advertisement was to promote the Mayor of Tower Hamlets, we considered whether the advertisement was directed towards a political end, contravening section 321(2)(b) of the Act.

Ofcom noted that the Mayor of Tower Hamlets did not represent a particular political party but had been elected to his office as an independent candidate. In Ofcom's opinion an independent candidate, i.e. a candidate who represents only himself, is a "party" for the purposes of the Act when campaigning. As such he is a "party organised for political ends". In this context, Ofcom noted the interpretation section of the Registration of Political Parties Act 1998, section 22 which states that in that Act, "party" includes any person or organisation.

In Ofcom's view, whether an advertisement promotes the office holder's political interests or executive interests is decided by reference to the details of the case, and in particular to the content of the advertisement.

As set out above, we considered that the advertisement served to portray the Mayor of Tower Hamlets, Lutfur Rahman, in a positive light. In Ofcom's view, it did so by conveying his personal aspirations for local housing targets and living conditions, for example:

*"Mayor Lutfur Rahman's objective is to improve the housing sector and overcrowding problems. He wants to ensure the entire borough's council tenants are living in decent conditions..." [emphases added]*

The advertisement also showed images of the Mayor twice, once in the cab of a mechanical digger and later with a couple inspecting a flat. In addition, his signature and title were shown prominently on screen throughout the advertisement.

In light of the advertisement's clear focus on promoting Mr Rahman positively, Ofcom considered s.321(3)(g) (promoting the interests of a party or other group of persons organised for political ends) to be the most relevant provision in this case. Broadcast advertising cannot be used to promote the interests of a party for political ends. In Ofcom's view the advertisement was intended to promote the image and reputation of the Mayor on the basis of council's housing targets, in contravention of s.321(3)(g).

We noted the advertiser and Licensees' arguments, in particular that the advertisement was not broadcast at a time of pending elections in the borough, or during the period of 'purdah' on publicity for the London Mayoral elections in 2012. Nevertheless, an advertisement which primarily serves to promote and enhance the image of any politician will fall foul of this section of the Act whenever it is transmitted.

Ofcom noted that the advertiser had referred to the Local Authority Code. We noted in particular the following paragraphs of that Code:

Paragraph 6: Part 3 of the Communications Act 2003 prohibits political advertising on television or radio. Local authorities must ensure that their publicity does not breach these restrictions.

Paragraph 20: Other than in the circumstances described in paragraph 34 [concerning local authority publicity during election pending periods] of this code, it is acceptable for local authorities to publicise the work done by individual members of the authority, and to present the views of those individuals on local issues. This might be appropriate, for example, when one councillor has been the "face" of a particular campaign. If views expressed by or attributed to individual councillors do not reflect the views of the local authority itself, such publicity should make this fact clear.

Paragraph 31: Publicity by local authorities may seek to influence (in accordance with the relevant law and in a way which they consider positive) the attitudes of local people or public behaviour in relation to matters of health, safety, crime prevention, race relations, equality, diversity and community issues.

Ofcom also noted that the first principle of the Local Authority Code is that local authority publicity must be lawful. Further – as noted in paragraph 6 of the Local Authority Code – the provisions of the Act must be observed in relation to broadcast advertising, irrespective of guidance that may be offered in the Local Authority Code.

In this case, as explained above, Ofcom concluded that the advertisement promoted the image and reputation of the Mayor by promoting his interests for political ends (s. 321(3)(g) of the Act) and contravened s.321(2)(b) of the Act and Rule 7.2.2(g) of the BCAP Code.

Channel S has previously been found in serious breach of the prohibition on political advertising. A significant fine was imposed on that occasion<sup>1</sup>. Ofcom was minded to consider the imposition of a further substantial statutory sanction in the light of this further breach.

However, in the course of this case Channel S Global Limited entered liquidation and ceased trading. Channel S Global Limited surrendered its licence and ceased broadcasting. Because of this, Ofcom is unable to consider the imposition of a sanction in respect of this case against this licensee.

The other four licensees in this case – Runners TV Limited (NTV), Prime Bangla Limited (Channel i), Bangla TV (UK) Limited (Bangla TV) and ATN Bangla UK Limited (ATN Bangla) – are put on notice that in the event of further serious breaches of sections 321(2) and 321(3), and the corresponding BCAP rules, Ofcom will consider the imposition of significant sanctions.

### **Breaches of BCAP Rule 7.2.2(g)**

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#### Communications Act 2003

Section 319:

*(1) It shall be the duty of OFCOM to set, and from time to time to review and revise, such standards for the content of programmes to be included in television and radio services as appear to them best calculated to secure the standards objectives.*

*(2) The standards objectives are—*

[...]

*(g) that advertising that contravenes the prohibition on political advertising set out in section 321(2) is not included in television or radio services;*

Section 321:

*Objectives for advertisements and sponsorship*

*(1) Standards set by OFCOM to secure the objectives mentioned in section 319(2)(a) and (g) to (j)—*

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<sup>1</sup> See: [http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/channel\\_s.pdf](http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/channel_s.pdf).

*(a) must include general provision governing standards and practice in advertising and in the sponsoring of programmes; and*

*(b) may include provision prohibiting advertisements and forms and methods of advertising or sponsorship (whether generally or in particular circumstances).*

*(2) For the purposes of section 319(2)(g) an advertisement contravenes the prohibition on political advertising if it is—*

*(a) an advertisement which is inserted by or on behalf of a body whose objects are wholly or mainly of a political nature;*

*(b) an advertisement which is directed towards a political end; or*

*(c) an advertisement which has a connection with an industrial dispute.*

*(3) For the purposes of this section objects of a political nature and political ends include each of the following—*

*(a) influencing the outcome of elections or referendums, whether in the United Kingdom or elsewhere;*

*(b) bringing about changes of the law in the whole or a part of the United Kingdom or elsewhere, or otherwise influencing the legislative process in any country or territory;*

*(c) influencing the policies or decisions of local, regional or national governments, whether in the United Kingdom or elsewhere;*

*(d) influencing the policies or decisions of persons on whom public functions are conferred by or under the law of the United Kingdom or of a country or territory outside the United Kingdom;*

*(e) influencing the policies or decisions of persons on whom functions are conferred by or under international agreements;*

*(f) influencing public opinion on a matter which, in the United Kingdom, is a matter of public controversy;*

*(g) promoting the interests of a party or other group of persons organised, in the United Kingdom or elsewhere, for political ends.*

*(4) OFCOM—*

*(a) shall, in relation to programme services, have a general responsibility with respect to advertisements and methods of advertising and sponsorship; and*

*(b) in the discharge of that responsibility may include conditions in any licence which is granted by them for any such service that enable OFCOM to impose requirements with respect to any of those matters that go beyond the provisions of OFCOM's standards code.*

*(5) OFCOM must, from time to time, consult the Secretary of State about—*

*(a) the descriptions of advertisements that should not be included in programme services; and*

*(b) the forms and methods of advertising and sponsorship that should not be employed in, or in connection with, the provision of such services.*

*(6) The Secretary of State may give OFCOM directions as to the matters mentioned in subsection (5); and it shall be the duty of OFCOM to comply with any such direction.*

*(7) Provision included by virtue of this section in standards set under section 319 is not to apply to, or to be construed as prohibiting the inclusion in a programme service of—*

*(a) an advertisement of a public service nature inserted by, or on behalf of, a government department; or*

*(b) a party political or referendum campaign broadcast the inclusion of which is required by a condition imposed under section 333 or by paragraph 18 of Schedule 12 to this Act.*

*(8) In this section “programme service” does not include a service provided by the BBC.*

### BCAP Code Rule 7.2

7.2 Advertising that contravenes the prohibition on political advertising set out below must not be included in television or radio services;

7.2.1 An advertisement contravenes the prohibition on political advertising if it is:

(a) an advertisement which is inserted by or on behalf of a body whose objects are wholly or mainly of a political nature;

(b) an advertisement which is directed towards a political end; or

(c) an advertisement which has a connection with an industrial dispute.

