

Ofcom Broadcast Bulletin

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Introduction

Under the Communications Act 2003 (“the Act”), Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives¹. Ofcom must include these standards in a code or codes. These are listed below. Ofcom also has a duty to secure that every provider of a notifiable On Demand Programme Services (“ODPS”) complies with certain standards requirements as set out in the Act².

The Broadcast Bulletin reports on the outcome of investigations into alleged breaches of those Ofcom codes below, as well as licence conditions with which broadcasters regulated by Ofcom are required to comply. We also report on the outcome of ODPS sanctions referrals made by ATVOD and the ASA on the basis of their rules and guidance for ODPS. These Codes, rules and guidance documents include:

- a) [Ofcom’s Broadcasting Code](#) (“the 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.
- 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 advertising³.
- 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 can be found on Ofcom’s website for [television](#) and [radio](#) licences.
- e) rules and guidance for both [editorial content and advertising content on ODPS](#). Ofcom considers sanctions in relation to ODPS on referral by the Authority for Television On-Demand (“ATVOD”) or the Advertising Standards Authority (“ASA”), co-regulators of ODPS for editorial content and advertising respectively, or may do so as a concurrent regulator.

[Other codes and requirements](#) may also apply to broadcasters and ODPS, depending on their circumstances. These include the Code on Television Access Services (which sets out how much subtitling, signing and audio description relevant

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

² The relevant legislation can be found at Part 4A of the Act.

³ 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.

licensees must provide), the Code on Electronic Programme Guides, the Code on Listed Events, and the Cross Promotion Code.

It is Ofcom's policy to describe fully the content in television, radio and on demand content. Some of the language and descriptions used in Ofcom's Broadcast Bulletin may therefore cause offence.

Notice of Sanction

DM Digital

Rehmatul Lil Alameen, 9 October 2011, 18:30

Introduction

DM Digital is a television channel primarily aimed at an Asian audience in the UK, which features broadcasts in a number of languages including English, Punjabi, Urdu, Sindhi, Kashmiri and Hindi. The service is also received in the Middle East and parts of Asia. This free-to-air service is broadcast on the Sky digital satellite platform. The licence for the DM Digital service is held by DM Digital Television Limited.

Summary of Decision

In a finding published on 8 May 2012 in issue 205 of Ofcom's Broadcast Bulletin¹, Ofcom found that DM Digital had seriously breached the Broadcasting Code ("the Code") by broadcasting material which was in breach of Rule 3.1 of the Code:

- This broadcast, which was in Urdu and was approximately one hour in duration, featured a presenter who introduced an Islamic Pir (a religious scholar) who delivered a live televised lecture about points of Islamic theology with reference to the shooting dead in early 2011 of the Punjab governor Salmaan Taseer by his bodyguard Malik Mumtaz Qadri. Salmaan Taseer had been a vocal critic of Pakistan's blasphemy law². This law punishes derogatory remarks against notable figures in Islam and carries a potential death sentence for anyone who insults or is judged to blaspheme against the Prophet Mohammed the Finding set out various statements made by the Islamic scholar that Ofcom found were likely to encourage or incite the commission of crime or to lead to disorder. Ofcom concluded they were likely to have this effect because, on a reasonable interpretation of the scholar's remarks, he was personally advocating that all Muslims had a duty to attack or kill apostates or those perceived to have insulted the Prophet.
- The finding set out various statements made by the Islamic scholar that Ofcom found were likely to encourage or incite the commission of crime or to lead to disorder. Ofcom concluded they were likely to have this effect because, on a reasonable interpretation of the scholar's remarks, he was personally advocating that all Muslims had a duty to attack or kill apostates or those perceived to have insulted the Prophet.
- A number of the scholar's remarks, in Ofcom's opinion, amounted to direct calls to action. In particular, Ofcom interpreted some of the Islamic scholar's comments to be a generic call to all Muslims (and not just members of the Muslim community within Pakistan) encouraging or inciting them to criminal action or disorder, by unambiguously stating that they had a duty to kill anyone who criticises or insults the Prophet Mohammed and apostates, and by praising Pakistan's blasphemy law and the killing of the Punjab governor, Salmaan

¹ <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb205/obb205.pdf> (published 8 May 2012)

² Section 295-C of Pakistan's Criminal Code.

Taseer, by Malik Mumtaz Qadri. Ofcom also noted that such actions were presented as being justified, and even required, as a duty binding on all Muslims according to the tenets of Islamic law and theology.

Ofcom therefore considered this material breached Rule 3.1 of the Code:

“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 considered this to be a genuinely unprecedented case on account of the serious nature of the breach and the poor compliance demonstrated by the Licensee. The broadcast of material likely to encourage crime or lead to disorder has the potential to cause significant harm and, in this case, the Licensee failed to have in place robust compliance procedures and a competent and experienced compliance team which could have prevented the material being broadcast.

For these reasons, and in accordance with Ofcom's Penalty Guidelines, Ofcom decided it was appropriate and proportionate in the very serious circumstances of this broadcast to impose a financial penalty of **£85,000** on DM Digital TV Limited in respect of the Code breaches (payable to HM Paymaster General). In addition, Ofcom considered that the Licensee should be directed to broadcast a statement of Ofcom's findings in this case, on a date and in a form to be determined by Ofcom and be directed never to repeat this material on its service again.

The full adjudication is available at:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/Rehmatul-DM-Digital.pdf>.

Notice of Sanction

DM Digital

POAF Conference, 25 November 2011, 21:00 and 4 December 2011, 21:00

Introduction

DM Digital is a television channel primarily aimed at an Asian audience in the UK, which features broadcasts in a number of languages including English, Punjabi, Urdu, Sindhi, Kashmiri and Hindi. The service is also received in the Middle East and parts of Asia. This free-to-air service is broadcast on the Sky digital satellite platform. The licence for the DM Digital service is held by DM Digital Television Limited.

Summary of Decision

In a finding published on 8 May 2012 in Broadcast Bulletin 205¹, Ofcom found that DM Digital had seriously breached the Broadcasting Code (“the Code”) by broadcasting the following material which was in breach of Rule 5.4 and 5.5 of the Code.

In summary:

- The finding related to two programmes which included coverage of a conference, held in the UK, of the Pakistan Overseas Alliance Forum (“POAF”). These broadcasts are referred to, for the sake of convenience, as *POAF Conference* or “the Programmes”. Each programme was in Urdu and was approximately three hours in duration.
- In the finding, Ofcom stated that the breaches of Rules 5.4 and 5.5 were so serious as to warrant the consideration of a statutory sanction.
- The finding related to two programmes which included coverage of a conference, held in the UK, of the Pakistan Overseas Alliance Forum (“POAF”) ². Each programme was in Urdu and was approximately three hours in duration. During these two programmes Dr. Liaqat Malik, the Chief Executive and Chairman of DM Digital expressed his views on the policies and actions of the current coalition government of Pakistan led by the Pakistan People’s Party (“PPP”) ³. In Ofcom’s view these were a matter of political and industrial controversy and a matter relating to current public policy.

¹ <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb205/obb205.pdf> (published 8 May 2012)

² POAF describes itself as a “non political and non religious welfare organisation for overseas Pakistanis and dedicated to welfare of all overseas Pakistanis”. See <http://poafglobaltrust.com/> The POAF website contains various references to and appears to have close links to DM Digital and its Chairman, Dr. Liaqat Malik: see e.g. <http://www.poafglobaltrust.com/DrLiaqatMalikChairmanProfile.htm>; and <http://www.poafglobaltrust.com/DMDigitalNetworkProfile.htm>

³ The PPP is the majority party in Pakistan’s coalition government at national level, and the MQM is a junior partner in that government.

- Under the Act, the person who is to be treated as providing the service is the person with general control over which programmes and other services and facilities are comprised in it. In accordance with this, Ofcom's published Guidance to Rule 5.4 states: explains that this rule refers to the licensee, the company officers and those persons with an editorial responsibility for the service or part of the service rather than, for example, the programme presenter. As Chief Executive and Chairman of DM Digital Dr Liaqat Malik is a "company officer" and a person that holds "editorial responsibility for the service" and was therefore the person providing the service. Therefore, by the channel broadcasting his views and opinions on a matter of political and industrial controversy and a matter relating to current public policy, Rule 5.4 of the Code was breached.
- The finding also found that both Programmes gave one-sided views on matters of political and industrial controversy and matters relating to current public policy, in contravention of Rule 5.5 of the Code. In particular:
 - in the programme broadcast on 25 November 2011, there were a number of statements that Ofcom considered to be highly critical of some of the policies and actions of the MQM⁴, including allegations of violence and killings sanctioned by the MQM, that had taken place in Karachi during 2011, but did not reflect alternative viewpoints, such as the viewpoint of the MQM as regards its policies and actions as the governing political party in Sindh province, especially in relation to the allegations that it had sanctioned violence and killings in Karachi; and
 - in the programme broadcast on 4 December 2012, there were a number of statements that Ofcom considered to be highly critical of NATO and the US Government and their policies towards Afghanistan and Pakistan, but did not reflect alternative viewpoints, such as the viewpoint of NATO or the US Government, with regard to their policies and actions relating to Pakistan.

Further, Ofcom was not aware of any evidence in the Programmes, or in a series of programmes taken as a whole (i.e. more than one programme in the same service, editorially linked, dealing with the same or related issues within an appropriate period and aimed at a like audience) of the necessary alternative viewpoints being broadcast. For example:

- regarding the programme broadcast on 25 November 2011, the views of the MQM were not reflected in relation to the matters of political and industrial controversy and matters relating to current public policy in question i.e. the MQM's policies and actions as the governing political party in Sindh province, especially in relation to the allegations that it had sanctioned violence and killings in Karachi; and,
- concerning the programme broadcast on 4 December 2011, the views of NATO and the US Government were not reflected, in relation to the matters of political and industrial controversy and matters relating to current public policy in question i.e. the policies and actions of NATO or the US Government relating to Pakistan.

Ofcom therefore considered this material breached Rules 5.4 and 5.5 of the Code:

⁴ Muttahida Qaumi Movement ("MQM"), currently the governing party in the Pakistani province of Sindh.

Rule 5.4:

“Programmes in the services...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”; and

Rule 5.5:

“Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved on the part of any person providing a service...This may be achieved within a programme or over a series of programmes taken as a whole”.

Ofcom considered this case to be serious as the Licensee demonstrated a clear lack of knowledge and understanding of how to apply Rules 5.4 and 5.5 and the extent and seriousness of the breaches was compounded by the Licensee’s wholly insufficient compliance arrangements.

For these reasons and in accordance with Ofcom’s Penalty Guidelines, Ofcom decided it was appropriate and proportionate in the circumstances of this broadcast to impose a financial penalty of **£20,000** on DM Digital TV Limited in respect of the Code breaches (payable to HM Paymaster General).

In addition, Ofcom considers that the Licensee should be directed to broadcast a statement of Ofcom’s findings in this case, on a date and in a form to be determined by Ofcom.

The full adjudication is available at:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/DM-digital-POAF.pdf>.

Note to Broadcasters

Policy Statement: Commercial Communications in Radio Programming

Summary

In Ofcom's 2010 statement, *Broadcasting Code Review: Commercial Communications in Radio Programming – Statement on revising the Broadcasting Code* (the "2010 Statement")¹, we revised Section Ten of the Broadcasting Code (the "Code"). The new Section Ten:

- updated the regulatory framework for radio, so that it was consistent with wider public policy on product placement on television and reflected the findings of our consumer research into listener attitudes about commercial radio²;
- maintained appropriate consumer protection, by ensuring all commercial arrangements in relation to broadcast material are transparent to the listener (supported by the requirements of the Broadcast Committee of Advertising Practice's UK Code of Broadcast Advertising ("the BCAP Code")³); and
- offered opportunities for the radio industry to generate new revenue which, in turn, could finance relevant and entertaining programming for listeners.

On implementation of the revised Section Ten of the Code, Ofcom stated it would:

- keep a watching brief on the implementation of the new rule set (i.e. the revised Section Ten of the Code);
- consider its appropriateness and effectiveness once the radio industry had adapted to the revised set of rules and associated regulatory framework; and
- decide whether to consult on any further changes to it.

After careful consideration, and for the reasons set out below, we have concluded the existing rules in this area are fit for purpose. Accordingly, we do not consider it necessary for Ofcom to consult on further changes to Section Ten at present, although this does not preclude possible future revisions.

Introduction

This policy statement concerns the impact of Section Ten of the Code (Commercial Communications in Radio Programming), following its implementation on 20 December 2010. It should be read in conjunction with both our 2010 Statement and

¹ <http://stakeholders.ofcom.org.uk/consultations/bcrradio2010/statement>

² <http://stakeholders.ofcom.org.uk/binaries/consultations/bcode09/annexes/radioresearch.pdf>

³ <http://www.cap.org.uk/Advertising-Codes/Broadcast-HTML.aspx>

Section Ten⁴ of the Code, which includes full definitions of the terms ‘commercial arrangements’⁵ and ‘commercial references’⁶ referred to in this document.

Background

Under the Communications Act 2003 (“the Act”), Ofcom is required to draw up and, from time to time, revise a code for television and radio services, covering standards in programmes, sponsorship and fairness and privacy. The Code came into effect on 25 July 2005⁷, following extensive public consultation and research during 2004.

In our 2008/9 Annual Plan⁸, Ofcom committed to conducting a full review of the Code, considering whether it still reflected the consumer, industry and regulatory environments. We issued our Broadcasting Code Review⁹ consultation in 2009 (“2009 consultation”), subsequently extending the review process to 2010, in order to take account of the Government’s decision¹⁰ to permit (subject to limitations) product placement on television. A further consultation was launched on 28 June 2010 (“2010 consultation”), which considered, among other things:

- **wider regulatory and broadcast policy decisions** of significance for radio broadcasting (in order to provide consistency with decisions on product placement and commercial references on television);
- **relevant areas of legislation**, including Ofcom’s duty to remove unnecessary regulatory burdens, and to ensure consistency with new consumer protection regulations¹¹;
- **consumer research** on listener attitudes to commercial radio, commissioned for the 2009 consultation;
- **responses to the 2009 consultation**¹²; and

⁴ <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/commercial-references-radio/>

⁵ A commercial arrangement is a contract, or any other formal understanding, between a broadcaster (or any agent or employee of the broadcaster) and a third party (or third parties). Examples of a commercial arrangement include programming sponsorship, competition prize donation and premium rate service provision. Programming that is subject to a commercial arrangement will therefore generally include payment and/or the provision of some other valuable consideration in return for a commercial reference (whether promotional or not).

⁶ For the purposes of Section Ten of the Code, a commercial reference is a reference in programming to a brand, trademark, product and/or service that is subject to a commercial arrangement or promotes the station/broadcaster’s own products or services.

⁷ The Code has been revised on a number of subsequent occasions, most recently in March 2013.

⁸ <http://www.ofcom.org.uk/about/annual-reports-and-plans/annual-plans/annual-plan-2008-09/>

⁹ <http://stakeholders.ofcom.org.uk/binaries/consultations/bcode09/summary/main.pdf>

¹⁰

http://webarchive.nationalarchives.gov.uk/+http://www.culture.gov.uk/reference_library/minister_speeches/6624.aspx

¹¹ The Consumer Protection from Unfair Trading Regulations (2008). See: <http://www.legislation.gov.uk/ukxi/2008/1277/contents/made>

- **pre-consultation discussions** with stakeholders.

Having considered stakeholders' responses to the 2010 consultation¹³, Ofcom decided to permit the integration of commercial communications and programming, subject to the retention of prohibitions in key areas (news broadcasts, children's programming and the selection and rotation of music for broadcast). This:

- updated the regulatory framework for radio, so that it was consistent with wider public policy on product placement on television and reflected the findings of our consumer research into listener attitudes about commercial radio;
- maintained appropriate consumer protection, by ensuring all commercial arrangements in relation to broadcast material are transparent to the listener (supported by the requirements of the BCAP Code); and
- offered opportunities for the radio industry to generate new revenue which, in turn, could finance relevant and entertaining programming for listeners.

Except in relation to spot ads, this removed for radio a principle that had underpinned the regulation of all commercial broadcasting: separation between commercial communications and programming.

The revised Section Ten of the Code gave radio stations wide discretion to integrate, for example, paid-for, promotional commercial references into programming, provided these were transparent to listeners, while retaining the value of spot ads as both a distinct type of content and a distinct revenue source. The slim set of rules was designed to secure the principle of transparency of commercial arrangements, which is central to ensuring consumer protection.

In our 2010 Statement, Ofcom proposed to keep a watching brief on the implementation of the new rules and to decide at a later date whether to consult on any further changes, based on the following criteria:

- **developments in public policy** related to the issue of additional constraints or prohibitions in broadcasting and advertising;
- **developments in radio output** (if any) that raise concerns over consumer protection (in particular, child audiences); and
- **complaints and/or issues raised by stakeholders.**

Ofcom stated that, as part of this process, consideration could be given, in particular, to the appropriateness and effectiveness of the new rules in relation to the following issues:

- **potential additional restrictions or prohibitions for potentially harmful products or services;**
- the retained prohibitions concerning:

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<http://stakeholders.ofcom.org.uk/consultations/bcode09/?showResponses=true&pageNum=1#responses>

¹³ <http://stakeholders.ofcom.org.uk/consultations/bcrradio2010/?showResponses=true>

- **commercial communications in and around news broadcasting;**
- **commercial communications in programming primarily aimed at children;** and
- **music selection and rotation;** and
- a possible move towards permitting the **complete integration of commercial communications in programming** (i.e. including all advertising).

Consideration of a further consultation concerning Section Ten of the Code

Since the implementation of the new rules in the revised Section Ten of the Code, on 20 December 2010, Ofcom has considered and completed 40 cases (raising a total of 45 issues) concerning commercial communications in radio programming. This has resulted in Ofcom recording only 4 breaches of the Code¹⁴. Further, Ofcom has not become aware of any significant concerns, in the course of its enforcement work or from other sources, concerning the effectiveness of the new rules.

The remainder of this policy statement therefore focuses on the issues and criteria for review set out in our 2010 Statement.

How appropriate are the new rules?