7.2.2 For the purposes of this section objects of a political nature and political ends include each of the following:

(a) influencing the outcome of elections or referendums, whether in the United Kingdom or elsewhere;

(b) bringing about changes of the law in the whole or a part of the United Kingdom or elsewhere, or otherwise influencing the legislative process in any country or territory

(c) influencing the policies or decisions of local, regional or national governments, whether in the United Kingdom or elsewhere

(d) influencing the policies or decisions of persons on whom public functions are conferred by or under the law of the United Kingdom or of a country or territory outside the United Kingdom;

(e) influencing the policies or decisions of persons on whom functions are conferred by or under international agreements;

(f) influencing public opinion on a matter which, in the United Kingdom, is a matter of public controversy;

(g) promoting the interests of a party or other group of persons organised, in the United Kingdom or elsewhere, for political ends.

7.2.3 Provision included by virtue of this section in standards set under section 319 [of the Act] is not to apply to, or to be construed as prohibiting the inclusion in a programme service of:

(a) an advertisement of a public service nature inserted by, or on behalf of, a government department; or

(b) a party political or referendum campaign broadcast the inclusion of which is required by a condition imposed under section 333 [of the Act] or by paragraph 18 of Schedule 12 to the Act.

## In Breach

### Celebrity Juice (Trailer)

ITV2 and ITV4, 6 October 2012 to 18 October 2012, various dates and times pre-watershed

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#### Introduction

*Celebrity Juice* is a comedy panel game show broadcast post-watershed on ITV2. Keith Lemon (Leigh Francis), the presenter, is a comic character, with a bleached blonde mullet haircut and a ginger moustache. He hosts a panel of celebrity guests who answer questions and compete in challenges, which often involve laddish humour and sexual innuendo. The television presenter Holly Willoughby is a regular team captain.

Ofcom received a number of complaints about a trailer for this programme being broadcast at various times pre-watershed on ITV2 and ITV4. The complaints all related to a brief shot in the trailer featuring the rapper, Example (Elliot John Gleave).

The trailer lasted a total of approximately 30 seconds. The trailer was accompanied by a voice-over, interspersed with snatches of speech, and by the soundtrack of the song "Sex Machine":

Voice-Over:                *"With his bronze body, silver tongue –*

Keith Lemon:            *You sexy bint!*

Voice-Over:                *– and golden 'tache, he's the fittest man on telly.*

Holly Willoughby:      *You know what I'm saying?*

Voice-Over:                *He's got the moves, the style, and the balls, to go where no host has gone before. So lie back, grab the juiciest lemon in the bunch, and prepare to get –*

Keith Lemon:            *Intimate."*

The trailer also featured a succession of brief clips from the programme, including Keith Lemon: preparing to run a race; with amateurish on-screen graphics altering his haircut; lifting his shirt to reveal a 'six pack' drawn on his stomach; miming wiping himself with shredded paper; wearing leopard-skin-print shoes; urinating in a bush; gyrating to music; kissing the head of male guest; with a woman lying prostrate on the ground; and with a man, both stripped to the waist, flexing their pectoral muscles.

There was also one shot featuring Example with Keith Lemon, which lasted only about one second. Example was shown wearing around his waist and over his clothes a pink object which, in Ofcom's view, appeared to resemble a strap-on dildo, which Example thrust towards Keith Lemon.



Ofcom considered that this shot featuring the dildo-like object raised potential issues under Rule 1.3 of the Code:

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

We therefore sought comments from ITV2 Limited (“ITV” or “the Licensee”) as to how the content complied with this rule.

### **Response**

The Licensee responded that, although it regretted any offence caused to viewers, it believed the content complied with Rule 1.3.

ITV confirmed that the trailer was broadcast on various dates and at various times pre-watershed between 6 and 18 October 2012: 164 instances in total, at various times throughout the day ranging from 06:11 to 20:59.

ITV argued that it had taken the nature of the programme, its style of humour and its target audience into account when editing and scheduling the trailer: “Given its nature, promotions for it that are broadcast before the watershed are therefore carefully edited and scheduled. Every promotion for the programme is given a time restriction, and usually they are not shown during or adjacent to children’s programmes. This particular programme was given that same restriction, but otherwise it was considered the content was essentially silly and slapstick, and sufficiently acceptable for pre-watershed broadcast.”

Specifically, the Licensee explained that the trailer had only been broadcast on ITV2 and ITV4: “ITV2 is aimed at a young adult audience (16-34 year olds) and ITV4 at an adult audience (25-55 year olds), as opposed to children.”

ITV invoked the tradition of slapstick, as a comic mode popular with all ages over hundreds of years, including the common motif of a phallic object used for the purpose of double entendre. ITV said that the item had been referred to as a “pricket bat” in a previous episode of *Celebrity Juice* in the context of being an implement to play an invented game called “Pricket”, used by the guest in the game to try to burst balloons. The Licensee said: “The pricket bat was not a strap-on prosthetic phallus, which might suggest an actual sex toy, nor did we consider that it bore any close resemblance to the anatomical shape of an actual penis. It was clearly a large inflated balloon intended to provoke mildly bawdy humour.” ITV added that: “If it [the object] had been a strap-on dildo, we would obviously never even considered including it in a pre-watershed trailer.”

The Licensee also cited the fact that both participants were fully clothed, the absence of dialogue and the brevity of the sequence, all of which in its opinion mitigated the potential for offence. While ITV acknowledged that the pelvic thrusting motion constituted “a very mild innuendo”, it insisted that there was “no overtly sexual content”.

Nevertheless, ITV stated that it had decided not to use this shot, or any similar shots, in future promotions for *Celebrity Juice*.

## Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives. These standards are reflected in Section One of the Code.

Rule 1.3 states that “[c]hildren must...be protected by appropriate scheduling from material that is unsuitable for them”.

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

While pre-watershed trailers must have room for innovation and creativity, Ofcom has a statutory duty with regard to all programmes, including trailers, to ensure that under-eighteens are protected. We also took into account that the nature of trailers means that viewers come across them unawares.

Ofcom first considered whether the brief shot of the object which, in our view, appeared to resemble a strap-on dildo, which was shown on numerous occasions pre-watershed, was unsuitable for child viewers.

ITV acknowledged that the trailer showed Example wearing a phallic object attached to a strap around his waist, which it said was “clearly a large inflated balloon intended to provoke mildly bawdy humour”. Ofcom disagreed. In our opinion, Example wore a strap around his waist from which protruded at the front a pink object which resembled an erect penis. To a number of viewers this could, in the brief shot shown, in Ofcom’s opinion, have reasonably resembled a sex toy. The clip showed Example and Keith Lemon in mid-shot so that the phallic object was unmistakable, and a sexual context was clearly suggested by Example thrusting his pelvis forward. This shot included in the trailer was therefore unsuitable for children.

We next considered whether children had been protected by appropriate scheduling from this unsuitable material.

ITV pointed out that the scheduling of the trailer restricted its broadcast to ITV2 and ITV4 and ensured that it was not shown adjacent to children’s programmes, and the Licensee suggested that the trailer was appropriately scheduled because it was silly and slapstick in tone. Ofcom notes that the unsuitable shot was very brief. Ofcom points out however that although the target audiences for these two channels were older people (16 to 55 year olds overall, depending on the channel), children – some of them unaccompanied – were available to view at times when this trailer was shown. Although this trailer was not scheduled next to children’s programmes, it was shown on 164 occasions at various times pre-watershed on the two channels between 6 and 18 October 2012. Further, in Ofcom’s opinion, the nature of this image (described above) was likely to have exceeded the expectations of the audience (and especially parents) for the content of trailers shown pre-watershed on these channels, particularly in light of that fact that broadcasters cannot give warnings in advance to viewers about the content of trailers as they can do for

programmes. Children were therefore not protected by appropriate scheduling from this unsuitable material.

Ofcom notes and welcomes ITV's decision not to use this shot again or similar shots of this nature in future promotions for *Celebrity Juice* broadcast pre-watershed.

Ofcom nevertheless has recorded a breach of Rule 1.3.

**Breach of Rule 1.3**

## In Breach

### Studio B with Shepard Smith

*Fox News Channel, 28 September 2012, 20:30*

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#### Introduction

Fox News Channel is a news channel originating in the USA, broadcast on the Sky digital satellite platform and licensed by Ofcom in the UK. The licence for this channel is held by Fox News Channel Limited Liability Company (“Fox News” or “the Licensee”). *Studio B with Shepard Smith* is a daily news and analysis programme hosted by Shepard Smith. The programme features breaking news and live coverage.