Potential additional restrictions or prohibitions for potentially harmful products or services

According to Section Ten of the Code, commercial references must comply with the BCAP Code's content and scheduling rules. Ofcom is not aware of any developments in public policy or radio output, the level or content of complaints and/or any issues raised by stakeholders that currently suggest the protections afforded by the BCAP Code are insufficient to maintain an appropriate level of consumer protection.

We do not therefore intend to consider revision of Section Ten of the Code in this regard at present.

Commercial communications in and around news broadcasting

Rule 10.3 of the Code states:

"No commercial reference, or material that implies a commercial arrangement, is permitted in or around news bulletins or news desk presentations.

"This rule does not apply to:

- reference to a news supplier for the purpose of identifying that supplier as a news source;

¹⁴ The relevant Findings can be found at:
<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb180/>;
<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb194/>;
<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb213/>; and
<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb224/>

- specialist factual strands that are not news bulletins or news desk presentations, but may be featured in or around such programming;
- the use of premium rate services (e.g. for station/broadcaster surveys); and
- references that promote the station/broadcaster's own products and/or services (e.g. the programme/station/broadcaster's website or a station/broadcaster's event)."

In our 2010 Statement, we noted that Section 319 of the Act sets standards objectives in relation to news, which require that news included in both television and radio services are presented with due impartiality and accuracy. The Act also sets an objective under which Ofcom must have regard for the desirability of maintaining the independence of editorial control over programme content. Accordingly, Section Five of the Code safeguards the impartiality and accuracy of news. Ofcom underpinned this in 2010 by maintaining a requirement in Section Ten of the Code that news bulletins and news desk presentations on radio may not be sponsored.

Being mindful of our statutory duties in relation to news programming as well as the more general ongoing public policy focus on the integrity of news, we do not currently regard it appropriate to consider an extension to the exemptions already in place in relation to Rule 10.3 of the Code.

We note that other protections also remain in place in relation to news programming on radio. These include, advertising scheduling and content rules (such as Section 7 of the BCAP Code) and the provisions of other sections of the Code, such as due impartiality (Section Five) and harm (Section Two), including the rule that factual programmes or items must not materially mislead the audience (Rule 2.2).

Commercial communications in programming primarily aimed at children

Rule 10.4 of the Code states:

"No commercial reference, or material that implies a commercial arrangement, is permitted on radio services primarily aimed at children or in children's programming included in any service.

"This rule does not apply to:

- credits for third party association with either programming or broadcast competition prize donation;
- the use of premium rate services (e.g. for broadcast competition entry); and
- references that promote the station/broadcaster's own products and/or services (e.g. the programme/station/broadcaster's website or a station/broadcaster's event)."

Under the Act, Ofcom is required to have regard to the vulnerability of children and to ensure "that persons under the age of eighteen are protected". Accordingly, we took into account the particular vulnerability of children in our revisions to Section Ten of the Code set out in our 2010 Statement. In particular, we were mindful that the integration of commercial communications within radio programming raised an

important concern about the difficulty children may have in recognising commercial messages and differentiating them from other broadcast material.

In our 2010 Statement, we therefore concluded that the *integration* of commercial communications within radio programming did not afford child listeners the protection provided by the *separation* between editorial and commercial messages.

We are particularly mindful of ‘Letting Children be Children’ – the Bailey Report¹⁵ published by the Department for Education in June 2011), which reviewed the commercialisation and sexualisation of childhood. Given the ongoing public policy focus on this area, we do not currently regard it appropriate to consider an extension to the exemptions already in place in relation to Rule 10.4 of the Code.

Music selection and rotation

Rule 10.5 of the Code states:

“No commercial arrangement that involves payment, or the provision of some other valuable consideration, to the broadcaster may influence the selection or rotation of music for broadcast.”

In our 2010 Statement, we noted our consultation proposal to reverse a longstanding prohibition on commercial arrangements being permitted to influence the selection or rotation of music. However, we ultimately concluded that such a move could adversely impact on:

- the range and diversity of music played on commercial radio stations; and/or
- the economic interests of music businesses and individual artists, by erecting a financial barrier to them accessing commercial radio.

Ofcom noted that any future liberalisation in this area would require an assessment (in accordance with our statutory duties) of these risks, and of the views concerning its impact on both the radio industry and the music industry and other stakeholders. Ofcom also noted that, before any such assessment could be undertaken, we would need first to understand the framework within which commercial agreements might be arrived at, and that, given the opposition by the music industry (as expressed in UK Music’s submission to our 2010 consultation) to commercial arrangements around the selection and rotation of music, the commercial radio and music industries would need to explore the matter in more detail before any such assessment could take place.

Ofcom notes that neither the commercial radio industry nor the music industry has raised any issues with Ofcom in this regard. For the foreseeable future, we therefore intend to maintain our current requirement that no commercial arrangement involving payment, or the provision of some other valuable consideration, to the broadcaster may influence the selection or rotation of music for broadcast.

Complete integration of commercial communications in programming

Rule 10.2 of the Code states:

“Spot advertisements must be clearly separated from programming.”

¹⁵ <https://www.education.gov.uk/publications/standard/publicationDetail/Page1/CM%208078>

In our 2010 Statement, we noted that Ofcom could consider a future move towards removing the principle of separation between all commercial communications (including spot advertisements) and programming, thus offering radio stations complete discretion to integrate seamlessly commercial elements into programming. Regulation would consist of a slim set of rules merely designed to secure the principle of transparency of commercial arrangements, in order to protect consumers, without further requiring the separation of spot ads (as a distinct type of content and a distinct revenue source) from programming.

Ofcom noted that, before any further consultation could be considered, the radio industry should be given time to adapt to the revised set of rules and associated regulatory framework implemented on 20 December 2010. Stakeholders' views appeared largely to support this position.

We note that spot ads remain central to commercial radio revenue generation and, as such, contribute significantly to the transparency of commercial communications through their separation from programming. As Ofcom considers that such transparency therefore remains central to maintaining an adequate level of consumer protection, we do not currently regard it appropriate to consider removing the separation requirement. Accordingly, we do not intend to consider any move towards permitting the seamless integration of all commercial communications within radio programming at present.

Other issues of significance when the revised Section Ten was first implemented

In our 2010 Statement, we considered it was unnecessary to introduce additional Code requirements in respect of:

- Consumer affairs programming;
- Religious programming; and
- Funding of commercial arrangements by non-commercial not-for-profit organisations.

Such issues remain of significant interest to Ofcom in relation to maintaining adequate consumer protection with regard to commercial communications. Nevertheless, Ofcom is not aware of any developments in public policy or radio output, the level or content of complaints and/or any issues raised by stakeholders that currently suggest the protections afforded by Section Ten of the Code and, as required under it, the BCAP Code, are insufficient to maintain an appropriate level of consumer protection in relation to these matters.

We do not therefore currently intend to consider revision of Section Ten of the Code in this regard.

Conclusion

After careful consideration, and for the reasons laid out above, we have concluded it is not necessary for Ofcom to consult on further changes to Section Ten of the Code at present. This does not preclude future revision of Section Ten and Ofcom will remain mindful of developments in public policy and radio output, the level and

content of complaints as well as issues raised by stakeholders, which may require us to review this section of the Code in the future.

Standards cases

In Breach

The Pitch

Controversial TV, 11 May 2013, 19:00

Introduction

Controversial TV is a general entertainment service which broadcasts a range of programmes focussing on 'alternative' subjects and opinion outside the mainstream on matters such as news and current affairs, sports and lifestyle programmes. Controversial TV is owned and operated by Edge Media TV Ltd ("Edge Media" or "the Licensee").

The Pitch is a programme where fledgling entertainers 'pitch' an idea for a television programme to a group of judges in the hope that their idea is made into a programme on Loaded TV (the originator of the series).

A complainant alerted Ofcom to the use of the phrase "*fuck off*" by comedian Arthur Smith during a 'pitch' by one of the contributors. Ofcom was able to view the material because we happened to be recording the output of the channel at this time.

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

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

We therefore asked the Licensee for its comments on how the material complied with this rule.

Response

Controversial TV noted that the material had been broadcast pre-watershed and said: "it would appear that the edit team had not obscured the sound over the wording in question thinking that the programming was going to go out after the watershed."

The Licensee said "in mitigation" that the demographic of its viewers "is more likely to be male, over 18 and therefore in a group which [Ofcom] research suggests are more accepting of the use of such words."

Controversial TV apologised for any offence caused to viewers watching *The Pitch*. The Licensee said it has "informed all producers to take more care over program[me] edits" and compliance over selecting and scheduling content pre- and post-watershed.

Decision

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

one of which is that “persons under the age of eighteen are protected”. This objective is reflected in Section One of the Code.

Rule 1.14 states that the most offensive language must not be broadcast before the watershed. Ofcom research on offensive language¹ clearly notes that the word “fuck” and its derivatives are considered by audiences to be among the most offensive language. While Ofcom notes Edge Media’s comments that the typical viewer for Controversial TV would be more accepting of this language, Rule 1.14 of the Code states unequivocally that “the most offensive language must not be broadcast before the watershed...”. Such language is unacceptable before 21:00, whatever the audience profile of the channel.

There was therefore a breach of Rule 1.14.

Breach of Rule 1.14

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

In Breach

Journey of a Lifetime

Channel i, 27 January 2013, 17:00

Introduction

Channel i is a news and general entertainment channel broadcast in Bengali and serving a Bangladeshi audience. The licence for Channel i is held by Prime Bangla Limited (“Prime Bangla” or “the Licensee”).

This approximately seven hour live programme featured a presenter, and various guests who appeared in the studio throughout the programme. The presenter and the guests discussed Islamic pilgrimage tours. Viewers were also invited to call the studio hotline or send a text message to the studio to ask questions about the tours or share their experiences if they had been before. The tours were organised by a London-based company called Bismillah Hajj & Umrah, an Islamic tours operator¹.

The content was broadcast in Bengali and English. Ofcom commissioned a translation of some of the content broadcast in Bengali. Below are examples of the discussion which occurred during the programme.

One of the studio guests stated:

“One thing I will say is that those of us who are looking to go to Umrah, we usually require tailor-made packages or even Al-Aqsa trip. We want things sorted, our flights sorted, our hotel sorted. Well look, if you’re looking for the ultimate package, you’re looking for a package that’s going to give you care and service, Bismillah is without doubt, by far one of the best”.

The presenter asked the guests and the callers about their experiences of going on previous Bismillah Hajj & Umrah tours, for example:

Presenter: *“Tell us about the prices, are they competitive and did you find them to be competitive?”*

Guest: *“Price-wise, yes recently everything’s gone up the past few, five, six years everything’s gone up. But at the time that I went which was last year, this last Hajj that went past... I couldn’t find anywhere else the same price with a five-star package.”*

Presenter: *“Just tell us about the ease of travel...”.*

Guest: *“My experience when I went last year was good because we had first class coaches, very nice coaches. You can relax. The coaches we had from Medina to Jeddah was absolutely fine. We had so much leg room, you had so much back room as well. It was good.”*

As well as the presenter and guests in the studio discussing the tours, the programme also contained pre-recorded segments about the tour destinations,

¹ Hajj and Umrah are Islamic pilgrimages to Mecca/Makkah.

including footage of the hotel rooms and the sights. Some of the pre-recorded content appeared to be Bismillah Hajj & Umrah's promotional material and included the on-screen caption "WE ARE TAKING BOOKING [sic] FOR HAJJ AND UMRAH". This was slightly obscured by the programme's own caption inviting viewers to contact the studio. The programme also included footage of a tour guide carrying out a tour in Bethlehem.

The programme included an interview in a hotel room in which the interviewee spoke of his experience of going on the Hajj 2012 tour:

Interviewee: *"Hajj 2012 has been a very smooth experience for me right from the very beginning from the point that I booked with Bismillah. The service was on time, it was speedy, it was professional, it was informative and I think it's important that you're told from the outset what expectations you should have. And even when I arrived here in Jeddah first, and then the transition from Jeddah to Mecca was very smooth and then throughout the journey because I arrived just a day before Hajj and the transition from being here in Mecca to Mina and the days onwards was perfect. I didn't see any problem with it. I must say that Bismillah Hajj group went out of their way to make me feel comfortable, to keep me informed as to what's happening and irrespective of how much experience you have with Hajj and with me 20th trip, each time is a different, unique experience. Even though Bismillah knew that I had a lot of previous experience with Hajjs, they still took it on as if it was my first experience and I think that that's very important that each individual Hajj experience should be tailored in such a way that it's not difficult at all. Because each experience will be different no matter how many times you've come."*

Interviewer: *"How would you recommend it to others that are coming?"*

Interviewee: *"From my personal experience of being at Hajj with Bismillah, this has been my first personal Hajj in the last eight years or so, I have been nearly every year but with a group from London to come here, I would highly recommend Bismillah Hajj group for two reasons. Number one, it is a group that's quite diverse and it involves quite a diverse age group and different nationalities and a lot of young professionals were on board with us. We had doctors, we had lawyers, so for people who of our age, especially my age and younger people, Bismillah Hajj group would be the right choice because you are going to be in with a group of people that are very similar to you and it's a great experience, it's a place where you can make lots of friends, so I would highly recommend Bismillah Hajj group".*

Interviewer: *"For next year what sort of recommendations or improvements could Bismillah Hajj carry out?"*

Interviewee: *"If I were asked to give suggestions as to how Bismillah would improve its services it would be a difficult question to answer because for me it's been a flawless experience from the point of booking to the point of finishing Hajj. It's been flawless for me. It's been a comfortable journey. However, having said that, I think because of the large numbers that Bismillah brings here and as I said earlier the diversity in terms of the age groups of the people, perhaps next year to group these people into more age categories rather than having mixed*

groups, so that they're in more familiar surroundings with people of their own age. Basmillah Hajj group has bought some very knowledgeable ... [guides] with them and I think some of these ... [guides] need to be focusing on a particular group while others on a different group. These are small suggestions because for me again as I said it was a flawless experience so it's not really my place to perfect something that for me was just as good as perfect. I have already expressed a desire to come back to Hajj again insh'Allah² with my family and my first choice would of course be Bismillah Hajj group. Two reasons, number one I feel that bringing my family, the elders of my family and the youngsters of my family, they will all have the right groups to mix with, and they'll be catered for very well by Bismillah Hajj group. Next year insh'Allah I want to go that one step further. I'm so enticed by what they were doing that I'm going to try and volunteer myself to actually be one of the team leaders and try and help as much as I can. There's plenty of opportunities here with Bismillah and I think I would only offer my services in that way if I believed they were doing the right thing and to me that seems to be the case insh'Allah".

During the programme, calls were taken from viewers who had questions about Bismillah Hajj & Umrah's tours. Examples of two such calls are set out below:

Call 1

Caller: *"I would like to know about the package, how it is arranged etcetera?"*

Presenter: *"It's a programme covering four countries, Jordan, Israel, Palestine and Mecca-Medina. It's a programme of 12 days during Easter break in April... It's a package of a total 12 days covering Jordan, Israel, Palestine and Mecca-Medina. It's a four star / five star package. During these 12 days these four countries will be visited including Umrah Hajj. Total cost of the package is £1650 including travel, accommodation, breakfast and dinner".*

Caller: *"Is it per person?"*

Presenter: *"Yes, per person."*

Call 2

Bismillah rep: *"He [the caller] is asking which hotel we will be using in Mecca. In one package in Mecca it is Al-Suhada 5 star, award winning hotel and another one is Illah Muntaka. Brand new, 1515 rooms. We will use this hotel. In Medina Sufa al Huda 4 star hotel, very nice, many people know about this hotel..."*

Presenter: *"Our some brothers and sisters those who don't have good source of income, they tell during Hajj and Umrah to give them cheap package. Do you have any cheap package?"*

Bismillah rep: *"This year we have made cheap package to meet the demand of average market but comparatively we are cheap. But we will give a time limit, for example, after first 20 persons we have to increase a*

² "If Allah wills it".

little bit more. We have made a package of £3500, very nice, decent. The hotel we offer, their rooms, bed rooms and bathrooms everything is shown on website. You will be able to see. In Mecca, it is about eight minutes walking distance, in Medina it is two to three minutes walking distance. This package will start from £3500 but it will go up to £3800. But the first 20 brothers and sisters they will get the benefit, other people will have to give £100 more and they will get better hotels, quality hotels. For Umrah if anybody goes off-peak time, we have a five star package with £850. In April when five star package is very expensive, we will give it by £1150 with group and normal package £1050.”

Presenter: *“Jazakallah³. Please don’t get disappointed my viewers brothers and sisters. There are normal package with five star, four star package. You can communicate, the office of Bismillah is Brick Lane, you can visit 72 Brick Lane or their website, [website address] to get details. Or if you phone the Bismillah office or the Hefajat Islam office you will get details or you will come to know details if you visit in person directly, God willing.”*

Throughout the programme the presenter referred viewers to Bismillah Hajj & Umrah’s website for more details of the tour packages. In addition, for a period of over 30 minutes near the end of the programme, Bismillah Hajj & Umrah’s website address appeared in on-screen text alongside the studio hotline and a “Further Contact” telephone number.

A viewer was concerned that the programme was promoting Bismillah Hajj & Umrah’s tours.

The Licensee confirmed to Ofcom that neither it, the programme producer, nor any person connected with either⁴, received payment or other valuable consideration for the inclusion of the references to Basmillah Hajj and Umrah’s tours during the programme, and that therefore the references had not been subject to any product placement arrangement.

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

- Rule 9.2: “Broadcasters must ensure that editorial content is distinct from advertising.”
- Rule 9.4: “Products, services and trade marks must not be promoted in programming.”
- Rule 9.5: “No undue prominence may be given in programming to a product, service or trade mark. Undue prominence may result from:
- the presence of, or reference to, a product, service or trade mark in programming where there is no editorial justification; or

³ “May Allah reward you”

⁴ “Connected person” is defined in Part 1 of Schedule 2 of the Broadcasting Act 1990.

- the manner in which a product, service or trade mark appears or is referred to in programming.”

We therefore asked the Licensee for its comments on how the material complied with Rules 9.2, 9.4 and 9.5.

Response

Rule 9.2

The Licensee stated that it made the programme in-house and therefore the programme was distinct from advertising.