Ofcom received a complaint from a viewer objecting to a live segment in this programme in which a car chase was being followed and filmed from a helicopter. The car turned off a main road, the driver abandoned his vehicle on a dirt track, and was then shown in footage (filmed live in long shot from the helicopter but clearly distinguishable) committing suicide by shooting himself in the head with a handgun. The complainant said it was not appropriate to show this content on television, especially pre-watershed when he was watching with his children.

On reviewing the material, we noted the following sequence, which began with the driver opening the door of the car while it was still in motion:

Smith [in voiceover]: *“Getting out? Time to get out? Could it be? Time to get out of the vehicle? Might it be?”*

[The car turned off the road.]

Smith [in voiceover]: *No. Taking a left now. Car no longer on road. Maybe this is home. You never know. Maybe he’s taking the car-jacked victim to the victim’s house. Now, this scares me.*

[The car stopped and the driver left the vehicle.]

Smith [in voiceover]: *What are you doing out in the middle of nowhere, getting out of the car? I’m just not sure about this.*

[The driver appeared to attempt to retrieve something from inside the car.]

Smith [in voiceover]: *He’s getting things out of the vehicle, clearly. It doesn’t appear that there’s anyone else with him. Well, you know, you wait for the end of these things, and then you worry about how they may end. There’s nobody else around him. This makes me a little nervous, I gotta tell you.*

[The driver was shown from long distance holding an object in his hand. Pause.]

Smith [in voiceover]: *Well, continuing to watch what he’s doing.*

[The driver abandoned the car and started to run away from the vehicle.]

Smith [in voiceover]: *And we're just not really sure, but he is looking kind of erratic, isn't he? I don't know.*

[The driver fell to the ground and got to his feet again.]

Smith [in voiceover]: *No. And – look at this – he's just running – oh my... Well, it looks like he's a little disoriented or something. I guess it's always possible the guy could be on something.*

[The driver stopped, held an object to his head and suddenly fell to the ground. It was clear that he had shot himself in the head. The channel cut back to the studio and Shepard Smith.]

Smith [in voiceover]: *No, get off, get off, get off, get off, get off, get off, get off, get off, get off, get off it, get off it, get off it! Get off it! We'll be right back."*

Ofcom noted the on-air apology given by Shepard Smith immediately after the commercial break following the incident:

*"Well, some explaining to do. While we were taking that car chase and showing it to you live, when the guy pulled over and got out of the vehicle, we went on delay. So, that's why I didn't talk for about ten seconds. We created a five-second delay, as if you were to bleep back your DVR five seconds, that's what we did with the picture we were showing you. So that we would see in the studio what was happening five seconds before you did, so that if anything went horribly wrong, we'd be able to cut away from it, without subjecting you to it. And we really messed up. And we're all very sorry. That didn't belong on TV. We took every precaution we knew how to take to keep that from being on TV. And I personally apologise to you that that happened. Sometimes... We see a lot of things that we don't let get to you, because it's not time-appropriate, it's insensitive, it's just wrong. And that was wrong. And that won't happen again on my watch. And I'm sorry. We'll update you on what happened with that guy and how that went down tonight on The Fox Report. I'm sorry."*

We considered that this material raised potential issues warranting investigation under two rules of the Code. Rule 1.3 states that:

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

Rule 2.3 sets out that:

*"In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context."*

We therefore sought comments from the Licensee as to how the content complied with the Code.

## Response

Fox News confirmed that when the vehicle stopped the studio had implemented a five-second delay in broadcasting the live material, as stated by Shepard Smith in his broadcast apology. When it became apparent to the production team that the driver was holding a firearm, the Licensee said that the order was given to stop broadcasting the material being filmed from the helicopter and switch to a shot of Shepard Smith in the studio. The fact that the switch was not made in time was the result of human error. In the week following the incident, Fox News said it had instituted a channel-wide five-second delay drill to review how the system works and when it should be used.

The Licensee also pointed out that, in addition to the broadcast apology made by Shepard Smith, a further public apology was made by the Executive Vice-President of Fox News Michael Clemente. This statement was released within an hour of the broadcast and stated:

“We took every precaution to avoid any such live incident by putting the helicopter pictures on a five second delay. Unfortunately, this mistake was the result of grave human error and we apologize for what viewers ultimately saw on the screen.”

## 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, which include ensuring that persons under the age of eighteen are protected from material that is unsuitable for them, and providing adequate protection for members of the public from harmful and/or offensive material. These objectives are reflected in Sections One and Two of the Code.

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

The Code contains no absolute prohibition on images depicting the point of death, as there may be occasions when such images are editorially justified. Ofcom believes that, in line with freedom of expression, it is important for news programmes to be able to choose how to report on events which they consider in the public interest. However, when showing distressing material broadcasters must comply with Rule 1.3 (to protect under-eighteens) and Rule 2.3 (to apply generally accepted standards).

### Rule 1.3

Rule 1.3 states that children must be protected by appropriate scheduling from material that is unsuitable for them. Appropriate scheduling is assessed by reference to factors such as the time of broadcast, the nature of the channel, and the availability of children to view, taking into account school time, weekends and holidays.

Ofcom first considered whether the material was unsuitable for children.

Ofcom noted that the footage of the man was filmed from a distance and not accompanied by natural sound, in particular that of any gunshot. The fact that a man had committed suicide on television was nevertheless clear to viewers. Broadcasting images showing the moment of death obviously has the potential to be very disturbing for viewers. This is true especially with regard to under-eighteens, whose exposure to death (and their ability to understand it and place it in context) is generally more limited than that of adults. Images – as here – of a man shooting himself in the head to commit suicide clearly had an even greater potential to cause distress to children. The material was therefore not suitable for children. We next considered whether children were protected by appropriate scheduling.

The programme was broadcast before the watershed and outside of school hours at 20:30 on a Friday in the UK. While Fox News, as a rolling news channel, is unlikely to attract many child viewers, Ofcom notes that children were nevertheless available to view. The broadcast of this material at this time was clearly not in line with the likely expectations of the audience for this channel, and in particular those of parents. For these reasons, the Licensee failed to protect children from unsuitable material by appropriate scheduling.

The material was therefore in breach of Rule 1.3.

### Rule 2.3

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

Ofcom first considered whether the material was potentially offensive.

The broadcast of footage of the point when a person dies a violent death is always likely to be capable of causing a high level of offence. The distance from which the incident was filmed and the absence of natural sound mitigated this to a limited extent, as noted above in relation to Rule 1.3. However, the broadcast of live images of a man taking his own life in a violent way was clearly capable of causing a high degree of offence.

We next considered whether the material was justified by the context.

Ofcom noted that this programme features breaking news and live coverage, with a perspective appropriate to the media culture in the USA. Fox News has a well-established editorial practice of broadcasting car chases live. The audience for this channel is likely to be small and self-selecting in the UK. Nonetheless, as already pointed out, the broadcast of live images of a man taking his own life in a violent way was clearly capable of causing a high level of offence, and so would have exceeded the expectations of the audience for this channel and potentially would have been very distressing to viewers who came across this content unawares.

We also noted that in this instance the footage was transmitted live as the result of human error (and therefore that no warning could precede the content); there are pressures under which a newsroom operates, particularly during a live broadcast; and there was a full apology broadcast promptly after the material was transmitted, as well as a further apology released within an hour. However, there was clearly an inherent risk in broadcasting a live feed of a car chase such as this, and robust compliance systems needed to be in place to ensure compliance with the Code. We

therefore welcomed the assurance from the Licensee that it had undertaken a review of its procedures in respect of five-second delays.

The broadcast of images showing the moment of death requires exceptional contextual and editorial justification, as set out in previous findings<sup>1</sup>. Ofcom does not believe that there was such exceptional contextual and editorial justification in this instance. Rule 2.3 was therefore breached.

Licensees are reminded that when broadcasting live, if there is a reasonably foreseeable chance that something might be broadcast that would raise issues under the Code, they should be able to demonstrate that they have taken all reasonable measures both before and during the broadcast to ensure compliance with the Code.

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

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<sup>1</sup> Broadcast Bulletin 117, 15 September 2008, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb117/issue117.pdf> and Broadcast Bulletin 156, 26 April 2010, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb156/Issue156.pdf>.



## In Breach

### The X Factor

ITV1, 6 October 2012, 20:00

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#### Introduction

This episode of *The X Factor* was the first of the live programmes in this series. The contestants who had got through to this stage of the competition were shown arriving at the Corinthia Hotel in London where they would be staying during the 'Live Finals'.

Ofcom noted the following references to the Corinthia Hotel ("the hotel") during the various pre-recorded introductions ("V/T") to eight of the 13 acts, which were broadcast prior to their live performances:

#### James Arthur V/T

The V/T opened with a brief establishing shot of the exterior of the hotel as James arrived, which included the hotel name above and either side of the door.

James said: *"It's absolutely amazing here...I've never really seen anything like it to be honest. It's a million miles away from the place I live back home."* His fellow contestant Rylan Clark was then seen exploring the bedroom and stating: *"Oh my god James, it's massive!"* and *"There's a phone in the toilet!"*

#### Melanie Mason V/T

During the V/T there was a brief shot of the exterior of the hotel which included the hotel name above and either side of the door, as Melanie explained that her children visited her that week.

#### Lucy Spraggan V/T

The V/T was mainly concerned with Lucy getting a new guitar and how playing the guitar was central to her performance. The V/T included a brief exterior shot of the hotel (which included the hotel name above and either side of the door) to introduce the conversation back at the hotel with her mentor Tulisa about her new guitar and forthcoming performance.

#### Union J V/T

Shots of the group arriving at the hotel entrance were shown with a brief shot of the exterior of the hotel which included the hotel name above and either side of the door. One of the group said *"This is a lot nicer than my house"*, accompanied by a close-up shot of a sign showing the hotel's name. Another of the group then joked: *"Do you think the Queen lives here?"* They were shown checking in at the reception desk where the receptionist said *"Welcome to the Corinthia Hotel London"*, before being shown in the bedrooms arguing over who would have which bed.

#### Jade Ellis V/T

The V/T opened with a close-up shot of the sign showing the hotel's name before Jade was seen with her daughter in the hotel restaurant.

### Kye Sones V/T

The V/T opened with shots of Kye and fellow contestants Carolynne and Melanie arriving at the hotel. There was a close-up shot of the sign showing the hotel's name, shortly followed by a shot of the exterior of the hotel which included the hotel name above and either side of the door. Kye said: *"Welcome to our new home. When we first walked into the hotel it felt like we were gonna go in there for the cameras and then you were gonna take us somewhere else. I can't believe we're gonna be living here. That is mental!"* This was accompanied by a wide shot of the exterior of the hotel with no signage visible. Kye was then seen entering his bedroom and exclaiming *"Oh my god!"* before jumping on the bed and then exploring the mini-bar which he found to be empty.

### Ella Henderson V/T

The V/T included a long shot of the hotel with no signage visible, which established Ella talking to her mentor Tulisa.

### Jahmene Douglas V/T

The V/T opened with a shot of the exterior of the hotel which included the hotel name above and either side of the door, followed by a close-up shot of the sign showing the hotel's name. Jahmene was then seen in the hotel talking to his mentor Nicole on the telephone.

The Licensee is Channel Television Limited which is an indirectly wholly owned subsidiary of ITV Plc. Compliance of this programme was undertaken on behalf of Channel Television Limited by the ITV compliance department, who therefore responded to Ofcom on behalf of the Licensee.

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

On the basis of information provided by the Licensee, Ofcom noted that the production company had entered into a contract with the hotel which indicated that it had paid the hotel a reduced rate to provide rooms and services. However, the contract did not guarantee the inclusion of any references to the hotel in any of the episodes of *The X Factor*.

Ofcom therefore considered the material raised issues warranting investigation under the following Rule 9.5 of the Code, which states:

"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."

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<sup>1</sup> "Connected person" is defined in Part 1 of Schedule 2 of the Broadcasting Act 1990.

We therefore asked the Licensee for its comments on how the material complied with Rule 9.5.

## Response

The Licensee submitted that *The X Factor* 'Live Shows' in previous years have always given an insight into the lives of each of the finalists as they prepare for their live performances. In previous years, the finalists have lived in a communal house and this location has naturally featured as part of the backdrop of their lives. This year the contestants were being housed in a hotel and therefore during this episode of the programme there were several references to this in some of the contestants' V/Ts.

The Licensee acknowledged that, cumulatively, there were a number of shots of the exterior of the hotel. However, it considered that the references were editorially justified and not unduly prominent in the context of establishing to viewers that the contestants were arriving in London, settling into their new lifestyles as performers and television celebrities, and coming to terms with their new and unfamiliar environment. The Licensee continued that the references "were part of the conventional visual grammar of television storytelling, and these and the other interior shots filmed at the hotel were editorially justified in reflecting where and how the contestants will now be living in the following weeks of the competition".

The Licensee said that, given that many of the contestants are unused to staying in a London hotel like the Corinthia Hotel, their comments as they arrived in this new environment were no more than their honest and spontaneous reaction to their new 'popstar' lifestyle.

The Licensee stated that in the James Arthur V/T James and Rylan's positive comments conveyed their excitement at their new surroundings. It added that: "James' comment that "It's a million miles away from the place I live back home" would have been immediately understandable to regular viewers of the series as a comment primarily about himself and his personal journey, rather than a comment on the Hotel itself, having previously seen footage of James living in modest accommodation in his hometown."

The Licensee submitted that there was editorial justification for seeing Union J arrive at the hotel in their V/T, as well as for the "brief and neutral" footage of them checking in and being welcomed at reception and their positive comments about the hotel. It said these were "evidently no more than brief and humorous responses to their new surroundings".

The Licensee said that Kye's comments in his V/T were no more than a spontaneous reaction to his new surroundings and to the experience of being part of the programme itself.

With reference to the remaining contestants' V/Ts featuring visual references to the hotel, the Licensee accepted that the subject of these was not to show the contestant arriving at the hotel. It explained that the visual establisher shot was in each case included to denote that fact that certain action within the V/T was taking place at the hotel (e.g. conversations with family members, mentors etc.) and was therefore editorially justified.

The Licensee submitted that the references to the hotel “made up a very small part of the total running time of these introductory V/Ts as a whole, let alone the running time of the programme as a whole”.

While the Licensee said that it did not consider the references to the hotel in this episode to be unduly prominent, it said that having reviewed the episode after broadcast, it had agreed with the producers that there would not be the same editorial justification for such references in succeeding episodes, as the location had already been established with viewers. The Licensee confirmed that any references to the hotel in succeeding episodes would be incidental and would not feature hotel signage.

## **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 Directive (“the 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 reflected in, among other rules, Rule 9.5 of the Code, which prohibit products, services or trade marks being given undue prominence in programming.

Undue prominence can arise from the inclusion in a programme of a reference to a product, service or trademark and/or from the manner in which the reference is made. A number of factors may determine whether Ofcom judges the appearance of a product, service or a trade mark to be unduly prominent. This can include the amount of time the product, service or a trade mark appears on screen, but this is not in itself the determinate factor in judging undue prominence. The degree of prominence it may be acceptable to afford a product, service or trade mark also depends on the context in which it appears and how integral it is to a scene.

Ofcom acknowledges that it is common practice to show an establishing shot of a location to indicate to the audience where the programme’s action is taking place. In this case, Ofcom accepted that there was editorial justification for some visual references to the hotel to establish the contestants’ arrival at what would be their home while they remained in the competition. Ofcom also considered that there was editorial justification for some verbal references to the hotel to convey the contestants’ excitement at their new surroundings.