Rules 9.4 and 9.5

The Licensee said that because the programme was a religious programme, the information provided had to be “supported by a well recognised religious leader / organisation... to avoid confrontation and allegations from different [religious] sects”.

The Licensee argued that as the programme was “a travel based religious historical program”, it was essential to show some footage from a third party who are well known in the community to “add authenticity to the content”. The Licensee submitted that the programme was not shown to promote the tours and the Licensee did not receive any commercial benefit from the broadcast.

The Licensee assured Ofcom that in future it would broadcast such content as teleshopping.

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 9.2 of the Code which states that editorial content must be distinct from advertising. Rule 9.2 requires that editorial content is distinct from advertising in order to prevent editorial material being distorted for commercial purposes. This is intended to ensure that the Licensee maintains editorial control over its programming and that it is clear to viewers that programming has not been subject to the control of advertisers. Rule 9.2 therefore seeks to ensure that viewers are easily able to differentiate between editorial material and advertising.

Rule 9.4 of the Code states that products, services and trade marks must not be promoted in programming, while Rule 9.5 of the Code prohibits products, services or trade marks being given undue prominence in programming.

In this case, Ofcom considered that the programme was promotional. It clearly encouraged viewers to book Bismillah Hajj & Umrah's pilgrimage tours by providing:

- i) positive reviews of the tours, e.g.

"Price-wise, yes recently everything's gone up the past few, five, six years everything's gone up. But at the time that I went which was last year, this last Hajj that went past... I couldn't find anywhere else the same price with a five star package."

"My experience when I went last year was good because we had first class coaches, very nice coaches. You can relax. The coaches we had from Medina to Jeddah was absolutely fine. We had so much leg room, you had so much back room as well. It was good."

"Hajj 2012 has been a very smooth experience for me right from the very beginning from the point that I booked with Bismillah. The service was on time, it was speedy, it was professional, it was informative and I think it's important that you're told from the outset what expectations you should have."

"...it was a flawless experience so it's not really my place to perfect something that for me was just as good as perfect."

- ii) an itinerary, e.g. *"It's a package of a total 12 days covering Jordan, Israel, Palestine and Mecca-Medina. It's a four star / five star package. During these 12 days these four countries will be visited including Umrah Hajj."*

- iii) references to specific price options, e.g.

"Total cost of the package is £1650 including travel, accommodation, breakfast and dinner"

"This year we have made cheap package to meet the demand of average market but comparatively we are cheap. But we will give a time limit, for example, after first 20 persons we have to increase a little bit more. We have made a package of £3500, very nice, decent. The hotel we offer, their rooms, bed rooms and bathrooms everything is shown on website. You will be able to see. In Mecca, it is about eight minutes walking distance, in Medina it is two to three minutes walking distance. This package will start from £3500 but it will go up to £3800. But the first 20 brothers and sisters they will get the benefit, other people will have to give £100 more and they will get better hotels, quality hotels. For Umrah if anybody goes off-peak time, we have a five star package with £850. In April when five star package is very expensive, we will give it by £1150 with group and normal package £1050."

- iv) details of how to book or request further information, e.g.

"...the office of Bismillah is Brick Lane, you can visit 72 Brick Lane or their website, [website address] to get details. Or if you phone the Bismillah office or the Hefajat Islam office you will get details or you will come to know details if you visit in person directly..."

In addition, for a period of over 30 minutes near the end of the programme, Bismillah Hajj & Umrah's website address appeared in on-screen text alongside the studio hotline and a "Further Contact" telephone number.

In view of the above, Ofcom considered the material clearly directly promoted the tours, their features and positive qualities, over an extended period, including a number of calls to action to viewers request further information. The programme therefore breached Rule 9.4 of the Code.

In addition, the nature and duration of the promotion of the tours throughout this approximately seven hour programme was such that they were clearly presented in an unduly prominent manner, in breach of Rule 9.5 of the Code.

Further, as the item was presented as editorial material, but nevertheless contained direct, detailed and extended promotions of the tours' features and positive qualities, Ofcom took the view that the item was akin to a teleshopping feature. Ofcom therefore concluded that this editorial material was not distinct from advertising, in breach of Rule 9.2 of the Code.

Ofcom noted the Licensee's assurances that in future any similar content would be identified as teleshopping. Broadcasters should be aware that teleshopping content must meet the definition of 'teleshopping' set out in the Code on the Scheduling of Television Advertising ("COSTA")⁵, and comply with both the COSTA rules and the UK Code of Broadcast Advertising ("the BCAP Code")⁶.

Breaches of Rules 9.2, 9.4 and 9.5

⁵ <http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/tacode.pdf>

⁶ <http://www.cap.org.uk/Advertising-Codes/Broadcast/BCAP-Code.aspx>

In Breach

Weekend Out

Sony TV Asia, 12 October 2012 and 4 January 2013

Introduction

Sony TV Asia is a general entertainment service which broadcasts a range of programmes originally shown in India to an international audience. The licence for Sony TV Asia is held by Sony Entertainment Television (“SET” or “the Licensee”).

Weekend Out is a magazine programme which showcases what to do and where to visit if you live in the United Arab Emirates (“UAE”). The programme is presented in English and Hindi, and is aimed at an international audience.

Ofcom received a complaint about the promotion of a restaurant called Al Haj Bundu Khan Restaurant in the UAE during the programme broadcast on 12 October 2012. In this segment, lasting nearly nine minutes, the presenter of the programme, Gaurav, talked about the range of meals available and ate a number of dishes, talking in very positive terms about the food, for example: *“This sauce is something you should definitely not miss. Excellent! Great! This [dish] literally melts in your mouth.”* An on-screen caption also gave viewers the telephone number to ring for reservations at the restaurant.

In addition, Ofcom noted in the same programme there was a report, lasting approximately five and a half minutes, which appeared to promote Max, a clothing and home furnishings chain store in the UAE. In this segment, Gaurav described the range of home products available and talked in positive terms about clothing options at the store, for example: *“The fashion collection at Max reflects the latest international trends in the market and all this at a price which you can’t afford to miss.”* The CEO of Max was interviewed about the growth and appeal of the store to different consumers and described what fashion products they had in store for that season.

Weekend Out contained Ofcom’s product placement ‘P’ logo to indicate products had been placed within the programme. However, in its representations to Ofcom (see Response below) SET confirmed that neither it, the programme producer, nor any person connected with either¹ received payment or other valuable consideration for the inclusion of references to Al Haj Bundu Khan Restaurant and Max during the programme, and that the references had not been subject to any product placement arrangement. The Licensee said it had placed the ‘P’ logo in *Weekend Out* “as a precautionary measure only.” SET said it knew it was “not making any financial benefits from the programme. However, as the genre of the programme is centred around showcasing the latest malls, restaurants, designers, trends hot in Dubai, we decided to place the ‘P’ due to the nature of the content in the show.”

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

Rule 9.2: “Broadcasters must ensure that editorial content is distinct from advertising.”

¹ “Connected person” is defined in Part 1 of Schedule 2 of the Broadcasting Act 1990.

Rule 9.4: “Products, services and trademarks must not be promoted in programming.”

Rule 9.5: “No undue prominence may be given in programming to a product, services 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.”

As part of its submission to Ofcom in November 2012, SET informed Ofcom that it had removed *Weekend Out* from its schedule in November 2012. In January 2013, Ofcom received an additional complaint about advertising messages contained within another edition of *Weekend Out* broadcast on 4 January 2013, after SET had informed us that it had withdrawn the programme.

Ofcom noted the programme broadcast on 4 January 2013 contained references to a number of products and services which appeared promotional in nature. These included, for example:

- Vintage Shades, an “*exclusive range of luxurious scarves and shawls crafted with personalised care*” at a shop in Dubai where customers and a spokesperson for the company spoke in very positive terms about the products;
- Teavana (a tea shop in Abu Dhabi) which was said to have over 100 varieties of “*the world’s finest teas*” and where “*passionate and knowledgeable ‘Tea-ologists’*” help customers choose the right tea for them;
- the opening of a Bosch home appliances showroom in Abu Dhabi, where Bosch “*values of innovation, reliability, longevity and high quality*” for its products were discussed; and
- a Cantonese restaurant in Dubai called Hakkasan where the “*perfect setting*” of the location and decor was highlighted and the presenter referred to a number of specific dishes, talked about the preparation of the food and described it as “*sublime*” and “*spectacular*” among other positive references.

This edition of *Weekend Out* also contained Ofcom’s product placement ‘P’ logo to indicate products had been placed within the programme. However, SET confirmed that neither it, the programme producer, nor any person connected with either² received payment or other valuable consideration for the inclusion of references to any of the products of services mentioned.

Ofcom considered this material also raised issues warranting investigation under the same Code rules as for the episode shown on 12 October. We also sought an explanation as to why this programme was broadcast after SET informed Ofcom that *Weekend Out* would not be shown again.

² “Connected person” is defined in Part 1 of Schedule 2 of the Broadcasting Act 1990.

Response

12 October 2012

SET stated that the programme was received via an international feed, aimed at the UAE market, and “thus it held no relevance to the UK clients and advertiser”. The Licensee said it had “allowed it to go on air” but “as a precaution it had placed a “P” on the beginning montage and the break bumpers.”

SET explained that it had “no paid advertising insertions” in the programme and that the nature of the reporting on the show reflected the general magazine format and provided a “what’s on” guide aimed at those living in the UAE.

The Licensee said there were no commercial arrangements in place for the products, services and trade marks featured or referred to in the programme and that the aim of the show “is to review the ‘happening’ places in the UAE” and inform viewers of places to visit.

4 January 2013

SET said that, as noted in its earlier response to Ofcom in November 2012, “Weekend Out had been dropped from SET because of the “suggested unsuitability” of the programme.” However, because of “human error” the scheduling team in India “made a mistake” and placed the programme back in the schedule for January “without our knowledge.” The Licensee also said its transmission team “had been warned of this programme however it was overlooked on their checks.”

SET also said that it receives programme content from India four hours before it goes on air in the UK. The Licensee said “even with time restraints...we check for any Ofcom misdemeanours, any technical errors and such...Any known discrepancies are omitted and replaced – if time permits. On this occasion the content was not alerted.” SET confirmed when it became aware that *Weekend Out* was back in the schedule it “had all the schedules checked again – and any placed were removed immediately.”

On the appearance of products and brands within the programme, SET said “the nature of the shoots [means] if [producers] film a report from the restaurant, the mall, the products that are hitting the shelves, the related objects/place will be shown as part of that editorial.”

Decision

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

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

The above requirements are reflected in, among other rules, Rule 9.2, which requires broadcasters to ensure editorial content is distinct from advertising; Rule 9.4 which states that products, services and trade marks must not be promoted in programming; and Rule 9.5 which prohibits giving undue prominence to a product, service or trade mark in programming. Undue prominence can arise from the inclusion in a programme of a reference to a product, service or trade mark and/or from the manner in which the reference is made.

In this case, Ofcom noted a number of references to products and services in the two programmes under consideration, as follows:

12 October 2012

Al Haj Bundu Khan Restaurant

This segment looked at the family history of the restaurant as well as the different dishes customers could eat. The presenter, Gaurav, often spoke positively about the range of dishes and quality of the food, *“This sauce is something you should definitely not miss. Excellent! Great! This [dish] literally melts in your mouth.”* While Ofcom considered this phrase, and others which praised how the meals tasted, were editorially justified during this restaurant review, we were concerned about the inclusion of an on-screen caption which stated: *“For reservations at Bundu Khan, call [telephone number]...”*. Ofcom considered the inclusion of this caption amounted to a promotion for the restaurant and was in breach of Rule 9.4.

Max

In this segment, Gaurav stood outside a Max store to introduce the company before he walked inside. Numerous close-up shots were shown of ladies' clothes, bags, shoes, men's jumpers and home furnishings. The presenter's comments about the store included:

“Let's introduce you to a brand that aims at fulfilling the fashion needs of the middle income customers. We take you to Max, the largest value fashion retailer in the Middle East region.”

“Winter is in full swing and so is their winter collection so just walk into Max and you have a lot of options to choose from whether its jackets, sweaters, pullovers, mufflers, whatever it is you'll find it here.”

“The latest season collection just re-trades the same stylish jackets with woollens to go along with – what more can you ask for?”

“Ok, so this is really the surprise I was talking about. How many of you knew that in Max you may not only get clothes but they have a lot more to offer? Like take a look at this...this is their home furnishing section.”

“Max is not just a clothing brand...you come across solutions for all your home needs right under one roof; so whatever your demand be – clothing, footwear, accessories to go with or even home furnishings Max is the store to look out for.”

“So after spending this one hour here I've realised that Max is a complete shopping destination and this is a shopping destination for your entire family because there is something for everybody - for the ladies, for the men, for the children, and then collectively your family can shop for your home as well.”

“With an international shopping experience Max believes in delivering its brand promise of more fashion, more value to its customers so mark the beginning of this New Year in style – a style that will not leave a hole in your pocket.”

The CEO for ‘Max Retail’ was interviewed about the branding and appeal of Max stores:

“Max reaches out to all value consumers and value seeking consumers and who look for fashion at value prices...in fact ...although our segment is mainly the ‘mid med’ market segment we also reach out to the slightly more aspirational customers who are seeking for value, and we also reach out to the consumers who are not exactly mid med and who are looking for aspirational products and who want to move up from the discount stores to more value stores.”

There may be sufficient editorial justification for references to products and services to avoid concerns arising under Section Nine of the Code. However, the more prominent the references to products, services, or brands within a programme, the greater the risk that these references may be either promotional in breach of Rule 9.4, or unduly prominent in breach of Rule 9.5, or both.

It is the broadcaster’s responsibility to ensure that any references to commercial products or services are appropriately limited so as not to raise issues under Rules 9.4 and 9.5.

In this case, while SET said the aim of programme was to ‘review’ the locations, the overwhelmingly positive language used to describe Max’s products and appeal to customers unambiguously promoted the store as a shopping destination for viewers (for example: *“Max is not just a clothing brand...you come across solutions for all your home needs right under one roof”* and *“So after spending this one hour here I’ve realised that Max is a complete shopping destination and this is a shopping destination for your entire family because there is something for everybody”*). The continual visual display of the range of products available within the store also promoted Max and the overwhelmingly enthusiastic comments from the presenter were clearly promotional in nature, in breach of Rule 9.4.

Ofcom recognises *Weekend Out* is intended to inform viewers about places they can visit in the UAE. There was therefore editorial justification for this report to refer to and feature shopping venues. However, we noted that this segment talked solely about Max as a brand, featured in extensive detail the products available to buy from Max, and included numerous positive references to Max and its products. Ofcom judged that there was insufficient editorial justification for the numerous positive references to Max and these were therefore unduly prominent, in breach of Rule 9.5.

Rule 9.2 requires that editorial content is kept distinct from advertising to prevent editorial material being distorted for commercial purposes. This rule helps to ensure that the licensee maintains editorial control over its programming and that it is clear to viewers that programming has not been subject to the control of advertisers. Rule 9.2 therefore seeks to ensure that viewers are easily able to differentiate between editorial material and advertising.

Overall we judged that the material promoted and gave undue prominence to Max to such a degree that it was akin to an advertising feature. We therefore judged that this editorial item was not distinct from advertising and also breached Rule 9.2.

4 January 2013

Vintage Shades

The presenter, Gaurav, introduced a filmed segment lasting approximately three minutes on the company Vintage Shades, which interspersed commentary from the presenter with numerous sweeping close-up shots of pashminas and shawls of various designs and colours. The commentary included the following remarks:

“Vintage Shades, an exclusive range of luxurious scarves and shawls crafted with personalised care brought its designs to Dubai for a second season. From neutral to vibrant shades, its impressive cashmere fabric embellished with luxurious pearls and feather-like splatters of Swarovski reflected contemporary designs and new age trends.”

“These scarves and shawls are stylish and fashionable. And they also fulfil its purpose during cool winter months. Hence the designer range of Vintage Shades showcased its spectacular range of timeless fabric and handcrafted art.”

In the segment, the owner was interviewed about her company and stated:

“Vintage Shades is a fashion accessories brand from Delhi that carry shawls and scarves which embellished with Swarovski and pearls and the main focus of the business is quality. And they just do not compromise on quality.”

A customer also gave her opinions about the company’s range of products:

“I have to say the collection just gets better and better. The colours, the crystals, the Swarovski that’s on them. They’re just so beautiful. And I always pick up something from Vintage Shades because I just think it’s completely worth it – the fabric, the pashmina, the cashmere shawls... it’s definitely worth to have in your wardrobe. And this season is just the best time in Dubai to buy yourself one.”

Teavana

The presenter Gaurav introduced a filmed segment lasting approximately three minutes on a shop which sells tea and tea-related merchandise, Teavana. The segment interspersed commentary from the presenter with sweeping close-up shots of tea caddies and the different merchandise available in the store, as well as an interview with one of the ‘Tea-ologists’ about the company’s history. The commentary stated:

“Tea is the art of life that takes you through a journey of relaxation and recreation. With the world’s finest teas introduced to one of the finest cities in the region, Abu Dhabi, brand Teavana takes this tea-full journey on to new heights. Teavana offers new tea enthusiasts and tea experts a heaven of tea experience, where passionate and knowledgeable ‘Tea-ologists’ engage and educate about the special manner in which tea is made. From its texture to its qualities, Teavana’s in house ‘Tea-ologists’ enlighten on the wide variety of teas available.”

“Teavana, the renowned American brand, brings warmth with a display of about 100 premium teas, as well as energises with its bright coloured tea-oriented crockery. Taken as a whole, Teavana at Atall Mall Abu Dhabi, will truly make you believe that drinking tea is surely a ritual for relaxation.”

One of the customers in the shop said:

“Well actually, it’s such a brilliant experience. They have so many different types of tea, different flavours, so is the merchandising they have over here. I quite enjoyed the shopping and tasting the tea [from] all over the place.”

Bosch

The presenter Gaurav introduced a filmed segment lasting approximately three minutes about the opening of a new “premier showroom” in Abu Dhabi from “the leading German home appliance brand” Bosch, to launch its own charity, the ‘Care Initiative’, alongside the Make A Wish Foundation. The segment interspersed commentary from the presenter with sweeping close-up shots of Bosch products such as washing machines, cookers, food mixers and other kitchen appliances. The commentary stated:

“Taking their values of innovation, reliability, longevity and high quality forward, Bosch’s products under ‘The Care Initiative’ focus on hygiene and security for families with children. The Initiative is dedicated to assisting children with life threatening medical conditions and their families through the fulfilment of special wishes. Bosch attempted not only to fulfil the wishes of many women but also accomplished its social moral responsibility. Bosch pledged to make a financial contribution of 50 dirham from every sale of its Care Collection in the UAE. In addition, with every major home appliance sold from the Defined Care range, it will also donate a teddy bear to the children’s foundation. This most certainly was a cause for a double celebration for the entire team at Bosch.”

The Regional Chief Executive Officer at Bosch was interviewed, who stated:

“Bosch home appliances have always considered themselves responsible corporate citizens. This is a part that we play in communities and of course through this initiative that was launched here today...Customers who come in to this Brand experience centre here can get expert advice and consultation on appliances that they require for their kitchen, whether it be a particular laundry need or a cooking need. They can get the full spectrum of advice. And of course all these appliances are installed in the customer’s homes as part of the package offered when appliances are purchased and we offer a full after sales service package as well...It’s a big breakthrough for us, it’s very exciting for our partners, and it’s going to be a significant step in the retail environment of Abu Dhabi.”

Hakkasan

From outside of the Hakkasan restaurant in Abu Dhabi, the presenter Gaurav introduced a segment lasting over eight minutes about a new Cantonese restaurant which had just opened in the city. The segment interspersed commentary from the presenter as well as discussion during a meal with the General Manager of the restaurant, alongside shots (occasionally in slow motion) of the interior and exterior of the restaurant. The commentary included:

“I have got you for an excellent modern Cantonese experience. This is a restaurant that opened up in Dubai last year. Now they’ve got eight outlets in seven major cities in the world. We’re in for a great experience. It’s called the Hakkasan experience.”

“As I enter the Michelin starred restaurant in the shadows of the Emirates Stars Boulevard, I feel transported into a Japanese-styled garden, complete with cascading wooden pavilions surrounded by walls of vegetation, water features and burning incense sticks.”

“The interiors are highlighted by trademark Hakkasan elements. A dining area, lounge and a blue lit bar section. But it also features a significant use of American red oak which provided a warm complement to the luxurious interior. Fresh flower arrangements only add colour and chic to the ambience. But since the cooler months have set in, I decided to enjoy the perfect weather in a perfect setting at their new stunning outdoor terrace. It’s a little oasis tucked away from the bustle of the surrounding business districts, and calming water features and of course lots of greenery.”

At the dining table, Gaurav asked the General Manager of the restaurant about the experience of dining at Hakkasan. The General Manager replied:

“It’s an experience which speaks to all your senses from the moment you walk into the restaurant. The smell of the incense which is, again, very unique to Hakkasan, to the decor of the restaurant, to the music, to the chef’s preparation of dishes, the uniqueness of flavours, the smell of the food, the appeal of our staff, the service, the uniforms. It’s a total package. You would not come only to Hakkasan for dining reasons, it’s an experience. It’s a total package altogether.”

After finishing the meal, Gaurav then turned to camera and said:

“You know, I have a policy – I never lie on a full stomach. So on a full stomach, I’ve got to tell you something – from the dumplings to the duck, from the prawns to the seabass, everything that I’ve had here at Hakkasan has been absolutely spectacular. So I agree with Amit when he says that when you come to Hakkasan there is something called the Hakkasan experience. Just in case you’re one of those people who has never been to Hakkasan, then must try dishes are the ones that I’ve tried, coming for a meal at Hakkasan that you are sure you’re not going to go wrong with, this is what you’ve got to order. And I’ve got to thank Amit, thank you Amit, I’ve had a great meal here and I’ll come here for many more.”

The commentary closed, with further shots of the interior of the restaurant, the food and the terrace:

“Since opening its doors in the Emirates Stars Hotel in November 2011, Hakkasan has continued to impress guests with its Michelin starred Cantonese cuisine, stylish decor and elegant ambience. From the ambience, the famed indigo lighting and the intricately carved walls in dark wood, to the impeccable service and the delicately flavoured food, my experience bordered on the sublime. This famed chain, frequented by celebrities including Shahrukh Khan and Morgan Freeman, definitely delivers on all counts.”

Ofcom recognises that in a magazine-style programme which features different places people can go to shop, or that conducts restaurant reviews, there is clear editorial justification for some forms of references to products and services. However, broadcasters must be careful to ensure that any commercial references remain editorially justified and that the programme does not simply become a vehicle to promote these products or services.

Ofcom had serious concerns about the effusive and prolonged nature of the references in all of the above examples. There was clearly insufficient editorial justification for such references, where the emphasis was plainly on showcasing the positive attributes of the services each company offered, in an advertising style. In particular the unambiguously glowing nature of the Hakkasan segment, in commenting extensively on the decor and setting, including slow motion shots of the interiors of the restaurant, went far beyond what could be expected from a restaurant review. In the segment about Bosch there were brief references to the company's charitable intentions, but the report focused mainly on the experience customers could get from the new Bosch store.

The reports on all of the products and services within segments mentioned above visually displayed the range of products available. The commentary from the presenter was also unambiguously positive. As such Ofcom judged that the visual and verbal references to these products and services were promotional in nature, in breach of Rule 9.4.

In addition, the segments also focussed entirely on the positive attributes of the products and brands. Ofcom considered that the segments went much further than merely informing viewers about 'what's on' and 'where to go' in the UAE. There was insufficient editorial justification for the extent and manner of these references to the brands, which were therefore unduly prominent, in breach of Rule 9.5.

Overall we judged that the material promoted and gave undue prominence to Vintage Shades, Teavana, Bosch and Hakkasan to such a degree that the individual segments were akin to advertising features. We therefore judged that these editorial items were not distinct from advertising, in breach of Rule 9.2.

Ofcom acknowledged the target audience for the programme was based in the UAE and that SET acquired *Weekend Out* for a UK broadcast. The products and services highlighted would not be easily available to viewers in the UK, unless they travelled to the UAE. Nevertheless, Ofcom expects all broadcasters who obtain television content from outside of the UK to ensure the material complies with all aspects of the Code. The rules in Section Nine apply to all Ofcom licensed television broadcasters, whether or not the products, services or trade marks are readily available to UK viewers.

We noted in its response that SET said: "Any known discrepancies are omitted and replaced – if time permits." Ofcom understands there may be time constraints on broadcasters wishing to re-transmit material for a UK audience when it has been originally obtained from abroad. However, it is unacceptable to potentially keep material which does not comply with the Code within a broadcast programme because 'time limitations' do not permit the removal of the content in question.

Ofcom also had concerns about SET's decision to place a product placement 'P' logo in *Weekend Out*, on both dates, which it said it had used as a "precaution" for any potential issues with the content. Ofcom has published detailed guidance³ for broadcasters on the product placement rules and the signalling requirements. SET's confusion in this area illustrated shortcomings in its understanding of its compliance responsibilities. In addition, while we noted that SET had admitted that *Weekend Out* was put back in the schedules as a result of "human error", Ofcom was concerned that the scheduling team in India put a programme that had been identified as

³ See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>

potentially being “unsuitable” back in the schedule without SET proactively noticing this.

In light of the breaches in this case, Ofcom expects the Licensee to improve its compliance in this area as a matter of urgency.

Breaches of Rules 9.2, 9.4 and 9.5

Resolved

It's Complicated (trailer)

Film 4, 5 April 2013, 13:13

Introduction

Film 4 broadcast a trailer for the film *It's Complicated* at 13:13 on a Friday afternoon during the Easter school holidays. The trailer was broadcast during an advertising break in the film *The Spy Next Door*, which is rated 'PG' by the BBFC and listed as a "family friendly action-comedy".

It's Complicated, rated '15' by the BBFC, is a comedy romance about a divorced couple Jane and Jack re-igniting their relationship. The trailer was approximately 30 seconds in duration and included clips of these characters lying on a bed in a context clearly implying that they had just had sex, with Jane saying out of breath, "*I'm having an out of body experience*", and "*Oh God*". The trailer also included clips of Jane and Jake kissing passionately, Jake rubbing Jane's leg intimately, and Jake commenting, "*This is very French of us; I have a young wife, but I am having sex with my old one*".

Ofcom received a complaint that the broadcast of the trailer at a time when children could have been watching was inappropriate because of the trailer's sexual content.

Ofcom considered that the material warranted investigation under Rule 1.3 of the Code, which states:

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

Ofcom therefore asked Channel 4 ("the Licensee") for comments on how the broadcast of the trailer complied with this rule.

Response

Channel 4 said it has comprehensive procedures relating to the rating and scheduling of trailers for its programmes. The Licensee said that the *It's Complicated* trailer was initially made for broadcast on Channel 4 not Film 4 and was rated for its suitability for transmission prior to it being placed in the schedules. Channel 4 considered that, although there was nothing explicit in this trail which necessarily should have restricted its scheduling, its overall adult tone and implications meant that the Licensee gave it an internal rating that it should only be shown after 20:00, and not around programmes specifically made for children.

Channel 4 said the trailer was then inappropriately scheduled on Film 4 in "an isolated" and "regrettable case of human error." The Licensee added that the broadcaster identified the mistake before it was made aware of the issue by Ofcom, and that the broadcast complained of and a subsequent transmission the same afternoon at 14:55 were the only occasions when the trailer was inappropriately scheduled.

Channel 4 said that it has now revised its system for scheduling trailers to ensure that none will be broadcast before being properly checked.

Decision

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

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

Ofcom has issued guidance in relation to Rule 1.3 which includes advice on the scheduling of trailers¹. In this guidance we emphasised the importance of ensuring that “trailers for post-watershed content scheduled pre-watershed include only content that is appropriate for a pre-watershed audience”. This is particularly important because viewers come across trailers unawares and broadcasters are unable to provide any context or warning to viewers in advance about the material they are about to see.

Ofcom first assessed whether this trailer contained material unsuitable for children. We considered that the content in the trailer (as set out in the Introduction), when assessed individually and in isolation, was not necessarily inappropriate for broadcast before the watershed. In Ofcom’s view, however, the cumulative effect of the brief scenes in this trailer, when viewed together, resulted in a clear adult tone which was unsuitable for child viewers, and which meant that the trailer required careful scheduling if its broadcast was to comply with the Code.

Ofcom then went on to consider whether this material was appropriately scheduled.

This content was broadcast during the Easter school holidays at lunchtime and during an advertising break in a film likely to appeal to a child audience.

This trailer was created to promote a post-watershed film containing adult themes but broadcast pre-watershed and because it was a trailer it was not signposted in advance to viewers. As a result they would have come across it unawares, and there was no specific editorial justification or context to help justify showing this content at this time (for example as might occur within a drama or documentary). To show this trailer at lunchtime on a Friday during school holidays was not in line with the likely expectations of the audience.

However, Ofcom took into account that: Channel 4 originally rated this trailer to be shown after 20:00, and not around programmes specifically made for children; the trailer was broadcast due to human error; the Licensee identified the mistake before being told of it by Ofcom; Channel 4 has reviewed its scheduling restriction procedures to ensure the error did not happen again; and, while there was a clear adult tone to the trailer, it contained no explicit sexual images or language.

¹ See: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/watershed-on-tv.pdf>

In light of these factors, Ofcom considers the matter resolved.

Resolved

Resolved

Bradford: City of Dreams

BBC 2, 9 May, 2013, 20:00

Introduction

Bradford: City of Dreams was a documentary series on BBC2 exploring contemporary life in the Yorkshire city of Bradford and the attempts of some of its entrepreneurial residents to build successful businesses in the current and challenging economic climate.

A member of the public alerted Ofcom to the use of offensive language by one of the entrepreneurs featured in the series, Naveed Khan.

Ofcom noted that at approximately 20:30 a clip of Mr Khan was broadcast discussing a car repair with a colleague. During the exchange Khan exclaimed "I don't understand fucking Argentina language" as he was struggling to understand his colleague. Although Khan uttered the offensive language under his breath to some extent, the word "fuck" was clearly audible.

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

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

Ofcom asked the BBC how this broadcast of offensive language complied with this rule of the Code.

Response

The BBC stated that although the word "fucking" was reasonably clear, Mr Khan did say the word under his breath to some extent. This, coupled with Mr Khan's strong Bradford accent, meant that the word was not noted when the programme was reviewed for editorial and compliance purposes. The BBC stated that they have received just two complaints on this matter, and suggested that this indicated that the majority of viewers had not picked up on the word.

The BBC apologised and stated that they regretted the oversight. When the programme-makers became aware of the language (on the morning following the initial transmission) action was taken immediately to remove the programme from iPlayer and edit out the language.

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 that "persons under the age of eighteen are protected". These duties are reflected in Section One of the Code.

Rule 1.14 states that “the most offensive language must not be broadcast before the watershed”. Ofcom research on offensive language¹ notes that the word “fuck” and its derivatives are considered by audiences to be amongst the most offensive language. The watershed begins at 21.00. The instance of the word “fuck” in this programme occurred at around 20.30. Given that the word “fuck” was clearly recognisable, this was a breach of Rule 1.14.

Ofcom noted however that: although audible, the word was not said in an emphatic way, and the BBC noted the offensive language when the programme was first shown, before being contacted by Ofcom, and immediately took measures to edit out the word from the version on their on-demand service. Taking all these factors into account, Ofcom considers the matter resolved.

Resolved

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

Advertising Scheduling Findings

Resolved

Resolved findings table

Code on the Scheduling of Television Advertising compliance reports

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

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

Channel	Transmission date and time	Code and rule / licence condition	Summary finding
Tiny Pop	24 April 2013, 10:00	COSTA Rule 4	<p>Ofcom received notification from the broadcaster that it had exceeded the permitted allowance by 180 seconds.</p> <p>The licence holder for Tiny Pop CSC Media Group (“CSC Media”) explained the original scheduled programme failed to play. Due to human error from the playout operator, the replacement programming which was inserted contained an extra 180 seconds in that hour.</p> <p>CSC Media said it stressed the seriousness of this matter with the playout operator and the importance of complying with COSTA. It also said additional training has been given to the playout operator to ensure the error is not repeated.</p> <p>Finding: Resolved</p>

Fairness and Privacy cases

Upheld

Complaint by Mrs Yvonne-Charley Walsh on her own behalf and on behalf of Mrs M A Mallender, Mr Johnnie Mallender and Mr David Mallender

999: What's Your Emergency?, Channel 4, 22 October 2012

Summary

Ofcom has upheld this complaint of unwarranted infringement of privacy in the programme as broadcast, made by Mrs Yvonne Walsh on behalf her family ("the Mallender family").

This edition of *999: What's Your Emergency?*, a series which follows the work of Blackpool's emergency services, included a very brief image of Mr Keith Mallender (the complainants' relative – now deceased) in his own home as he was assessed by a paramedic.

Ofcom found that the Mallender family's privacy was unwarrantably infringed because this footage of Mr Mallender, while in a vulnerable state during a sensitive situation which was private to him and his family, was broadcast without consent. In the specific circumstances of this case, Ofcom did not consider that the public interest in broadcasting this particular footage outweighed the family's expectation of privacy.

Introduction

On 22 October 2012, Channel 4 broadcast an edition of its series *999: What's Your Emergency?* which follows the work of Blackpool's emergency services from the point that an emergency call was taken at the control centre to the deployment of the police, ambulance teams and fire crews. This edition of the programme focussed on women in the emergency services. It also featured the increasing number of incidents involving women, some of whom had behaved violently.

The end of the programme included a montage of clips showing the female members of the emergency services who had featured in the programme. The clips showed the women either attending incidents to which they had been called and/or reflecting on their experiences as women in the emergency services. One of the clips shown was of a female paramedic helping an elderly man (the complainants' relative, Mr Keith Mallender – now deceased). During this clip, the paramedic was shown holding a stethoscope to the man's chest while she said: "*Keith, I'm going to listen to your chest, alright*". The footage showing Mr Keith Mallender lasted under two seconds and was only broadcast once. However, his face was shown unobscured and his first name was referred to.

Following the broadcast of the programme, Mrs Walsh complained to Ofcom that her privacy and that of her mother, Mrs M A Mallender, and her brothers, Mr Johnnie Mallender and Mr David Mallender ("the Mallender family") was unwarrantably infringed in the programme as broadcast.

Summary of the complaint and broadcaster's response

Mrs Walsh complained that the privacy of the Mallender family was unwarrantably infringed in the programme as broadcast in that the programme included footage of her father when he was seriously ill without consent.

Mrs Walsh said that her family had called the emergency services on 22 November 2011 after her father had started to vomit blood. Mrs Walsh said that they had all been very distressed at the time and had given the camera crew permission to come into the house with the paramedics. However, Mrs Walsh said that while at the hospital where Mr Mallender was treated, her mother had declined a request to be interviewed and had asked that the footage of her husband not be broadcast as she did not want anyone to see him looking so ill. Mrs Walsh said that the cameraman agreed to this request. Mrs Walsh added that her father died later the same day.

In response, Channel 4 said that following a call to the emergency services on 22 November 2011, a paramedic team being filmed that night attended Mr Keith Mallender at his home at about 05:30. In accordance with the established protocol for this series, Channel 4 said that upon entering the property, the lead paramedic explained that she was being filmed for a Channel 4 documentary and asked whether it was alright for the cameraman to continue filming. Mr Mallender's daughter, Mrs Walsh, responded by saying "yeah, yeah, it's my dad" and the paramedics and the cameraman followed her into the room where the patient, Mr Mallender, sat in a chair at the dining table. The filming continued throughout the five to ten minute period during which Mr Mallender was assessed by the paramedic. The cameraman was in full view of the patient and his family and neither raised any objection to the filming. Channel 4 said that if the family had asked for the cameraman not to enter the house or to stop filming he would have done so. It added that the presence of the camera did not add to the patient's uncomfortable situation in any way.

The broadcaster explained that although the cameraman continued filming as Mr Mallender was transferred to the ambulance it was a brief part of this earlier sequence which was used in the programme to illustrate the paramedic tenderly caring for a patient who needed emergency care. Mr Mallender was then taken to hospital.