Ofcom acknowledged that there were no references to the hotel in five of the 13 V/Ts. However, of the other eight V/Ts, Ofcom was particularly concerned with the number of references in each of the following three V/Ts:

- The James Arthur V/T, which included a shot of the exterior of the hotel with the hotel name above and either side of the door in combination with James' and Rylan's positive comments: *"It's absolutely amazing here...I've never really seen anything like it to be honest. It's a million miles away from the place I live back home."*; *"Oh my god James, it's massive!"*; and *"There's a phone in the toilet!"*
- The Union J V/T, which included a shot of the exterior of the hotel with the hotel name above and either side of the door, as well as a close-up shot of the hotel sign, and the receptionist saying: *"Welcome to the Corinthia Hotel London."* In addition the group made the following positive comments about the hotel: *"This is a lot nicer than my house"*; and *"Do you think the Queen lives here?"*
- The Kye Sones V/T, which included a shot of the exterior of the hotel which included the hotel name above and either side of the door, a close-up shot of the hotel sign, and Kye's positive comments about the hotel: *"Welcome to our new home. When we first walked into the hotel it felt like we were gonna go in there for the cameras and then you were gonna take us somewhere else. I can't believe we're gonna be living here. That is mental!"*; and *"Oh my god!"*, when seeing his room.

In addition, Ofcom noted that five other V/Ts also included visual references to the hotel as establishing shots. In view of the fact that the subject of these V/Ts was not to show the contestants arriving at the hotel, Ofcom considered there was insufficient editorial justification for these shots of the hotel, particularly given the number of other visual and verbal references to the hotel in this episode.

Ofcom considered that, in isolation, each reference to the Corinthia Hotel did not raise issues of undue prominence, in the context of establishing where the contestants would be living during the final stages of the competition, and conveying their excitement at their new surroundings. However, Ofcom considered the overall number of references to be excessive for the purpose of establishing this.

We therefore judged that there was insufficient editorial justification for the repeated references to the hotel during the programme. Ofcom concluded that the cumulative effect of these references resulted in the programme as a whole giving undue prominence to the hotel, in breach of Rule 9.5 of the Code.

### **Breach of Rule 9.5**

## In Breach

### Sur Kshetra

*Rishtey, 7 October 2012, 21:15*

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#### Introduction

Rishtey is a Hindi general entertainment channel broadcast on the Sky platform. *Sur Kshetra* was a singing talent show sponsored by East End Foods. The licence for this channel is held by Viacom18 Media Private Limited (“Viacom18” or “the Licensee”).

Every few minutes throughout this one hour and 20 minute pre-recorded programme, the sponsor’s logo appeared above the programme name in the bottom left-hand corner of the screen. This occurred each time for a duration of between approximately three and 60 seconds. It appeared that there was a word between the sponsor’s logo and the programme name, which may have been a reference to the sponsorship arrangement, but as it could not be read clearly, we considered that the credit made no reference to the sponsorship arrangement.

A viewer was concerned that the East End Foods logo was given undue prominence within the programme.

Ofcom therefore considered the material raised issues warranting investigation under Rule 9.22(b) of the Code, which states:

“Sponsorship credits broadcast **during programmes** must not be unduly prominent. Such credits must consist of a brief, neutral visual or verbal statement identifying the sponsorship arrangement. This can be accompanied by only a graphic of the name, logo, or any other distinctive symbol of the sponsor, its products, services or trade marks.”

We therefore asked the Licensee for its comments on how the content complied with Rule 9.22(b).

#### Response

Viacom18 stated it has a trained team of “content auditors” who watch all content before broadcast to check that it is compliant with the Code and other Ofcom rules. The Licensee explained that on this occasion the production team “missed the instructions of the content auditors” and therefore broadcast the content in error.

The Licensee submitted that once it became aware of the error, it immediately removed the problematic sponsorship credits. It also said that it had taken steps to prevent similar errors in the future.

#### 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”.

The EU Audiovisual Media Services Directive limits the amount of advertising a broadcaster can transmit and requires that advertising is distinguishable from other parts of the programme service. Sponsorship credits are treated as part of the sponsored content and do not count towards the amount of airtime a broadcaster is allowed to use for advertising. To prevent credits effectively becoming advertisements, and therefore increasing the amount of advertising transmitted, broadcasters are required to ensure that sponsorship credits do not contain advertising messages.

Rule 9.22 of the Code therefore requires that sponsorship credits must be distinct from advertising. Further, Rule 9.22(b) of the Code requires that sponsorship credits broadcast during programmes must not be unduly prominent. The rule also requires that such credits consist of a brief, neutral visual or verbal statement identifying the sponsorship arrangement, accompanied by only a static graphic of the name, logo, or any other distinctive symbol of the sponsor. In addition, sponsorship credits during programmes must not contain advertising messages or calls to action, or any other information about the sponsor or its products.

In this case, the sponsorship credit appeared every few minutes throughout this pre-recorded programme, each time for a duration of between approximately three and 60 seconds. Sponsorship credits broadcast during programmes should not be intrusive. In this case, Ofcom judged that the frequency and duration of the credits provided the sponsor with greater prominence than was necessary to inform the audience of the sponsorship arrangement.

Further, while it appeared that there was a word between the sponsor's logo and the programme name, which may have been a reference to the sponsorship arrangement, it could not be read clearly. Ofcom therefore considered that the credit made no reference to the sponsorship arrangement.

Ofcom considered the repeated and extended appearance of the credit was unduly prominent. In addition, the sponsorship credit did not identify the sponsorship arrangement. The credit was therefore in breach of Rule 9.22(b) of the Code.

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

## In Breach

### Provision of recordings

*Buzz Asia, 11 October 2012, 08:20*

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#### Introduction

Buzz Asia is a local commercial radio station that broadcasts to the Greater London area. The licence for the service is held by The Litt Corporation (“Litt” or “the Licensee”).

A listener alerted Ofcom to a programme containing sexual references broadcast on Buzz Asia at 08:20 on 11 October 2012. Ofcom therefore requested a recording of the programme from the Licensee in order to assess the complaint.

Litt provided Ofcom with an audio file that contained a recording of the programme but over the top of this had been recorded another broadcast transmitted on Kismat, a separate radio station also owned by the Licensee. As a result it was not possible for Ofcom to assess the content of the Buzz Asia programme to which we had been alerted.

Ofcom considered the matter raised issues warranting investigation under Condition 8(1) and (2) (Retention and production of recordings) of Litt’s licence for Buzz Asia.

Condition 8 of a local analogue commercial radio licence states:

“8 (1) The Licensee shall adopt procedures acceptable to Ofcom for the retention and production of recordings of any programme which is the subject matter of a Standards Complaint.

8 (2) In particular the Licensee shall:

- (a) make and retain, for a period of 42 days from the date of its inclusion therein, a recording of every programme included in the Licensed Service together with regular time reference checks;
- (b) at the request of Ofcom forthwith produce to Ofcom any such recording for examination or reproduction.”

Ofcom therefore sought comments from Litt under Condition 8(1) and (2) of its licence.

#### Response

Litt explained that due to a “technical fault” the recording of Buzz Asia output had been mixed up with that of Kismat played out at the same time and they could not be separated. It did, however, provide Ofcom with a transcript of the material.

The Licensee said that to avoid a recurrence, it now records the output of its services on individual machines.



## **Decision**

Under the Communications Act 2003, 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 complies with any request by Ofcom to produce such recordings.

Condition 8 of a local analogue commercial radio licence requires that the Licensee shall "adopt procedures acceptable to Ofcom for the retention and production of recordings of any programme which is the subject matter of a Standards Complaint".

Ofcom noted that the recording supplied by the Licensee contained the output of Buzz Asia mixed up with that of Kismet. Although Ofcom acknowledged that the Licensee provided a transcript of the Buzz Asia output and that certain words and phrases could be distinguished, Ofcom was unable to assess the material identified by the complainant. Consequently, the Licensee is in breach of Condition 8 of its Licence for failing to make and retain an appropriate recording of the Buzz Asia programme and, at the request of Ofcom, to provide a recording of this programme for assessment.

The failure by Litt to meet the requirements of Condition 8 is a significant breach of its licence because it resulted in Ofcom being unable to fulfil its statutory duty properly to assess and regulate broadcast content in this case.

## **Breach of Licence Condition 8**

## Advertising scheduling cases

### In Breach

#### Advertising minutage

*Trace Sports, 25 September 2012, 23:00, 26 September 2012, 07:00 and 3 October 2012, 10:00*

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#### Introduction

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

“[T]ime devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes.”