Channel 4 continued that the notes on the filming production log included the names of the people involved in this particular incident and a contact telephone number. It stated too that the production company had been given permission to film, but that the Mr Mallender's family did not want any shots of "the patient" (i.e. Mr Mallender) vomiting blood to be included in the programme. Channel 4 also said that this account was similar to that set out by Mrs Walsh in her complaint to Ofcom, notably her comment that "although we said they [i.e. the cameraman as well as the paramedic] could come into the house my mum had asked them later not to show the footage as she didn't want people to see dad so ill".

Channel 4 said that around nine months after the filming took place, the series producer spoke to the cameraman to check the position regarding consent for the brief shot of Mr Mallender which they planned to include in the programme. Channel 4 said that the cameraman recalled that he had been given permission to film in the house and had done so in clear view of the patient and family who did not object. It added that the cameraman said that he was asked not to film the patient once he

was at hospital because he was vomiting blood and that the unedited footage of Mr Mallender confirmed that he did not do so¹.

The broadcaster said that the image of Mr Mallender included in the programme showed him having his chest listened to with a stethoscope while he was being assessed at home and before he became more unwell at the hospital.

Channel 4 said that given this background, the production company believed that it had consent to use this very limited contribution of this patient.

Channel 4 noted that Mrs Walsh complained that her mother, while at the hospital, had declined a request to be interviewed and had asked that the footage of her husband not be broadcast as she did not want anyone to see him looking so ill. Mrs Walsh also said that the cameraman agreed to this request. In response Channel 4 said that while neither the log notes nor the unedited footage refer to it, the production company believed that Mrs Walsh declined a request to be interviewed. However, it said that the cameraman denied that he ever agreed that no footage at all of Mr Mallender would be included in the programme.

Channel 4 said that although the shot of Mr Mallender included in the programme was only just over a second long, (and the production company knew that it had been given permission to film the paramedics' care of Mr Mallender at his home), the series producer, nevertheless, sought to contact the complainants' family on the telephone number provided at the time of the incident. The series producer called about four times and on two occasions left a message, including a contact number, on the answering machine. Channel 4 said that the series producer explained that she was a producer from the production team filming for Channel 4 when the paramedics came to care for Mr Mallender and that a very brief shot of Mr Mallender being tenderly cared for by the paramedic would be included in one of the programmes to illustrate the paramedic doing her job. The series producer did not hear from the family and so called again and left another message explaining the likely transmission date of the programme and that the shot was to be included. Channel 4 regretted that none of these messages was received by the complainants' family because Mrs Mallender had changed her telephone number but this was not known to the broadcaster. It also said that neither it nor the production company were aware that Mr Mallender had died at the hospital some hours after the filming took place until Mrs Walsh complained to them after the broadcast. It added that due to data protection legislation they would have been unable to access details of Mr Mallender's personal medical history.

Channel 4 said that it had no intention of upsetting or distressing the complainants' family and as soon as it became aware of the unfortunate circumstances it took immediate steps to rectify the position. In particular, both the production company and the Channel 4 Commissioning Editor with responsibility for the series apologised to the Mallender family (copies of this correspondence were provided to Ofcom) and the programme was edited to remove any images of Mr Mallender.

Channel 4 concluded that the brief shot of the late Mr Mallender, which it said did not show him in undue distress, was included in the programme in good faith. In particular, the broadcaster said that the programme makers believed that the complainant's family had given permission for the filming and subsequent broadcast

¹ Given that the complaint related solely to the footage of Mr Mallender which was included in the programme as broadcast, this unedited footage was not considered by Ofcom as it was not relevant.

of the specific footage of Mr Mallender which was included in the programme and that, therefore, they did not consider that there had been an unwarranted intrusion into the complainants' privacy. However, Channel 4 added that had it or the production company been aware of Mr Mallender's death, the shot would not have been included in the programme.

Decision

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

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

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript and both parties' written submissions. Neither party made any representations in response to Ofcom's Preliminary View on this complaint.

Ofcom considered Mrs Walsh's complaint that her family's privacy was unwarrantably infringed in the programme as broadcast in that footage of her late father, Mr Mallender, when he was seriously ill was included in the programme without consent.

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

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

In considering whether or not there had been an unwarranted infringement of the Mallender family's privacy in the broadcast of the programme, Ofcom first assessed the extent to which the members of Mr Mallender's family (his wife, daughter and two sons) had a legitimate expectation of privacy in respect of the broadcast of footage of Mr Mallender receiving medical treatment. Ofcom had regard to Practice 8.6 of the Code which states that, if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

Ofcom noted that Mr Mallender was shown in the programme as he was examined by a paramedic in his own home. The image of him, which was brief (shown for under two seconds), showed the paramedic holding a stethoscope to his chest while she said "*Keith, I'm going to listen to your chest, alright*". It was evident from the footage that Mr Mallender's upper body was unclothed and he appeared to be quietly concentrating on what was happening to him. From this footage, Ofcom considered

that viewers would have understood that Mr Mallender was experiencing pain or discomfort. Ofcom noted that no other footage of Mr Mallender was included in the programme, nor were there any further references to him. In these circumstances, Ofcom took the view that the footage of Mr Mallender showed him in a vulnerable state during a sensitive situation which was private to him and his family.

In addition, Ofcom noted that although Mr Mallender's surname was not included in the programme it did include a clear, albeit a very brief, image of his face in profile and a reference to his first name. Given this Ofcom considers that Mr Mallender was identifiable from the footage of him included in the programme.

In light of the factors noted above, Ofcom considered that the complainants (i.e. Mr Mallender's immediate family) had a legitimate expectation of privacy in relation to the broadcast of the footage of Mr Mallender receiving medical treatment. Having found that the complainants had a legitimate expectation of privacy in this respect, Ofcom assessed whether consent had been secured before the relevant footage was broadcast in accordance with Practice 8.6.

Ofcom noted that Mrs Walsh said that although the family had given the camera crew permission to come into the house with the paramedic, subsequently, while at the hospital where Mr Mallender was treated, her mother had declined a request to be interviewed and had asked that the footage of her husband should not be broadcast as she did not want anyone to see him looking so ill. It noted too that Mrs Walsh said that the cameraman agreed to this request. Ofcom also took note of Channel 4's response to this that the programme makers believed that the complainant's family had given permission for the filming and subsequent broadcast of the specific footage of Mr Mallender which was included in the programme and that the family's only proviso had been that no footage of Mr Mallender vomiting blood should be included.

According to Channel 4, the production log for the programme indicated that upon entering the property the paramedic explained that she was being filmed for a Channel 4 documentary. She asked whether it was all right for the cameraman to continue filming and Mr Mallender's daughter, Mrs Walsh, had responded by saying "yeah, yeah, it's my dad", after which the cameraman continued to film the paramedic as she attended to Mr Mallender.

Mrs Walsh had agreed that the cameraman could accompany the paramedic as she attended Mr Mallender in his home. However, given that the family was clearly very distressed about Mr Mallender's situation and that their primary concern would have been to see Mr Mallender receive immediate medical attention, Ofcom did not consider in the circumstances of this case that Mrs Walsh's response to the paramedic constituted consent to the inclusion of footage of Mr Mallender in the programme as broadcast.

Ofcom acknowledged that there was a difference in the cameraman's and the Mallender family's understanding of the conversation which took place between them at the hospital. Specifically, Ofcom noted that the cameraman believed that Mrs Mallender had given consent to the broadcast of the footage which he had recorded of Mr Mallender in his home, but not footage of him vomiting blood, while the complainants believed that they had not consented to the broadcast of any footage of Mr Mallender. Notwithstanding that the programme makers believed that consent for the use of this footage had been obtained, Ofcom considered that in the particular circumstances of this case (i.e. where the complainants were evidently very distressed about the suffering of their close relative) the onus to ensure that the

family had clearly understood the situation and actually given consent for the use of the footage in question lay with the programme makers and the broadcaster.

Ofcom noted that during the editing process nine months after the filming took place the series producer sought to contact the Mallenders by making several telephone calls to the contact telephone number recorded in the production log at the time of filming as that of the Mallender family. Ofcom also noted that despite several telephone calls and two voice messages left to this number, the series producer did not make contact with Mrs Mallender because, as later became clear, she had changed her telephone number after Mr Mallender's death.

Ofcom noted from Channel 4's submission that it said that, due to data protection legislation, the programme makers would have been unable to access details of Mr Mallender's personal medical history and that they were, therefore, unaware that he had died in hospital some hours after the filming took place. However, even in the absence of this information, Ofcom considered that it would have been clear to the programme makers that Mr Mallender was very unwell (they knew that he had been vomiting blood and that he had been transferred to hospital) and that, consequently, his family were deeply distressed and therefore care needed to be taken to ensure they had received consent.

In light of this, and taking all of the factors set out above into account, Ofcom considered that the broadcaster had not ensured that it had the consent of the Mallender family to the broadcast of the footage of Mr Mallender and that their privacy was infringed as a result of its broadcast.

Having concluded that the Mallender family had a legitimate expectation of privacy and that their privacy was infringed by the broadcast of the footage in the programme, Ofcom then went on to determine whether the infringement of their privacy was warranted.

In doing so, Ofcom weighed the broadcaster's competing right to freedom of expression and the public interest in examining the work of the emergency services and the audience's right to receive information and ideas without unnecessary interference against the Mallender family's right to privacy. Ofcom noted that in its response Channel 4 claimed in a general way that there was a public service purpose for the programmes in the *999: What's Your Emergency?* series. Other than explaining that the footage of Mr Mallender had been selected in order to illustrate the paramedic tenderly caring for a patient who needed emergency care, Channel 4 did not however make any specific arguments (either on the grounds of public interest or for other reasons) to justify the infringement of the complainants' privacy as a result of the broadcast of this footage.

Ofcom noted that as soon as Channel 4 was informed that Mr Mallender had died on the night that filming took place, it apologised to the Mallender family for any distress caused to them by the broadcast of the programme and acted swiftly in editing the footage of Mr Mallender out of programme. Channel 4 also acknowledged in its submissions that had it been aware of Mr Mallender's death prior to the broadcast it would not have included the footage of him in the programme.

Having taken account of all of the above, Ofcom concluded that the desire to illustrate the paramedic tenderly caring for a patient who needed emergency care as part of the closing sequence of the programme did not provide sufficient justification for the intrusion into the Mallender family's privacy through the broadcast of the footage. Therefore, in Ofcom's view, on balance, the broadcaster's right to freedom

of expression, its right to receive and impart information without interference and the public interest in enabling viewers to see a paramedic at work did not outweigh the Mallender family's expectation of privacy in relation to the broadcast of the brief footage of Mr Mallender without appropriate consent. Ofcom therefore concluded that the inclusion of this footage in the programme as broadcast and the consequent infringement of privacy was not warranted.

Ofcom found that the Mallender family's privacy was unwarrantably infringed in the programme as broadcast.

Accordingly, Ofcom has upheld Mrs Walsh's complaint of unwarranted infringement of privacy in the programme as broadcast.

Not Upheld

Complaint by Mr Gareth Davies on behalf of himself and Apex Multiple Contractors

The Ferret, ITV1, 30 July 2012

Summary

Ofcom has not upheld a complaint of unjust or unfair treatment and unwarranted infringement of privacy made by Mr Gareth Davies.

The programme included a report about the work undertaken by a firm of building contractors, Apex Multiple Contractors (“Apex”), on a period property in Port Talbot, Wales. During the course of the programme the owners of the property, Mr and Mrs Duncan, commented on the quality of the works that had been undertaken and expressed their disappointment at some aspects of it. They commented specifically on a number of elements of the work and were critical of how the contractors had removed the existing doors, rather than repaired and renovated them; and that original wood panelling had been removed, which they said had changed the character of the house. Mr Duncan also stated that he did not believe Apex to be members of the professional bodies whose logos they had displayed on their signage.

Ofcom found that:

- Mr Davies’ views were fairly and accurately presented in the programme as broadcast and viewers would have understood what Mr Davies’ position was in relation to the issues raised in the programme. Ofcom considered that the broadcaster had taken reasonable care to ensure that the material facts were not presented, disregarded or omitted in a way that was unfair to Mr Davies.
- Ofcom also considered that the presentation of facts was fair and that the broadcaster had a sufficient evidential basis for the assertions that were made in the programme regarding Apex’s membership of two professional organisations.
- Mr Davies was given an appropriate and timely opportunity to respond to the serious allegations about Apex made in the programme because the programme makers put the main allegations to Mr Davies in a letter one month before the broadcast and Mr Davies and the programme makers corresponded regularly in the month prior to the broadcast.
- In light of the conflicting claims from Mr Davies and the programme makers as to whether Mr Duncan had an in-house contact at *The Ferret*, Ofcom does not reach a view on this point. However, Ofcom considered that Mr Davies’ position in relation to whether the programme was biased was fairly reflected in the programme.
- Mr Davies did not have a legitimate expectation of privacy in relation to the obtaining and broadcast of footage of his home given that it was also his business premises and the property was filmed from a public highway.

Introduction

On 30 July 2012, ITV1 HTV Wales broadcast an edition of its consumer affairs programme *The Ferret*, presented by Mr Chris Segar. This particular edition featured a report about Mr and Mrs Duncan who engaged the complainant's (Mr Gareth Davies) company, Apex Multiple Contractors ("Apex"), to carry out renovations on their property (a former vicarage in Port Talbot, Wales).

The programme explained that Apex had previously been hired by Mr and Mrs Duncan to restore brickwork to the outside of the vicarage and that they were pleased with the results. Mr and Mrs Duncan decided to have the interior of the house renovated, so that the standard of the inside of the house was the same as the outside and hired Apex to carry out this work.

Mr Duncan said that it was an expensive project and that approximately £93,000 was spent in total on the building works, £60,000 on the interior and the remainder on the external renovation. A quote from Apex to Mr Duncan detailing the proposed internal works was shown in the programme. Mr Duncan said that a further £15,000-£20,000 was spent on items such as carpets and lighting. The programme stated that Mr and Mrs Duncan moved out of the property for three months while the refurbishments were taking place, although Mr Duncan stayed at the property occasionally in order to pay Apex. However, Mrs Duncan stated that when she returned to her home she was not satisfied with the renovation, because while it "*looks lovely*" she felt that she had "*lost a period property*". For example, Mrs Duncan said she had told Apex to retain the old doors but instead they were replaced with new doors. In addition, Mrs Duncan complained that the cooker was not big enough and she said it was not the cooker that Apex was supposed to order. Further, there was uneven tiling in the kitchen and the overall look of the property was "*contemporary*" though Apex was instructed to restore the property rather than replace its period features.

Still shots of Apex's signage banners with the company's contact details were shown in the programme and Mr Duncan explained that two of these banners were hung outside the property at the time that work was taking place. The presenter, Mr Segar, made reference to the fact that the Apex signage banner displayed the logos of the Federation of Master Builders (the "FMB") and the National Home Building Council ("NHBC"), but in the programme Mr Duncan expressed his doubts that Apex was, in fact, a member. Mr Duncan said that he was reluctant to take this matter to court because of the costs involved but had contacted the programme to try to recover some of the costs (around £20,000) that he had paid to Apex.

Mr Segar explained that the programme had approached Mr Davies about the complaints raised by Mr and Mrs Duncan and in turn Mr Davies provided a statement which accused the programme of "*biased and corrupt reporting*".

Mr Segar referred to Mr Davies' statement at intervals during the programme. For instance, in response to the complaint that Apex had destroyed the character of the property and in particular that panelling was removed from one of the rooms, Mr Davies' response was that there was no panelling in the first place. Mr Segar showed a photograph of the room before Apex were contracted to carry out work in which panelling was visible. In relation to the replacement of doors, Mr Davies' statement said that the old doors were not the original doors and that Mrs Duncan had in fact gone to select the new doors with an Apex employee. He added that Mr Duncan was present when the new doors were hung and had raised no concerns with Apex at that point. Mrs Duncan denied that she had gone to select new doors with an Apex employee and said that she was only asked to select kitchen units.

Mr Segar also returned to the issue of the signage banners and what logos were visible on them. Mr Segar said that he had contacted the FMB and the NHBC and that “*both organisations say Apex have never been members*”. Mr Segar set out Mr Davies’ position which was that the signage on Mr Duncan’s home “*showed who Apex were members of at the time*” and that the FMB logo was covered with tape and that the logo “*...was never displayed*”.

Mr Segar then read a statement from Mr Davies in which he stated that “*the customer is now making false and incriminating accusations in an attempt to get out of paying the outstanding bill of several thousand pounds*”. Mr and Mrs Duncan denied that they owed Apex money. The statement continued that:

“Mr Duncan never raised any concerns at the time...Mrs Duncan was aware of the kitchen plan ...and that Apex did not do all the work and Mr Duncan used other contractors”.

Following the broadcast of the programme, Mr Davies, the owner of Apex, complained to Ofcom that the company was treated unjustly or unfairly in the programme as broadcast and that his privacy was unwarrantably infringed in connection with the obtaining of material included in the programme and in the programme as broadcast.

Summary of the complaint and the broadcaster’s response

Unjust or unfair treatment

Mr Davies complained that Apex was treated unjustly or unfairly in the programme as broadcast in that:

- a) Mr Davies said that material facts were presented, disregarded or omitted in the programme in a way that was unfair to him.

In response and before addressing the particular elements of the complaint, ITV said that there was a legitimate consumer concern in relation to this story in that the report focussed on a dispute over the quality of the works carried out by Apex, the company’s compliance with the agreement between themselves and Mr and Mrs Duncan and whether Apex’s banners on the site were misleading as to its membership of the NHBC and FMB. The broadcaster added that the veracity of the claims made by Mr and Mrs Duncan were checked, where possible, against the available documentation and that the programme reported in a balanced way in that it was made clear that there were two sides to many of the issues raised.

The broadcaster then addressed each of the examples cited by Mr Davies (as set out below) in his complaint:

- Mr Davies complained that the programme did not take into account that Mr and Mrs Duncan had hired other contractors to carry out works to their property and these contractors had no connection to Apex.