During monitoring of licensees’ compliance with COSTA, Ofcom noted that on 25 September, 26 September and 3 October 2012, Trace Sports exceeded the allowance permitted by COSTA by broadcasting in three clock hours 28 minutes and 30 seconds, 18 minutes and 20 seconds, and 13 minutes and 56 seconds of advertising respectively.

Ofcom therefore sought comments from Trace UK World Limited (“the Licensee”), the licence holder for Trace Sports, under Rule 4 of COSTA.

#### Response

The Licensee explained that the channel is derived from a live feed of a French version of the channel. It said that local advertising is inserted when its UK playout system receives automated cue tones from the French feed. The Licensee explained that, on the dates in question, additional cue tones intended for an African version of the channel were received erroneously. These caused additional advertising breaks to be played out unintentionally on the UK channel.

The Licensee gave Ofcom assurances that it had made technical changes to its playout system to ensure that this problem does not recur.

#### Decision

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

Articles 20 and 23 of the EU Audiovisual Media Services Directive set out strict limits on the amount and scheduling of television advertising. Ofcom has transposed these requirements by means of key rules in COSTA. Ofcom undertakes routine monitoring of its licensees’ compliance with COSTA.

In this case, Ofcom found that the amount of advertising broadcast by Trace Sports was in breach of Rule 4 of COSTA on three occasions.

Ofcom was particularly concerned by how significantly the Licensee had exceeded the maximum allowance permitted by Rule 4 of COSTA. Although this was the result of a technical problem which has since been rectified, these were serious breaches and Ofcom will continue to monitor the Licensee's compliance with COSTA. Should similar compliance issues arise, Ofcom may consider further regulatory action.

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

## In Breach

### Advertising minutage

*Attheraces, 17 November 2012, 15:00*

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#### Introduction

Attheraces is a television channel focused on horse racing. The licence is held by Attheraces Limited (“Attheraces” or “the Licensee”).

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

“[T]ime devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes.”

During monitoring of licensees’ compliance with COSTA, Ofcom noted that the channel had exceeded the maximum allowance per clock hour on 17 November 2012. The overrun was one minute.

Ofcom considered the case raised issues warranting investigation under Rule 4 of COSTA and therefore sought formal comments from Attheraces on how the material complied with this rule.

#### Response

The Licensee apologised for exceeding the maximum amount of advertising time permitted, and explained that the overrun had been caused by a production assistant inadvertently pressing the button to commence a commercial break, during confusion after a temporary loss of sound in the studio.

Attheraces said that the error was not corrected due to the production staff not having the right contact details for the control room at the advertising serving facility, and the ensuing delay led to an additional minute of advertising being broadcast.

Attheraces said that it had now ensured that all production staff had access to the right contact details, in order to avoid a repetition of this incident.

#### Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including compliance with international obligations with respect to advertising included in television and radio services.

Articles 20 and 23 of the EU Audiovisual Media Services Directive set out strict limits on the amount and scheduling of television advertising. Ofcom has transposed these requirements by means of key rules in COSTA. Ofcom undertakes routine monitoring of its licensees’ compliance with COSTA.

In this instance, Ofcom found that the amount of advertising broadcast on Attheraces between 15:00 and 16:00 on 17 November 2012 breached Rule 4 of COSTA. We noted that the extra advertising was transmitted as a result of human error. However, Ofcom was concerned that there were not sufficiently robust procedures in place to

ensure compliance with COSTA. To ensure compliance with the relevant requirements, broadcasters should have clear procedures for their staff to follow in the event of technical problems during transmission. We noted that the Licensee had given assurances that its production staff will in future be equipped with the right contact details to enable them to correct such mistakes, but it was a matter of concern to Ofcom that this basic compliance measure had clearly not been in place to date.

Further, Attheraces has previously given assurances about improving its compliance procedures, after an earlier incident relating to advertising minutage was resolved by Ofcom. This concerned an overrun of 23 seconds, at 22:00, on 3 June 2010<sup>1</sup>. Ofcom has since recorded a number of breaches of Rule 4 of COSTA by the Licensee: 27 April 2011, 22:00, 70 second overrun<sup>2</sup>; 1 May 2011, 22:00, 84 second overrun<sup>3</sup>; 20 May 2011, 22:00, 30 second overrun<sup>4</sup>; and 12 June 2011, 19:00, 50 second overrun<sup>5</sup>. We note that there have been no such breaches in the past year, but we are putting the Licensee on notice that we intend to continue monitoring Attheraces' compliance with COSTA. Ofcom may consider further regulatory action should these issues recur.

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

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<sup>1</sup> Broadcast Bulletin 164, 23 August 2010,  
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb164/issue164.pdf>.

<sup>2</sup> Broadcast Bulletin 187, 1 August 2011,  
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb187/obb187.pdf>.

<sup>3</sup> Broadcast Bulletin 187, 1 August 2011,  
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb187/obb187.pdf>.

<sup>4</sup> Broadcast Bulletin 187, 1 August 2011,  
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb187/obb187.pdf>.

<sup>5</sup> Broadcast Bulletin 188, 22 August 2011,  
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb188/obb188.pdf>.

## Broadcast Licence Condition cases

### Licence revocation

#### Breach of licence condition

*Dune FM (Southport)*

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##### Introduction

Dune FM Limited (in liquidation) (“Dune” or “the Licensee”) was the holder of a local FM commercial radio licence for Southport (broadcasting on 107.9 MHz) (the “Licence”). The Licensed Service is outlined in the Annex to the Licence and requires, amongst other things, Dune to provide “a soft Adult Contemporary music and information station for Southport and the surrounding area”.

On 9 July 2012, Liverpool County Court ordered that Dune be wound up under the provisions of the Insolvency Act 1986. Following the subsequent appointment of the Official Receiver as liquidator of the company, Dune ceased to trade, and therefore was no longer legally able to continue broadcasting.

Given that Dune was no longer broadcasting, Ofcom found the Licensee to be in breach of Condition 2(1) in the Schedule to its Licence, which requires that:

“The Licensee shall provide the Licensed Service specified in the Annex for the licence period and shall secure that the Licensed Service serves so much of the licensed area as is for the time being reasonably practicable.”

The Finding was published in Broadcast Bulletin 213 on 10 September 2012.

Since we considered the breach of the Licence to be a serious one, on 11 September 2012 we wrote to the Licensee and the representative of the Official Receiver. This letter informed the Licensee of Ofcom’s Preliminary View that we were minded to revoke the Licence as a result of the ongoing failure to provide the Licensed Service, and gave the Licensee a reasonable opportunity to make representations.

On 9 October 2012 we received a letter from the Liquidator on behalf of Dune asking for Ofcom’s consent to the transfer of the Licence to a new company, with a view to enabling a programme service to recommence. In accordance with section 86(8) of the Broadcasting Act 1990 (“the 1990 Act”), Ofcom may not give its consent to a licence transfer unless it is satisfied that the transferee would be in a position to comply with all of the licence conditions. Following careful consideration of the request and the information provided in support of it, we concluded that it did not provide us with all of the information that we require to assess the request.

Accordingly, and having first given the Licensee the opportunity to make representations, on 24 October 2012 Ofcom served on the Licensee a Notice of Proposed Licence Revocation. The Notice set out:

- the nature of the Licensee’s breach of the Licence;
- that Ofcom was satisfied that the nature of the breach was such that, if not remedied, it would justify revocation of the Licence;

- Ofcom's Preliminary View that, were the breach not remedied, revocation would be necessary in the public interest; and
- the steps that the Licensee was required to take to remedy the Licence breach. These were to provide Ofcom by 5pm on 07 November 2012 with a concrete plan for returning the service to air in accordance with Annex 1 to the Licence on or before 24 November 2012.

In response to this Notice, Ofcom received from the Licensee a revised request to transfer the licence to the same new company. However, having carefully assessed the information provided, we concluded that there were insufficient grounds for Ofcom to be satisfied that the proposed transferee company would be in a position to comply with all of the conditions in the Licence in line with the requirements of sections 86(7) and (8) of the 1990 Act. In particular, we were not satisfied that the potential new licensee would be in a position to comply with the conditions requiring the provision of the Licensed Service throughout the licence period (i.e. until 31 December 2015).

On 29 November 2012 we informed the Licensee that Ofcom was now minded to issue a notice of revocation under section 111(3) of the 1990 Act. This letter set out the reasons for our views and provided the Licensee with a further ten day period in which to make representations in relation to our preliminary view.

### **Response**

In its letter of 10 December 2012 the Licensee requested that Ofcom reassess the transfer of the Licence to the new company based on further information that the proposed transferee company provided to Ofcom on the same date.

### **Decision**

Having carefully assessed the new or revised information provided to us on 10 December 2012, we considered that this further information did not provide sufficient grounds for us to make a decision that we should consent to the licence transfer request. There remained insufficient grounds for Ofcom to be satisfied that the proposed transferee company would be in a position to comply with all of the conditions in the Licence.

Ofcom was, therefore, satisfied that the Licensee had failed to take the steps specified in the Notice of Proposed Licence Revocation, and that it was necessary in the public interest to revoke the Licence. In particular, Ofcom was satisfied that the public interest is reflected in our duties to secure optimal use of the radio spectrum and securing provision of a range and diversity of local radio services. This interest would not be served by the maintenance of the Licence in circumstances where there is a prolonged failure to broadcast, in breach of the Licence, with no reasonable prospect of an imminent resumption of broadcasting. It would, however, be served by revocation of the Licence, enabling Ofcom to consider alternative use of the relevant frequency.

Accordingly, Ofcom decided to serve on the Licensee a notice of revocation of the Licence.

Following publication of the notice of revocation<sup>1</sup>, the Licence was therefore revoked with effect from 23.59 hours on Thursday 20 December 2012.

**Revocation of commercial radio licence number AL203 (Southport) under section 111(3) of the Broadcasting Act 1990**

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<sup>1</sup> See: <http://stakeholders.ofcom.org.uk/binaries/broadcast/radio-ops/breaches/southport.pdf>.



## Other Programmes Not in Breach

Up to 31 December 2012

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>
8 Out of 10 Cats	Channel 4	12/11/2012	Undue prominence

## Complaints Assessed, not Investigated

### Between 18 and 31 December 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
8 Out of 10 Cats	Channel 4	24/12/2012	Religious/Beliefs discrimination/offence	2
A Celebrity Juicemas Carol	ITV2	13/12/2012	Generally accepted standards	1
A Celebrity Juicemas Carol	ITV2	17/12/2012	Generally accepted standards	1
A Perfect Murder	5*	20/12/2012	Offensive language	1
Adrian Durham	Talksport	n/a	Generally accepted standards	1
Alan Carr: Chatty Man	Channel 4	21/12/2012	Offensive language	1
Ali Brownlee	BBC Radio Tees	17/12/2012	Outside of remit / other	1
Alphas	5*	18/12/2012	Flashing images/risk to viewers who have PSE	1
An Island Parish	BBC 2	07/12/2012	Outside of remit / other	1
Argumental Christmas Special	Dave	16/12/2012	Race discrimination/offence	1
Asian Selection with the Spice Boys	Inspiration FM	14/12/2012	Outside of remit / other	1
BBC Digital Radio promotions	BBC	n/a	Outside of remit / other	1
BBC News	BBC 1	21/12/2012	Generally accepted standards	1
BBC News	BBC News	26/12/2012	Outside of remit / other	1
BBC News	BBC News	n/a	Outside of remit / other	1
BBC News	BBC Radio 2	13/12/2012	Outside of remit / other	1
BBC News at Ten	BBC 1	14/12/2012	Under 18s in programmes	1
Black Mirror: The National Anthem	Channel 4	04/12/2011	Generally accepted standards	1
Bloomberg	Bloomberg	14/12/2012	Due impartiality/bias	1
Boom TV	Showcase 2	n/a	Sponsorship credits	1
Brainiac: Science Abuse	Challenge	03/12/2012	Scheduling	2
Brand New Entertainment (promotion)	E4	21/12/2012	Generally accepted standards	1
Britain's Best Bakery	ITV1	19/12/2012	Outside of remit / other	1
Britain's Hidden Housing Crisis	BBC 1	13/12/2012	Under 18s in programmes	1
British Comedy Awards 2012	Channel 4	12/12/2012	Generally accepted standards	1
Capital Breakfast	Capital FM	13/12/2012	Offensive language	1
Capital Breakfast	Capital FM	17/12/2012	Offensive language	1
Capital Breakfast	Capital Radio	27/12/2012	Offensive language	1

Casualty	BBC 1	15/12/2012	Generally accepted standards	1
CBeebies Pantomime - Jack and the Beanstalk	CBeebies	23/12/2012	Outside of remit / other	1
Celebrity Who Wants to be a Millionaire	ITV1	20/12/2012	Outside of remit / other	1
Channel 4 News	Channel 4	20/12/2012	Due impartiality/bias	2
Chat Girl TV	Adult Channel	19/12/2012	Sexual material	1
Chat Girl TV	Adult Channel	20/12/2012	Sexual material	2
Christmas at River Cottage	More 4	24/12/2012	Animal welfare	1
Christmas Day Breakfast Show	Talksport	25/12/2012	Materially misleading	1
Christmas Lights	ITV3	15/12/2012	Offensive language	1
Come Dine with Me	Channel 4	12/12/2012	Generally accepted standards	1
Crimson Force	Syfy	13/12/2012	Animal welfare	1
Dale's Great Getaway	ITV1	29/12/2012	Animal welfare	1
Dancing On Ice (trailer)	ITV1	25/12/2012	Nudity	1
Daybreak	ITV1	11/12/2012	Due impartiality/bias	1
Daybreak	ITV1	20/12/2012	Privacy	1
Deal or No Deal	Channel 4	19/12/2012	Scheduling	1
Deal or No Deal's Big Christmas Dinner	Channel 4	25/12/2012	Generally accepted standards	1
Did We Land on the Moon?	Channel 5	12/12/2012	Materially misleading	3
Digital on-screen graphics	Magic TV	n/a	Generally accepted standards	1
Downton Abbey	ITV1	25/12/2012	Generally accepted standards	5
EastEnders	BBC 1	13/12/2012	Generally accepted standards	1
EastEnders	BBC 1	20/12/2012	Drugs, smoking, solvents or alcohol	1
EastEnders	BBC 1	20/12/2012	Offensive language	17
Eddie Stobart: Trucks and Trailers	Channel 5	02/11/2012	Offensive language	1
Emmerdale	ITV1	05/12/2012	Scheduling	1
Emmerdale	ITV1	18/12/2012	Religious/Beliefs discrimination/offence	1
Emmerdale and Coronation Street	ITV1	27/12/2012	Drugs, smoking, solvents or alcohol	1
Family Guy	BBC 3	25/12/2012	Generally accepted standards	1
Ferne Cotton Radio Show	BBC Radio 1	20/12/2012	Outside of remit / other	1
Gavin and Stacey	Dave	14/12/2012	Race discrimination/offence	1
Gemma Cairney	BBC Radio 1	14/12/2012	Sexual orientation discrimination/offence	1
Goals on Sunday	Sky Sports 1	02/12/2012	Race discrimination/offence	1
Gordon's Christmas Cookalong Live (trailer)	Channel 4	18/12/2012	Generally accepted standards	3