ITV said that the extent to which other contractors had been hired by Mr Duncan to work on the project was disputed by the parties. Mr Davies claimed that Mr Duncan had used other contractors and implied that this was to do a significant amount of internal works. The broadcaster said that despite the

programme makers request for him to set out this assertion in full, Mr Davies had not provided further information regarding this claim. The broadcaster said that Mr Duncan's account, that he had not employed other contractors to do any significant amount of the works, was consistent with the quote provided by Apex. The broadcaster said the programme fairly reflected both sides of the dispute and therefore the material facts were not presented in a way that was unfair to Mr Davies.

- Apex supplied Mr Duncan with a number of quotes but not a £60,000 quote as stated in the programme. Mr Davies added that the quotes referred to were not agreed or final works but simply quotes because Mr Duncan did not want to take up all the works on this quote due to his budget and the fact that he was exploring all avenues with other contractors.

The broadcaster stated that the quote of £60,000 had been provided to the programme makers and that the figure of £63,984 plus VAT had been crossed out and a handwritten number of £60,000 inserted. The broadcaster stated that Mr Duncan's online bank statements and handwritten notes of payments to Apex supported the claim that £60,000 had been transferred to the company. The broadcaster noted that Mr Davies had not produced the additional quotes he referred to in correspondence, despite the programme makers asking for them. Despite this, the broadcaster said that it included Mr Davies' account that he had given Mr Duncan several quotes and that some of the works were not completed as Mr Duncan had chosen not to proceed with them. ITV stated that both sides of the dispute were fairly reflected in the programme and the material facts were not presented, omitted or disregarded in a way that was unfair to Mr Davies.

- The programme said that Apex had destroyed the character of the house in part by stripping out the wood panelling. However there was no evidence of panelling prior to Apex commencing works on the property.

ITV said that the programme had not stated that Apex had "destroyed the character of the house" but did include Mr and Mrs Duncan's claims that this had been the effect of the work. The broadcaster said that Mr Duncan had provided them with photographic evidence of wood panelling in the house and that this was included in the programme. ITV said that Mr Davies' statement that there was no panelling in the house was fairly and accurately reflected in the programme and therefore the facts were not presented, omitted or disregarded in a way that was unfair to Mr Davies.

- The programme said that Apex had replaced the doors with "cheap new ones" when in fact Mrs Duncan had gone with an Apex employee to a hardware store and chosen the doors herself. Mr Davies explained that the existing doors were only disposed of with Mr and Mrs Duncan's consent because they wanted to replace all the doors.

The broadcaster said that neither the programme nor Mr or Mrs Duncan stated that Apex had replaced the doors with "cheap new ones". It said that the programme had set out Mr and Mrs Duncan's complaint that the doors had been replaced, rather than renovated. Mr and Mrs Duncan's denied that they had requested new doors, although Mr Davies had said that he had evidence that Mrs Duncan had chosen the replacement doors herself and that Mr Duncan had been present when the doors were hung.

The broadcaster said that Mr Davies had not provided the evidence he said he had of Mrs Duncan choosing the new doors and that Mr and Mrs Duncan's account that they had wanted the existing doors renovated was consistent with the quote list which stated "dip & restore existing doors..." ITV said the views of both parties were fairly represented in the programme and the material facts were not presented, omitted or disregarded in a way that was unfair to Mr Davies.

- Mr Duncan implied in the programme that he was away when the vicarage was being refurbished, however Mr Duncan was living on site at all times while the works were being carried out and even acted as project manager and was involved in the day to day decision making.

The broadcaster noted that Mr Davies' and Mr Duncan's accounts of whether Mr Duncan lived on site during the project varied. It noted that Mr Davies had provided programme makers with a statement from a painter who said Mr Duncan was present at the property for much of the project; Mr Davies also asserted that Mr Duncan had project managed the building works. Mr Duncan said he had moved out of the house during the building works and stayed only occasionally.

As these accounts differed, the broadcaster said that the programme reported the issue in an objective manner and that Mr Davies' position was fully reflected in the programme.

- The signage displayed on Mr Duncan's property showed which organisations Apex was a member of at the time. The broadcaster was provided with a certificate confirming that Apex was a member of the NHBC at the time that works were being carried out. Mr Davies said that the FMB logo was not displayed at any point during the renovations at the property.

ITV said that Mr Davies had provided programme makers with a letter confirming that Apex were registered on the NHBC Safemark scheme, but that NHBC had confirmed Apex had never registered as a member and was not entitled to use the NHBC logo. In relation to the FMB membership, the programme makers contacted FMB who confirmed that Apex was not and had never been a member.

The broadcaster said that it had taken appropriate steps to verify whether Apex was a member of NHBC and FMB. It stated that Mr Davies comments in relation to Apex's membership of the NHBC Safemark scheme, and his assertion that Apex had not used the FMB logo on its banners were given due weight in the programme. The broadcaster said therefore that the material facts were not presented, omitted or disregarded in a way that was unfair to Mr Davies.

- b) Mr Davies complained that ITV had been unfair in their dealings with him prior to the broadcast of the programme.
- Mr Davies complained that he was not given a reasonable time to respond to the allegations made in the programme and that his emails to programme makers were "simply ignored". Mr Davies said he was given one day by programme makers to provide a statement responding to the allegations.

ITV said that Mr Davies was given an appropriate and timely opportunity to respond to the allegations. It said that the programme's presenter Mr Segar first wrote to Mr Duncan on 28 June 2012, over a month before the story was broadcast on 30 July 2012, putting the allegations to him and asking for a contribution in response to them with a view to the story being broadcast "shortly". It said that Mr Davies duly responded to this letter on 29 June 2012, that further correspondence followed and on 24 July 2012 programme makers wrote to Mr Davies informing him that the story was due to be broadcast on 30 July 2012, giving him details of Mr and Mrs Duncan's response to the points made in his earlier letters and inviting him to give an interview or a statement for inclusion in the programme.

ITV said that the programme makers requested that the statement be supplied by lunchtime on 26 July 2012, it said that such a deadline was not unreasonable and was appropriate and timely given the previous request for a contribution by Mr Segar and the lengthy correspondence between Mr Davies and the programme makers since 28 June 2012 about the issues at dispute. ITV said that Mr Davies indicated a response would be sent by 27 July 2012, which the programme makers agreed to, but that in the event a statement was sent on 26 July 2012. The broadcaster said that it is not true that ITV "ignored" Mr Davies' emails. It added that the correspondence file between Mr Davies and the programme makers (which it provided to Ofcom) contained several letters and emails from the programme makers in response to Mr Davies' emails and letters.

- Mr Davies said that Mr Duncan had an "in-house contact" with a journalist at *The Ferret* and that he had supplied a "witness statement" as evidence to this effect, which was ignored by programme makers. Mr Davies complained that the programme was "bias [sic] and corrupt" as a result.

ITV said that Mr Duncan had no such contact with the programme makers and that no member of the production team had ever heard of Mr Duncan or corresponded with him prior to him contacting the production team about his complaint. It said for this reason it did not include Mr Davies' claim or a reference to the relevant part of the witness statement in the programme and did not believe it was unfair to omit these details. The broadcaster noted that it understood that the witness statement was from an employee of Apex.

Unwarranted Infringement of Privacy

- c) Mr Davies complained that his privacy was unwarrantably infringed in the programme as broadcast in that:

Mr Davies complained that his privacy was unwarrantably infringed in connection with obtaining of material included in the programme and the programme as broadcast in that the reporter filmed and subsequently broadcast footage of the outside of his house.

ITV stated that it did not believe that Mr Davies had a legitimate expectation of privacy regarding the filming and broadcasting of footage of his house. It said that the footage had been filmed from a public place and did not include any footage of Mr Davies, his family or his private life.

The broadcaster stated that the house was Apex's registered business office and was filmed in the context of explaining where the business was "based". It added

that the programme did not disclose the exact name, address or location of the house and its location would have been unidentifiable to the general viewing public. The broadcaster noted that the address of the house was stated on the company's website and in online business directories as the contact address for Apex. The broadcaster argued that this meant the address and location of the house and their connection to Mr Davies and business were therefore in the public domain and the programme gave no more information than was already public.

ITV said that, in these circumstances, Mr Davies did not have a legitimate expectation of privacy. It said that this was consistent with Ofcom previous adjudications¹ on this issue. It said that given the reasons set out above it was warranted to include this footage without Mr Davies' consent.

Representations on Ofcom's Preliminary View

Ofcom prepared a Preliminary View in this case that Mr Davies' complaint should not be upheld. In commenting on this Preliminary View ITV made two factual points of clarification which Ofcom has reflected in its final decision below. Mr Davies did not submit any representations on Ofcom's Preliminary View. However, Mr Davies did raise additional points when Ofcom sent him the proposed final Adjudication which we consider necessary to address in the Adjudication.

Decision

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

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

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast, and both parties' written submissions, including supporting material. Ofcom took note of the representations made by the broadcaster in response to being given the opportunity to comment on Ofcom's Preliminary View on this complaint (which was not to uphold), and the two factual points of clarification made by the broadcaster are reflected in this decision. No representations on the Preliminary View were received from Mr Davies, although he did raise additional points on the proposed final Adjudication which we consider necessary to address in the Adjudication.

When considering complaints of unjust or unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals or organisation, as set out in Rule 7.1 of

¹ The broadcaster cited the 'Old Dog New Tricks' adjudication (see <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb94/>) and the 'Sky News Report' adjudication (see <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb91/>) in support of this statement.

Ofcom's Broadcasting Code ("the Code"). Ofcom had regard to this Rule when reaching its decision on the complaint.

When assessing Mr Davies' complaint of unjust or unfair treatment and the particular elements of that complaint, Ofcom took into consideration Practice 7.9 of the Code. This states that before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

- a) Ofcom first considered Mr Davies' complaint that material facts were presented, disregarded or omitted in the programme in a way that was unfair to him.

Ofcom viewed the programme as a whole and noted that it contained conflicting accounts of the building works undertaken by Mr Davies' company, Apex, on the home of Mr and Mrs Duncan. It is important to note that it is not Ofcom's role to establish whether the substance of Mr and Mrs Duncan's or Mr Davies' accounts are correct, but to determine in broadcasting the allegations whether the broadcaster took reasonable care not to present, disregard, or omit material facts in a way that was unfair to Mr Davies.

In doing so, Ofcom considered the context of Mr and Mrs Duncan's claims and whether their presentation in the programme resulted in any unfairness to Mr Davies. Mr and Mrs Duncan were featured in the programme as former customers of Apex who gave their opinion about the quality of the work they had received from the company. Ofcom noted that although Mr Davies did not appear in the programme, parts of his statement were referred to and read out extensively throughout the report. From the outset of the report it was made clear that Mr Davies disputed many of the issues raised by Mr and Mrs Duncan. This was indicated towards the beginning of the item, for example, when Mr Segar, the programme's presenter, explained that Apex believed that its "*...position had not been given the same level of consideration as Mr Duncan's unfounded allegations...we vehemently deny Mr Duncan's allegations*".

Ofcom also considered the information and material available to programme makers at the time prior to broadcast and assessed whether, in light of this information, the programme's presentation of the facts resulted in unfairness to Apex.

In reaching its decision on whether Mr Davies was portrayed unfairly in the programme as broadcast, Ofcom took into account the following points set out below in order to reach an overall conclusion.

Ofcom first considered the complaint that the programme did not take into account that Mr and Mrs Duncan had hired other contractors to carry out works to their property and these contractors had no connection to Apex.

In relation to whether other contractors had been employed on the project, Ofcom recognised that there were differences in Mr Duncan's and Mr Davies' version of events.

Ofcom noted the correspondence between the programme makers and Mr Davies prior to transmission of the report. In an email dated 5 July 2012, Mr Davies stated that Mr Duncan had:

“...used other contractors to carry out works to his property in which Apex had no connection... Apex was not the sole contractor on site”.

In a later email to the programme makers on 25 July 2012 Mr Davies stated that he had “evidence ([i.e.] invoices and receipts) of what work was carried out by ourselves...”. In response in an email of the same date, the programme makers asked Mr Davies directly for the evidence he referred to, but this appeared not to have been provided to them. Ofcom noted too that Mr Davies was given a number of opportunities to provide to the programme makers evidence which he said that he had that other contractors were used, but again he did not do so.

In the report, Mr Segar interviewed Mr and Mrs Duncan directly about whether they employed other contractors. Ofcom noted the following exchange:

Mr Segar: *“Apex say other contractors were used besides themselves on this job.*

Mr Duncan: *Not by us, we employed them to carry out the work.*

Mrs Duncan: *That was what they were being paid for.*

Mr Segar: *They were the master contractors and they used subcontractors?*

Mr Duncan: *Absolutely right, which is what they told us they specialised in”.*

Later in the report, Ofcom noted that Mr Segar read a further section of a statement from Mr Davies, in which Mr Davies stated that: *“Apex did not do all the work and Mr Duncan used other contractors”*. Mr Segar then explained that Mr Duncan’s position was that the only other contractor he had used was a carpenter who he had employed for *“two days to do minor works”*.

Given the factors considered above, Ofcom concluded that Mr Davies’ position was clearly reflected in the programme and that viewers would have understood that the accounts of Mr Duncan and Mr Davies in relation to whether other contractors were employed on the project differed. In these circumstances, Ofcom considered that the broadcaster had taken reasonable care to ensure that the material facts had not been presented in the programme in a way that was unfair to Mr Davies.

Ofcom next considered Mr Davies’ complaint that Apex had supplied Mr Duncan with a number of quotes, but not a £60,000 quote as stated in the programme.

Ofcom considered the documentation provided to it by the broadcaster and noted a quote of 8 April 2011 from Apex to Mr and Mrs Duncan for £63,984 plus VAT. Ofcom noted, in particular, that this figure had been crossed out and a handwritten figure of £60,000 replaced the original quote. This document had been filmed and was shown in the programme. Ofcom considered this document would have been understood by viewers to be a quote for £60,000 and the programme fairly described it as such. Ofcom also noted that the broadcaster stated that Mr and Mrs Duncan’s bank account

records supported the £60,000 quote, although Ofcom was not provided with any evidence to support this.

Ofcom also assessed the correspondence between the broadcaster and Mr Davies prior to the transmission of the programme. Ofcom noted an email of 5 July 2012 in which Mr Davies stated he had never provided Mr Duncan with a £60,000 quote and that Apex had provided “several quotes to Mr Duncan... the quote you are referring to was not the agreed works/final contract with the client... [who was] shopping around, exploring all avenues with other contractors”. The programme makers invited Mr Davies in an email of 9 July 2012 “to send us your final quote or, even, final invoice” but it appeared to Ofcom that it was not provided.

In the programme, Ofcom noted that Mr Segar read a portion of Mr Davies statement reflecting his position which said:

“Mr Duncan had several quotes, but some work was not done as Mr Duncan decided not to accept some quotes. A quote was just an estimate...”

Mr and Mrs Duncan also put forward their view on the cost of the works in the programme in an interview with Mr Segar:

Mr Duncan: *“We’ve paid them £93,000 for jobs that they [Apex] know full well that they were supposed to carry out.*

Mr Segar: *£33,000 was for the exterior, which you were entirely happy with?*

Mr Duncan: *Yes.*

Mr Segar: *And sixty for inside?*

Mr Duncan: *Yes”.*

Following this exchange, Ofcom noted that Mr Segar stated that Mr Davies “says he gave further quotes including one for lining the walls with plasterboard but hasn’t produced any copies of these quote”.

Given the factors above, Ofcom considered that Mr Davies’ position in relation to the quote was fairly reflected in the programme and that he was given an opportunity by the programme makers to produce invoices or quotes that he may have provided subsequent to the £60,000 quote that Mr Duncan had supplied to the programme makers. Mr Davies did not take that opportunity. Ofcom considered that in these circumstances the programme makers were entitled to rely on the material provided to them by Mr Duncan in relation to the £60,000 quote and that the broadcaster had taken reasonable care to ensure that the material facts had not been presented in the programme in a way that was unfair to Mr Davies.

Ofcom next considered the complaint that the programme said that Apex had destroyed the character of the house in part by stripping out the panelling. However, there was no evidence of panelling prior to Apex commencing works on the property.

Ofcom noted that the programme showed Mrs Duncan explaining her concerns about the renovation and that she believed she had *“lost a period property as far as I’m concerned, it had an awful lot of character, the house, and that’s all gone”*.

Ofcom noted that, later in the programme, Mr Segar reflected Mr Davies view of this issue:

“Answering the claim that Apex had destroyed the character of the house by stripping out panelling, Mr Davies said ‘there is no evidence of panelling beforehand’. Well, the Duncan’s gave us these pictures of the rooms before with panelling”.

Two images of wood panelling were shown in the programme and Mr Duncan explained that *“the panelling was to your right and left here, there was beautiful panelling over the windows and up in [the] bedroom”*.

The broadcaster provided Ofcom with three photographic images of wood panelling on the ceiling and walls that had been supplied by Mr and Mrs Duncan to illustrate the panelling prior to the refurbishment.

Ofcom considered that Mrs Duncan’s view that the character of the property had been lost due to the renovations undertaken by Apex was made in the context of her experience as a customer of Apex and that this would be understood by viewers as such. Further, Mrs Duncan’s assertion that wood panelling had been removed was substantiated by photographs of the panelling before the renovation which were shown in the programme. Ofcom therefore considered that the broadcaster had presented the facts in a way that was fair.

Ofcom noted that in his written representations Mr Davies said that the photographs of the wood panelling were not dated. However, Ofcom took the view that the broadcaster had reflected Mr Davies’ position in relation to the panelling fairly and that viewers would have understood clearly that Mr Davies disagreed that the panelling had existed prior to the renovation. Ofcom concluded that the broadcaster had taken reasonable care to ensure that the material facts had not been presented in the programme in a way that was unfair to Mr Davies.

Ofcom considered the complaint that the programme said that Apex had replaced the doors with “cheap new ones” when, in fact, Mrs Duncan had gone with an Apex employee to a hardware store and chosen the doors herself. Mr Davies explained that the existing doors were only disposed of with Mr and Mrs Duncan’s consent because they wanted to replace all the doors.

Ofcom noted that the new doors were not referred to as “cheap new ones” in the programme and that this phrase had only been used in correspondence between the programme makers and Mr Davies prior to transmission of the programme.

In the programme, Mrs Duncan stated that Apex *“were supposed to dip the old doors and if they didn’t come up too well, well then they could be painted again, because they were the original doors to the house”*.

In relation to the renovation of the property Mr Duncan explained in the programme that:

“We wanted to keep it as a 110 year old house. We wanted it renovated and by renovation we meant that we didn’t want a cardboard box put inside it, we didn’t want our doors to disappear we wanted to be able to live in it, pass it onto our children as something we were proud of”.

Ofcom noted that earlier in the report, Mr Segar had asked Mr and Mrs Duncan directly whether their instructions that they wanted “*restoration not replacement*” had been clearly understood by Apex. Mr Duncan confirmed that they had. Mr Segar also set out Mr Davies view on the replacement of the doors:

“Gareth Davies told us the old doors were not the original, which is why Mr Duncan decided to replace them as the doors were mismatched, damaged or soiled. He also says Mrs Duncan went with an Apex employee to choose new doors and Mr Duncan was present when the doors were hung and raised no concerns”.

Mrs Duncan then stated:

“I haven’t been anywhere with anybody to choose new doors...the only place I’ve been...was to Howden’s for the kitchen units”.

Ofcom also noted that the disputed £60,000 quote had included an item to “dip and restore existing doors, complete with decorating”.

The issue of the replacement or renovation of the doors was clearly another area in which the views of Mr and Mrs Duncan and Mr Davies varied significantly. However, having carefully examined the programme, Ofcom concluded that Mr Davies’ view in relation to the doors was fairly reflected in the programme and that viewers would have been left in no doubt as to his position that his instruction was to replace the doors. Ofcom therefore considered that there had been no unfairness to Mr Duncan in this regard.

Ofcom assessed the complaint that Mr Duncan implied to the show that he was away when the vicarage was being refurbished, however Mr Duncan was living on site at all times while the works were being carried out and even acted as project manager and was involved in the day to day decision making.

Again, Ofcom recognised that this was an issue where Mr Duncan’s and Mr Davies’ version of events varied significantly. Following the initial correspondence from the programme makers to Mr Davies in which they set out the claims they intended to make in the programme, Mr Davies responded by stating in a letter of 29 June 2012 that his position was that “Mr Duncan in fact lived on site during the period that the works were carried out and at no point did he express his concerns or dissatisfaction with the standard of work”. Mr Davies also provided programme makers with a statement from one of the painters who worked on the project which supported this and an email from one of the building materials supplier who stated that “Mr Duncan was also present on a few [deliveries] we made to the property...”.

In the programme, Mr Segar reflected Mr Davies position on this issue by stating that:

“Mr Davies says that Mr Duncan lived on site, was in fact project managing himself, agreed all works verbally and oversaw all work on a daily basis. He also sent a statement from his painter who says he saw Mr Duncan at the house nearly every day”.

Mr and Mrs Duncan then responded directly to this claim:

Mrs Duncan: *“Andrew couldn’t change a plug.*

Mr Duncan: *“No, and we didn’t intend to. The whole object of getting this company... [was] we put the project totally in their hands...”.*

Ofcom considered that Mr Davies position was clearly reflected in the programme and the evidence he provided was referred to in part. Ofcom concluded that the broadcaster had taken reasonable care to ensure that the material facts had not been presented in the programme in a way that was unfair to Mr Davies.

Ofcom next considered Mr Davies’ complaint that the signage displayed on Mr Duncan’s property showed which organisations Apex were members of at the time, and the broadcaster was provided with a certificate confirming that Apex was a member of the NHBC at the time that works were being carried out. Mr Davies said that the FMB logo was not displayed at any point during the renovations at the property.

Ofcom noted that in the programme, Mr Duncan stated that Apex had two plastic banners outside the property. Mr Segar said that the Apex signage showed the logos of the FMB and the NHBC and asked Mr Duncan if Apex were members of these organisations. Mr Duncan replied *“Well, unless they can show us otherwise we certainly don’t believe they are”.*

Later in the programme, Mr Segar again pointed out the FMB and NHBC logos on the banners and explained that *“both organisations say that Apex have never been members”.* Mr Davies provided the programme makers with a photograph of the sign, hung on the property at the time of the building works. The photograph was shown in the programme and Mr Segar explained that Mr Davies position was that the sign *“showed who Apex were members of at the time... it has the FMB logo covered with tape and Mr Davies says the FMB logo was never displayed”.* Mr Segar then explained that the NHBC had confirmed that in 2010 Apex had membership to the *“Safemark scheme”*, but that *“membership of Safemark is not membership of the NHBC. Both bodies want to follow up the alleged unauthorised use of their logos”.* Ofcom noted that the NHBC logo was displayed in the photograph supplied by Mr Davies.

Ofcom noted an email of 3 July 2012 from the FMB to the programme makers in which they stated that Apex had *“never been a member of the FMB”.* The NHBC had also confirmed to the programme makers in an email of 11 July 2012 that *“Apex are not and never have been on NHBC’s Register of builders...”* and that the Safemark scheme *“has no connection with our builder Register and has its own separate logo...Nor does it in anyway authorise the use of NHBC’s logo...”.*

Ofcom considered that the assertions made in the programme that Apex was not a member of the FMB and NHBC were evidenced by the correspondence from these organisations and, that the comments as presented in the programme in relation to Apex's use of the logos had been therefore a fair reflection of the facts. Ofcom also considered Mr Davies' assertion that the FMB logo had not been on display at the time the work was undertaken was fairly reflected in the programme and that his position was fairly reflected in the programme.

In considering the points as set out above, Ofcom carefully considered whether on each occasion the broadcaster had taken reasonable care to present the material facts in a way that was not unfair to Mr Davies. It noted that Mr Davies position on each of the points of complaint set out above was reflected fairly and viewers would have been clear what Mr Davies' position was in relation to each issue. Ofcom also considered that the broadcaster had a sufficient evidential basis for the assertions that they made in the programme.

For the reasons set out above, having considered each of the specific points of the complaint made by Mr Davies that the programme portrayed him unjustly or unfairly, Ofcom concluded that, overall, the broadcaster had taken reasonable care to satisfy itself that the material facts (as detailed in the points above) were not presented, omitted or disregarded in a way that portrayed him unfairly.

- b) Ofcom considered whether ITV had been unfair in their dealings with Mr Davies prior to the broadcast of the programme.
- Ofcom considered Mr Davies' complaint that he was not given a reasonable time to respond to the allegations in the programme and that his emails to programme makers were "simply ignored". Mr Davies said he was given one day by programme makers to provide a statement responding to the allegations.

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

Ofcom noted that a number of allegations about the quality of the work undertaken by Apex on Mr Duncan's property were made in the programme. These are set out in detail in head a) above. For example, Mr Duncan complained that the removal of original wood panelling and the replacement, rather than restoration, of original doors had resulted in the loss of period features and character to the house. Further, as set out in head a) above the programme also alleged that Apex was not a member of trade organisations whose insignia appeared on its signage.

Ofcom considered that these amounted to serious allegations of wrongdoing or incompetence and that an appropriate and timely opportunity to respond should have been given to Mr Davies.

The broadcaster provided Ofcom with the correspondence between the programme makers and Mr Davies prior to the transmission of the programme. Ofcom noted that the programme makers first contacted Mr

Davies on 28 June 2012 and that in this letter Mr Davies was informed that *The Ferret* had been approached by Mr and Mrs Duncan who had told programme makers that, amongst other things, Apex had:

“...destroyed the character of the house, by stripping out panelling, removing 15 original doors and replacing them with cheap new ones... They [Mr and Mrs Duncan] can't restore the lost character... Also, your [banner signage] notice fixed outside the job said you were members of both NHBC and the FMB. The couple, and we, have failed to find any trace of your membership in those bodies' records”.

The letter concluded by inviting Mr Davies to take part in the programme to “give [his] side”.

Mr Davies replied by email on 29 June 2012, attaching a letter which he said was from a solicitor but was not signed and did not appear on headed paper. The letter addressed some of the issues which the programme makers had raised in the letter of 28 June 2012.

Further to this, the programme makers responded to Mr Davies letter on 2 July 2012, they stated:

“This letter [of 28 June 2012] from the production team pointing out the viewer's claim and inviting a response is always the first step...the team will...make follow up enquires... Only then will a decision be made, in conjunction with our Compliance Department, about possible transmission of the item – in those circumstances you would, of course, be invited to respond again either by interview or by means of a statement”.

Mr Davies responded at length to ITV and the programme makers in an email of 5 July 2012 setting out his position in relation to the claims made in the programme. Ofcom noted that there was a further chain of correspondence between Mr Davies and the programme makers during the course of July 2012. On 24 July 2012 the programme makers wrote to Mr Davies and set out their position in relation to a number of claims made by Mr Davies during the course of the July 2012 correspondence and informing him that the programme would be transmitted on 30 July 2012. The letter also said that the programme makers:

“...would like, again, to offer you the opportunity to respond to the queries raised originally in Chris Segar's letter dated June 28th, as well as the issues we have set out above. This is so we can fairly and accurately reflect your side of the story in the programme”.

The programme makers asked Mr Davies to comment by lunchtime on 26 July 2012. Mr Davies took issue with the amount of time he had been given to reply but provided a response on 26 July 2012. Further emails were exchanged between Mr Davies and programme makers on 27 July.

Ofcom noted that the programme makers clearly set out the main allegations contained in the programme as broadcast on 28 June 2012, a month before the transmission of the programme on 30 July 2012. Mr Davies and the programme makers continued in detailed correspondence about the nature of the allegations made in the programme during the course of July 2012. The programme makers gave Mr Davies a final and formal opportunity to respond

on 24 July and asked him to respond by 26 July. Ofcom considered that given the protracted correspondence that had preceded this letter, Mr Davies was well aware of the allegations in the programme and had previously answered them in great detail, Ofcom therefore considered that he had been given an appropriate and timely opportunity to respond to them. Ofcom found that the detailed correspondence between Mr Davies and the programme makers showed that his emails had not been ignored.

Ofcom's decision is that, in the circumstance of this case, the broadcaster had given Mr Davies an appropriate and timely opportunity to respond to the significant allegations made in the programme

- Ofcom next considered Mr Davies' complaint that Mr Duncan had an "in-house contact" with a journalist at *The Ferret* and that he had supplied a "witness statement" as evidence to this effect, which was ignored by programme makers. Mr Davies complained that the programme was "bias [sic] and corrupt" as a result.

In considering this aspect of Mr Davies complaint Ofcom took account of Practice 7.2 and Practice 7.9. Practice 7.2 states that broadcasters and programme makers should be fair in their dealings with potential contributors to programmes unless, exceptionally, it is justified to do otherwise. Practice 7.9 is set out in head a) above.

Ofcom first considered the "witness statement" that was provided by Mr Davies to programme makers. This was in the form of a handwritten note from an individual who had worked on Mr Duncan's property for Apex and was addressed to Mr Davies. The note stated:

"I specifically remember a conversation that I had with Mr Duncan where he brought up in conversation that he (Mr Duncan) confirmed he knows he's got connections with someone from the Ferret (consumer programme)."

The letter was dated 3 July 2012 but appears to have been provided to the programme makers on 26 July 2012. Mr Davies first made the allegation that Mr Duncan had an "in-house" contact with the Ferret in an email of 29 June 2012 which stated:

"One must add that it is common knowledge that Mr Duncan (the consumer who has complained) has in house contact with a member of staff from the ferret team therefore we believe that it is a bias and one sided view".

On 2 July the programme makers responded to Mr Davies' allegation, they stated that:

"I must refute your claim that Mr Duncan has "in-house contact" with a member of the team. I can assure you that no one here has ever heard of Mr Duncan, or his family or his dispute with you, prior to his first contact with us a fortnight ago".

ITV again denied that Mr Duncan had any connections with The Ferret in letters to Mr Davies on 9 July and 24 July, and subsequently in their representations to Ofcom. Ofcom also noted that in the programme, although

the allegation of the “in-house contact” was not referred to explicitly, Mr Davies’ position that the programme was biased was referred to in the programme:

“[Mr Davies] has complained to ITV’s head office about The Ferret, accusing us of biased and corrupt reporting. Gareth Davies added that Apex’s position had not been given the same level of consideration as Mr Duncan’s unfounded allegations...”

Ofcom noted that ITV denied that there was any pre-existing contact between Mr Duncan and the programme makers on a number of occasions. In light of the conflicting claims, Ofcom does not reach a view on this point. However, Ofcom considered that Mr Davies’ position in relation to whether the programme was biased was fairly reflected in the programme and that viewers would have understood Mr Davies’ position in this regard.

Unwarranted infringement of Privacy

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

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

- c) Ofcom considered the complaint that Mr Davies’ privacy was unwarrantably infringed in connection with obtaining of material included in the programme and the programme as broadcast in that the reporter filmed footage of the outside of his house.

In considering whether or not Mr Davies’ privacy was unwarrantably infringed in the making of the programme, Ofcom had regard to Practice 8.5 of the Code which states that any infringement of privacy in the making of a programme should be with the person’s and or organisation’s consent, unless it is warranted. Ofcom also had regard to Practice 8.4 of the Code which states that broadcasters should ensure that images filmed in a public place are not so private that prior consent is required, unless broadcasting without their consent is warranted. It also had regard to Practice 8.9 which states that the means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme.

In order to establish whether or not Mr Davies’ privacy was unwarrantably infringed in this respect, Ofcom first assessed the extent to which he had a legitimate expectation of privacy in respect of the filming of his home.

Ofcom noted that the broadcast footage in question, which appeared to Ofcom to have been filmed openly by the programme makers, comprised of two images of Mr Davies’ home. This footage was confined to two exterior shots of the property, which did not appear to be to be hidden from view in any way, filmed from the public highway. In one shot, the front of the detached property was shown in wide shot, while in the second shot, the side and roof of the property were visible. In its

submission to Ofcom, the broadcaster stated that the footage filmed did not include any footage of Mr Davies, his family or their family life. Ofcom noted that Mr Davies' home was also his business' registered address and that it was listed on his website and in online directories.

Ofcom recognised that the filming of an individual's home may in some circumstances give rise to an expectation of privacy. However, in light of the factors set out above, Ofcom considered that the filming, which was conducted openly and from the public highway, did not capture any information relating to Mr Davies (or his family) that could reasonably be regarded as private or sensitive in nature or attracting a degree of privacy in these circumstances. For these reasons, Ofcom considered that Mr Davies did not have a legitimate expectation of privacy in connection with the obtaining of the footage of the exteriors of his house. Given this conclusion, it was not necessary for Ofcom to consider whether any infringement in to Mr Davies' privacy was warranted.

Ofcom considered, therefore, that there was no unwarranted infringement of Mr Davies' privacy in connection with the obtaining of material included in the programme as broadcast.

- d) Ofcom next considered Mr Davies' complaint that his privacy was unwarrantably infringed in that footage of the outside of his house was included in the programme as broadcast.

In considering this complaint, Ofcom had regard to Practice 8.2 of the Code which states that information which discloses the location of a person's home or family should not be revealed without permission unless it is warranted. Ofcom also had regard to Practice 8.6 of the Code which states that if the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

In considering whether or not Mr Davies' privacy was unwarrantably infringed in the programme as broadcast, Ofcom assessed the extent to which he had a legitimate expectation in relation to the footage of his house broadcast in the programme.

Again, as noted in head b) above, Ofcom noted the footage of Mr Davies' house included in the programme. In particular, it noted that the footage comprised of two exterior shots of the property: one shot of the front of the detached property was shown in wide shot while in the second shot only the side and roof of the property were visible. Ofcom noted the footage included in the programme constituted two shots of Mr Davies' home, filmed from a public highway showing Mr Davies' home from the front and from the side. It also noted that in the first shot Mr Segar was shown in the foreground of the shot explaining that the programme makers had contacted Mr Davies, whose business was based in Cymmer, Port Talbot and he had accused the programme of "*bias and corrupt reporting*". The front of Mr Davies' property was visible in the background of the shot. In the second shot, Mr Segar was seen in the foreground reading a statement from Mr Davies, the side and roof of Mr Davies' property was visible in the background.

Ofcom also considered whether the programme as broadcast disclosed the location of Mr Davies' family home. Ofcom noted that while the programme did indicate that the property was in Cymmer, Port Talbot, neither the footage of the

property nor the commentary indicated either the house name/number or the name of the street on which it is located. Ofcom concluded that the location of Mr Davies' property was not disclosed in the programme. Ofcom noted in any event that Mr Davies address was displayed on Apex's website as the company's address and that he had therefore placed these details in the public domain.

Ofcom noted the context of the footage, which explained where Mr Davies' business was located and showed Mr Segar reading from a statement from Mr Davies. No details of Mr Davies' private life were referred to and this footage was included solely in relation to Mr Davies' business, Apex. Ofcom also took into account that that the location of Mr Davies' property was not disclosed in the programme and that its address was already in the public domain.

Ofcom recognised that the filming and subsequent broadcast of footage of an individual's home may give rise to an expectation of privacy however for the reasons set out above Ofcom considered that in the particular circumstance of this case, Mr Davies had no expectation of privacy in relation to the footage of his home that was broadcast.

Given this conclusion, it was not necessary for Ofcom to consider whether any infringement in to Mr Davies' privacy was warranted.

Given all the factors referred to above, Ofcom concluded that Mr Davies did not have a legitimate expectation of privacy in the broadcast of footage of his house in the programme. Ofcom concluded therefore that there had been no unwarranted infringement of Mr Davies' privacy in the broadcast of the programmes.

Accordingly, Ofcom has not upheld Mr Davies' complaint of unfair treatment and of unwarranted infringement of privacy in connection with the obtaining of material included in the programme and in the programme as broadcast.