Gordon's Christmas Cookalong Live (trailer)	Channel 4	19/12/2012	Generally accepted standards	1
Gordon's Christmas Cookalong Live (trailer)	Channel 4	20/12/2012	Generally accepted standards	1
Grant Stott	Forth One 97.3FM	17/12/2012	Race discrimination/offence	1
Halfords' sponsorship of Happy Motoring on Dave	Dave	08/12/2012	Harm	1
Hatton vs Schkenko	Prime Time Boxing	24/01/2012	Outside of remit / other	1
Have I Got News for You Christmas Special	BBC 1	21/12/2012	Gender discrimination/offence	1
Heston's Fantastical Christmas	Channel 4	19/12/2012	Crime	1
Him and Her	BBC 3	23/12/2012	Generally accepted standards	1
Hollyoaks	Channel 4	17/12/2012	Generally accepted standards	1
Hollyoaks	Channel 4	20/12/2012	Generally accepted standards	3
Hollyoaks	Channel 4	n/a	Scheduling	1
Hollyoaks	E4	19/12/2012	Generally accepted standards	1
House of Lies	Sky Atlantic	18/12/2012	Generally accepted standards	1
Ian Abrahams	Talksport	n/a	Religious/Beliefs discrimination/offence	1
Inside Claridge's	BBC 2	17/12/2012	Animal welfare	1
JK and Lucy	Heart South Coast	13/12/2012	Commercial communications on radio	1
Julia Hartley-Brewer	LBC	14/12/2012	Due impartiality/bias	1
Keith Lemon	Various	n/a	Generally accepted standards	1
Lapland	BBC 1	20/12/2012	Violence and dangerous behaviour	1
Last Tango in Halifax	BBC 1	18/12/2012	Harm	2
Last Tango in Halifax	BBC 1	18/12/2012	Materially misleading	1
Lemon La Vida Loca	ITV2	18/12/2012	Gender discrimination/offence	1
Little Princess	Channel 5	14/12/2012	Competitions	1
Live at the Apollo	BBC 1	21/12/2012	Generally accepted standards	1
Live Ford Super Sunday	Sky Sports 1	16/12/2012	Offensive language	1
Live NFL	Sky Sports 3	16/09/2012	Product placement	1
Lord of War	Channel 5	20/12/2012	Generally accepted standards	1
Made in Chelsea	E4	24/12/2012	Violence and dangerous behaviour	1
Match of the Day	BBC 1	22/12/2012	Outside of remit / other	1
Meet the Hutterites (trailer)	National Geographic	17/12/2012	Generally accepted standards	1
Michael and Clara	Kiss FM	07/12/2012	Competitions	1
Misfits	E4	09/12/2012	Transgender discrimination/offence	3

Murder, She Wrote	ITV3	30/11/2012	Scheduling	1
Music videos	Various	n/a	Undue prominence	1
My Big Fat Gypsy Christmas	Channel 4	28/12/2012	Generally accepted standards	1
News programming	Various	01/09/2012	Outside of remit / other	1
Newsbeat	BBC Radio 1	26/12/2012	Generally accepted standards	1
Newsnight	BBC 2	17/12/2012	Outside of remit / other	1
Nick Ferrari	LBC 97.3FM	17/12/2012	Disability discrimination/offence	1
Olympics 2012	BBC 3	17/12/2012	Race discrimination/offence	1
Phones4U sponsorship credit	Channel 4	n/a	Generally accepted standards	1
Premier League Football	Talksport	23/12/2012	Commercial communications on radio	1
Programming	BBC channels / ITV channels	24/12/2012	Outside of remit / other	1
Programming	Various	n/a	Advertising/editorial distinction	1
Programming	Various	n/a	Gender discrimination/offence	2
Programming	Various	n/a	Scheduling	1
Racing Legends and World's Most Dangerous Roads (trailer)	BBC 2	24/12/2012	Harm	1
Reality With Mahee	CHS TV	29/11/2012	Race discrimination/offence	1
Red Light Central	Red Light 1	15/12/2012	Sexual material	1
Rennies' sponsorship credit	ITV and Channel 4	n/a	Generally accepted standards	1
Rev	BBC 2	18/12/2012	Religious/Beliefs discrimination/offence	1
Rhod Gilbert's Work Experience	BBC 2	20/12/2012	Generally accepted standards	1
Rickie, Melvin & Charlie in the Morning	Kiss 101	18/12/2012	Offensive language	1
Ricky Hatton Fight	Prime Time	24/11/2012	Outside of remit / other	2
Road Safety campaign	Smooth Radio	18/12/2012	Generally accepted standards	1
Rome: A History of the Eternal City	BBC 4	19/12/2012	Outside of remit / other	1
Sky News	Sky News	20/12/2012	Due impartiality/bias	1
Sky News	Sky News	28/12/2012	Due impartiality/bias	1
Sons of Guns	Discovery Channel	10/12/2012	Violence and dangerous behaviour	1
Southpark	Various	18/12/2012	Generally accepted standards	1
Sponsorship credit of Truth Triumphs Alone	STAR plus	n/a	Sponsorship credits	1
Sports Personality of the Year 2012	BBC 1	16/12/2012	Outside of remit / other	1
Sports Personality of the Year 2012	BBC 1	16/12/2012	Voting	3

Sports programming	Various	n/a	Outside of remit / other	1
Steve Wright in the Afternoon	BBC Radio 2	29/10/2012	Outside of remit / other	1
Strictly Come Dancing	BBC 1	22/12/2012	Generally accepted standards	4
Strictly Come Dancing	BBC 1	22/12/2012	Outside of remit / other	1
Strictly Come Dancing: It Takes Two	BBC 2	18/12/2012	Harm	1
Supersized Earth	BBC 1	05/12/2012	Violence and dangerous behaviour	1
Take Me Out	ITV1	15/12/2012	Generally accepted standards	4
Text Santa	ITV1	21/12/2012	Drugs, smoking, solvents or alcohol	1
Text Santa	ITV1	21/12/2012	Outside of remit / other	1
Text Santa	ITV1	21/12/2012	Scheduling	1
The 50 Funniest Moments of 2012	Channel 4	28/12/2012	Offensive language	9
The Abyss	Channel 4	18/10/2012	Nudity	1
The Chase	ITV1	21/12/2012	Outside of remit / other	1
The Fear	Channel 4	03/12/2012	Violence and dangerous behaviour	1
The Glimmer Man	TCM	18/12/2012	Generally accepted standards	1
The Inbetweeners	E4	16/12/2012	Sexual orientation discrimination/offence	1
The Jimmy Fallon Show (trailer)	CNBC	18/12/2012	Violence and dangerous behaviour	1
The Lord of the Rings: The Return of the King	Channel 4	29/12/2012	Outside of remit / other	2
The Toys That Made Christmas	BBC 2	22/12/2012	Violence and dangerous behaviour	1
The Truth Behind Karbala	Ummah Channel	06/12/2012	Generally accepted standards	1
The Wright Stuff	Channel 5	13/12/2012	Generally accepted standards	1
The X Factor Results Show	ITV1	09/12/2012	Scheduling	1
This Morning	ITV1	14/12/2012	Nudity	1
This Morning	ITV1	20/12/2012	Generally accepted standards	1
Top Gear	BBC 3	15/12/2012	Generally accepted standards	1
Top Gear	BBC 3	24/12/2012	Materially misleading	1
Top Gear	BBC America	30/12/2012	Outside of remit / other	1
Top Gear	BBC	31/12/2012	Outside of remit / other	1
tvmovies24.com (trailer)	Syfy Channel	n/a	Animal welfare	1
Twilight	E4	28/12/2012	Generally accepted standards	1
Victoria Derbyshire	BBC Radio 5 Live	04/12/2012	Generally accepted standards	2
War on Britain's Roads	BBC 1	05/12/2012	Due impartiality/bias	1
Weekly News Round Up	Russia Today	09/12/2012	Due accuracy	1
Zack and Miri Make a Porno	Channel 5	16/12/2012	Offensive language	1

Zack and Miri Make a Porno (trailer)	Channel 5	06/12/2012	Scheduling	1
Zack and Miri Make a Porno (trailer)	Channel 5	14/12/2012	Scheduling	2
Zakir Naik	Peace TV	n/a	Religious/Beliefs discrimination/offence	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 27 December and 9 January 2013.

Programme	Broadcaster	Transmission Date
999: What's Your Emergency?	Channel 4	22 October 2012
Advertising minutage	Aaj Tak	n/a
Chaal Sitaroon KI	DM Digital	9 December 2012
I'm a Celebrity, Get Me Out of Here Now!	ITV2	7 December 2012
Murder Files: The Sketchbook Killer	Channel 5	11 December 2012
Panorama: Gambling Nation	BBC 1	5 November 2012
Phones 4U's sponsorship of Films on 4	Channel 4	26 December 2012
Saray Aam	ARY World	4 November 2012
Sikh Channel	Sikh Channel	1 October 2012
Sikh Youth Show	Sangat TV	4 November 2012
Sponsorship of Let Us Talk Hinduism	MATV (Punjabi)	n/a
Super Casino	Channel 5	4 January 2013

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

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

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

For fairness and privacy complaints go to:

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