Other Programmes Not in Breach

Up to 1 July 2013

Programme	Broadcaster	Transmission Date	Categories
Good Afternoon	Gateway 97.8 FM	15/05/2013	Due impartiality/bias
Skint	Channel 4	13/05/2013	Generally accepted standards

Complaints Assessed, not Investigated

Between 18 June and 1 July 2013

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
10 O'Clock Live	Channel 4	05/06/2013	Generally accepted standards	2
24 Hours in A&E	Channel 4	19/06/2013	Fairness	1
Absolute 80s	Absolute 80s	n/a	Outside of remit / other	1
Adult programming	Various	15/06/2013	Outside of remit / other	1
Advertisements	Sky Sports 3	21/06/2013	Advertising scheduling	1
Airport Live	BBC 2	18/06/2013	Outside of remit / other	1
Alan Carr: Chatty Man	Channel 4	31/05/2013	Generally accepted standards	1
ARY News	ARY News	12/05/2013	Generally accepted standards	1
BBC News	BBC News	n/a	Outside of remit / other	1
BBC News	BBC Radio 2	27/06/2013	Race discrimination/offence	1
BBC News	BBC Radio 4	27/06/2013	Race discrimination/offence	1
BBC News at Six	BBC 1	11/06/2013	Violence and dangerous behaviour	1
BBC News at Ten	BBC 1	27/06/2013	Outside of remit / other	1
BET: Black Ent Tv	BET: Black Ent TV	23/06/2013	Race discrimination/offence	1
Big Brother	Channel 5	13/06/2013	Offensive language	1
Big Brother	Channel 5	15/06/2013	Race discrimination/offence	1
Big Brother	Channel 5	16/06/2013	Generally accepted standards	1
Big Brother	Channel 5	18/06/2013	Offensive language	6
Big Brother	Channel 5	18/06/2013	Religious/Beliefs discrimination/offence	1
Big Brother	Channel 5	20/06/2013	Generally accepted standards	4
Big Brother	Channel 5	21/06/2013	Offensive language	1
Big Brother	Channel 5	24/06/2013	Race discrimination/offence	1
Big Brother	Channel 5	26/06/2013	Generally accepted standards	5
Big Brother	Channel 5	27/06/2013	Generally accepted standards	9
Big Brother	Channel 5	27/06/2013	Harm	1
Big Brother	Channel 5	n/a	Product placement	1

Big Brother's Bit on the Side	Channel 5	20/06/2013	Generally accepted standards	1
Bigger than Katy Perry	Sky Living	30/05/2013	Scheduling	1
Breakfast	BBC 1	20/06/2013	Generally accepted standards	1
Breakfast	BBC 1	22/06/2013	Generally accepted standards	1
Breakfast Show	BBC Radio Berkshire	12/06/2013	Outside of remit / other	1
Breakfast Show	Jack FM	13/06/2013	Generally accepted standards	1
Breakfast Show	Kings Lynn FM	13/06/2013	Offensive language	1
Channel 4 News	Channel 4	28/05/2013	Generally accepted standards	1
Channel 4 News	Channel 4	29/05/2013	Due impartiality/bias	1
Channel 4 News	Channel 4	03/06/2013	Due impartiality/bias	1
Channel 4 News	Channel 4	20/06/2013	Nudity	1
Channel 4 News	Channel 4	21/06/2013	Generally accepted standards	1
Channel 4 News	Channel 4	27/06/2013	Due impartiality/bias	1
Charity appeal	ATN Bangla	12/05/2013	Religious/Beliefs discrimination/offence	1
Chefs: Put Your Menu Where Your Mouth is	BBC 2	18/06/2013	Offensive language	1
City of God	Sky Movies Select	24/06/2013	Generally accepted standards	1
Cleanskin	Sky Thriller	18/06/2013	Generally accepted standards	1
Competition	True Movies	12/06/2013	Generally accepted standards	1
Confessions of an Alien Abductee	Channel 4	13/06/2013	Generally accepted standards	3
Continuity announcement	Channel 4	24/06/2013	Generally accepted standards	1
Copping Off (trailer)	BBC Radio 1	23/06/2013	Sexual material	1
Coronation Street	ITV	12/04/2013	Undue prominence	1
Coronation Street	ITV	17/06/2013	Drugs, smoking, solvents or alcohol	1
Coronation Street	ITV	19/06/2013	Drugs, smoking, solvents or alcohol	1
Coronation Street	ITV	21/06/2013	Product placement	1
Coronation Street	ITV	24/06/2013	Promotion of products/services	2
Coronation Street	ITV2	24/06/2013	Violence and dangerous behaviour	1
Crimes That Shook Britain	Crime Investigation Network	18/06/2013	Generally accepted standards	1
Crimewatch Roadshow	BBC 1	21/06/2013	Generally accepted standards	1
Derren Brown	Channel 4	23/06/2013	Crime	1
Dettol's sponsorship of You've Been Framed	ITV	22/06/2013	Sponsorship credits	1
Dickinson's Real Deal	ITV	01/07/2013	Competitions	1

Doctors	BBC 1	31/05/2013	Scheduling	1
Drivetime	Talksport	21/06/2013	Race discrimination/offence	1
EastEnders	BBC 1	14/06/2013	Outside of remit / other	1
EastEnders	BBC 1	25/06/2013	Drugs, smoking, solvents or alcohol	1
Eddie Stobart: Trucks and Trailers	Channel 5	21/06/2013	Offensive language	1
Embarassing Bodies	Really	18/06/2013	Generally accepted standards	1
Embarrassing Bodies	Channel 4	n/a	Generally accepted standards	1
Embarrassing Bodies	Channel 4	04/06/2013	Nudity	5
Embarrassing Bodies	Channel 4	11/06/2013	Scheduling	3
Emmerdale	ITV	19/06/2013	Generally accepted standards	1
Emmerdale	ITV	27/06/2013	Outside of remit / other	1
Extraordinary People: My Face Is Eating Me Alive (trailer)	Channel 5	13/06/2013	Generally accepted standards	2
Extraordinary People: My Face Is Eating Me Alive (trailer)	Channel 5	16/06/2013	Scheduling	1
Extraordinary People: My Face Is Eating Me Alive (trailer)	Channel 5	n/a	Scheduling	1
Eye Spy	Channel 4	27/06/2013	Race discrimination/offence	1
Fareed Zakaria GPS	CNN	16/06/2013	Scheduling	1
Fox News	Fox News	n/a	Race discrimination/offence	1
Foxy Bingo's sponsorship of The Jeremy Kyle Show	ITV	n/a	Scheduling	1
Free Speech	BBC 3	12/06/2013	Outside of remit / other	1
French Open Tennis 2013	ITV4	07/06/2013	Generally accepted standards	1
Gemma Cairney	BBC Radio 1	22/06/2013	Scheduling	1
Geo News	Geo TV	21/05/2013	Generally accepted standards	1
Geoff Lloyd's Hometown Show	Absolute Radio	25/06/2013	Age discrimination/offence	1
Ghostbusters	5*	15/06/2013	Offensive language	1
Gurbani Vichar	Kismat Radio	n/a	Format	3
Happy Families	ITV	13/06/2013	Information/warnings	1
Happy Families	ITV	20/06/2013	Under 18s in programmes	1
Happy Families	ITV	27/06/2013	Under 18s in programmes	1
Hart of Dixie	Really	10/06/2013	Generally accepted standards	1
Heresy	BBC Radio 4	20/06/2013	Generally accepted standards	1

Holby City	BBC 1	25/06/2013	Disability discrimination/offence	1
Hollyoaks Omnibus	Channel 4	16/06/2013	Product placement	1
Horizon	BBC 2	19/06/2013	Outside of remit / other	2
How I Met Your Mother	E4	18/06/2013	Offensive language	1
International Football	ITV	02/06/2013	Advertising/editorial distinction	1
International Football	UTV	02/06/2013	Advertising/editorial distinction	1
ITN News	ITV	11/06/2013	Due accuracy	1
ITV News and Weather	ITV	26/06/2013	Generally accepted standards	1
ITV News at Ten and Weather	ITV	11/06/2013	Due accuracy	2
ITV News Central	ITV Central	20/06/2013	Outside of remit / other	1
ITV Sport (trailer)	ITV4	30/06/2013	Materially misleading	1
Khara Sach	ARY News	28/05/2013	Generally accepted standards	1
Kourtney and Kim Take Miami	E!	16/06/2013	Animal welfare	2
Le Mans 24 Hours Qualifying	British Eurosport	19/06/2013	Outside of remit / other	1
Live at the Apollo	BBC 1	09/06/2013	Generally accepted standards	1
LIVE The Derby	Channel 4	01/06/2013	Gender discrimination/offence	1
Loose Women	ITV	11/06/2013	Generally accepted standards	1
Loose Women	ITV	17/06/2013	Due accuracy	1
Loose Women	ITV	17/06/2013	Promotion of products/services	1
Lorraine	ITV	21/06/2013	Offensive language	1
Lost and Delirious	More Than Movies	15/06/2013	Outside of remit / other	1
Match of the Day Live	BBC 3	19/06/2013	Product placement	1
Match of the Day Live	BBC 3	20/06/2013	Generally accepted standards	1
Micro Monsters with David Attenborough (trailer)	Sky1	15/06/2013	Generally accepted standards	1
Mid Mornings with Miss Rach	Team Rock Radio	21/06/2012	Offensive language	1
Mindhunters	TCM	31/05/2013	Scheduling	1
Miranda	BBC 1	27/05/2013	Sexual material	1
Mock the Week	BBC 2	16/06/2013	Race discrimination/offence	2
Mock the Week	BBC 2	20/06/2013	Transgender discrimination/offence	1
Motive	Universal HD	16/06/2013	Violence and dangerous behaviour	1
My Parents Are Aliens	CITV	25/06/2013	Sexual material	1
Natural World	BBC 2	15/06/2013	Animal welfare	1

NCIS: Los Angeles	Sky1	16/06/2013	Generally accepted standards	1
Neighbours (trailer)	Channel 5	22/06/2013	Scheduling	1
News	Various	n/a	Materially misleading	1
Newsbeat	BBC Radio 1	23/05/2013	Generally accepted standards	1
Newsnight	BBC 2	24/06/2013	Outside of remit / other	1
Nick Ferrari at Breakfast	LBC 97.3 FM	30/05/2013	Religious/Beliefs discrimination/offence	1
Programming	Capital Radio	n/a	Offensive language	1
One Born Every Minute (trailer)	Really	16/06/2013	Scheduling	1
Panorama	BBC 1	17/01/2013	Outside of remit / other	1
Panorama	BBC 1	06/06/2013	Religious/Beliefs discrimination/offence	1
Pistorius Trial: The Key Questions	Channel 5	03/06/2013	Outside of remit / other	1
Press Preview	Sky News	16/06/2013	Materially misleading	1
Programme trailer	MTV	15/06/2013	Generally accepted standards	1
Programming	Kanal 5	n/a	Outside of remit / other	1
Programming	Kohinoor FM	30/05/2013	Generally accepted standards	1
Programming	UK O	14/06/2013	Outside of remit / other	1
Programming	Various	n/a	Generally accepted standards	1
Programming	Various	n/a	Outside of remit / other	1
QI XL	Dave Ja Vu	11/06/2013	Generally accepted standards	1
Question Time	BBC 1	20/06/2013	Religious/Beliefs discrimination/offence	1
Road to Referendum	STV	04/06/2013	Due impartiality/bias	13
Road to Referendum	STV	11/06/2013	Due impartiality/bias	6
Road to Referendum	STV	18/06/2013	Due impartiality/bias	1
Road to Referendum (trailer)	STV	17/06/2013	Due impartiality/bias	1
Saweray saweray	ARY World	03/06/2013	Generally accepted standards	1
Seven Seas Multivitamin's sponsorship of ITV National Weather	ITV	11/06/2013	Advertising content	1
Sex Toy Stories	Channel 4	13/06/2013	Generally accepted standards	1
Sky News	Sky News	17/06/2013	Disability discrimination/offence	1
Sky News with Kay Burley	Sky News	11/06/2013	Due impartiality/bias	1
Spartacus: Vengeance	Pick TV	30/05/2013	Gender discrimination/offence	2
Storyville	BBC 4	10/06/2013	Religious/Beliefs discrimination/offence	1

Sunday Politics	BBC 1	09/06/2013	Fairness	1
Sunday Supplement	Sky Sports 1	n/a	Due impartiality/bias	1
Supercasino.com's sponsorship of Big Brother	Channel 5	n/a	Gambling	1
Teen Mom 2	MTV	12/06/2013	Undue prominence	1
Tennis: Queens Club Final	BBC 1	16/06/2013	Generally accepted standards	1
Terror in the Skies	Channel 4	23/06/2013	Outside of remit / other	1
Terror in the Skies	Channel 4	30/06/2013	Materially misleading	1
The Apprentice	BBC 1	05/06/2013	Outside of remit / other	1
The Apprentice	BBC 1	19/06/2013	Outside of remit / other	1
The Apprentice: You're Fired!	BBC 2	12/06/2013	Race discrimination/offence	1
The Apprentice: You're Fired!	BBC 2	26/06/2013	Generally accepted standards	1
The Apprentice: You're Fired!	BBC 2	26/06/2013	Materially misleading	1
The Big Dirty List Show: 50 Years of Sex and Music	Channel 4	22/06/2013	Sexual material	1
The Borgias (trailer)	Sky Atlantic	17/06/2013	Religious/Beliefs discrimination/offence	1
The Call Centre	BBC 3	18/06/2013	Religious/Beliefs discrimination/offence	1
The Call Centre	BBC 3	25/06/2013	Harm	2
The Chase	ITV	13/06/2013	Outside of remit / other	1
The Jam	Blast 106 (Belfast)	21/06/2013	Generally accepted standards	1
The Jeremy Kyle Show	ITV	06/06/2013	Generally accepted standards	1
The Jeremy Kyle Show	ITV	13/06/2013	Scheduling	1
The Jeremy Kyle Show	ITV	21/06/2013	Generally accepted standards	1
The Jeremy Kyle Show	ITV	28/06/2013	Generally accepted standards	1
The JVS Show	BBC Three Counties Radio	31/05/2013	Generally accepted standards	3
The Magaluf Weekender	ITV2	25/06/2013	Generally accepted standards	1
The Man with the 10-Stone Testicles (trailer)	Channel 4	22/06/2013	Scheduling	1
The Man with the 10-Stone Testicles (trailer)	Channel 4	23/06/2013	Scheduling	1
The Matt Edmondson Show	BBC Radio 1	08/06/2013	Drugs, smoking, solvents or alcohol	1
The Million Pound Drop Live	Channel 4	14/06/2013	Generally accepted standards	37
The Million Pound	Channel 4	22/06/2013	Race	1

Drop Live			discrimination/offence	
The Million Pound Drop Live	Channel 4	28/06/2013	Materially misleading	1
The Million Pound Drop Live (trailer)	Channel 4	12/06/2013	Materially misleading	1
The O Reilly Factor	Fox News	12/06/2013	Generally accepted standards	1
The One Show	BBC 1	14/06/2013	Harm	1
The One Show	BBC 1	17/06/2013	Generally accepted standards	1
The Only Way is Essex	ITV2	09/06/2013	Violence and dangerous behaviour	3
The Only Way is Marbs	ITV2	05/06/2013	Offensive language	1
The Politician's Husband	BBC 1	02/05/2013	Generally accepted standards	1
The Radio 1 Breakfast Show with Nick Grimshaw	BBC Radio 1	14/06/2013	Generally accepted standards	1
The Route Masters: Running London's Roads	BBC 2	18/06/2013	Outside of remit / other	1
The Rugby Lions World Tour (trailer)	Sky News	09/06/2013	Generally accepted standards	1
The Simpsons	Channel 4	13/06/2013	Scheduling	1
The Simpsons	Sky1	15/06/2013	Scheduling	1
The Simpsons	Sky1	22/06/2013	Scheduling	1
The Simpsons	Sky1	27/06/2013	Scheduling	1
The Thick of It	Dave	21/06/2013	Offensive language	1
The Valleys	MTV	16/06/2013	Sexual material	1
The Voice (trailer)	BBC 1	18/06/2013	Drugs, smoking, solvents or alcohol	1
The Voice UK	BBC 1	15/06/2013	Outside of remit / other	1
The Voice UK	BBC 1	22/06/2013	Materially misleading	1
The Voice UK	BBC 1	22/06/2013	Nudity	30
The Voice UK	BBC 1	22/06/2013	Religious/Beliefs discrimination/offence	3
The Voice UK	BBC 1	22/06/2013	Voting	2
The Wright Stuff	Channel 5	14/06/2013	Age discrimination/offence	1
The Wright Stuff	Channel 5	20/06/2013	Generally accepted standards	1
The Wright Stuff	Channel 5	20/06/2013	Generally accepted standards	1
This Morning	ITV	20/06/2013	Scheduling	2
Today at Wimbledon	BBC 2	26/06/2013	Product placement	1
Tonight: Who'd be a teacher?	ITV	06/06/2013	Due impartiality/bias	1
Two and a Half Men	Comedy Central	30/05/2013	Scheduling	1
Vakna med NRJ	Kanal 5	23/04/2013	Under 18s in programmes	2
Venus and Serena	BBC 2	23/06/2013	Offensive language	1

Video Surf	Pick TV	16/06/2013	Animal welfare	2
Wallander	BBC 4	15/06/2013	Violence and dangerous behaviour	1
Watchdog	BBC 1	12/06/2013	Outside of remit / other	1
Watchdog	BBC 1	19/06/2013	Outside of remit / other	1
Waterloo Road	BBC 1	n/a	Generally accepted standards	1
Where in the World	The Breeze	24/06/2013	Competitions	1
Wonga sponsorship credit	5 USA	29/06/2013	Advertising content	1
World's Craziest Fools	BBC 3	23/06/2013	Offensive language	1
You've Been Framed and Famous!	ITV	08/06/2013	Scheduling	1
You've Been Framed!	ITV	22/06/2013	Religious/Beliefs discrimination/offence	1
You've Been Framed!	ITV2	21/06/2013	Generally accepted standards	1

Investigations List

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

Here is an alphabetical list of new investigations launched between 20 June and 3 July 2013.

Programme	Broadcaster	Transmission date
Acupressure Show	Sikh Channel	16 May 2013
Advertising minutage	Sky 2	2 June 2013
Advertising minutage	Tiny Pop	24 April 2013
Channel 4 News	Channel 4	23 May 2013
Daybreak	itv London	24 May 2013
Harry Enfield and Chums	Gold	12 June 2013
Newsnight	BBC 2	23 May 2013
Rich Planet	Showcase TV	19 June 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/>.