

# **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 objectives<sup>1</sup>. 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 Act<sup>2</sup>.

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 advertising<sup>3</sup>.
- 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

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

<sup>2</sup> The relevant legislation can be found at Part 4A of the Act.

<sup>3</sup> BCAP and ASA continue to regulate conventional teleshopping content and spot advertising for these types of services where it is permitted. Ofcom remains responsible for statutory sanctions in all advertising cases.

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

### **Northern Birds (channel 935), Essex Babes (channel 936), Sportxxx Girls (channel 940), and Livexxx Babes (channel 942)**

*References to a website URL, 24 September 2012 to 8 February 2013, various times*

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#### **Introduction**

The above services (together, “the SEL Licensed Services”) all transmit interactive daytime chat and ‘adult chat’ advertising content. These services are freely available without mandatory restricted access and are situated in the ‘adult’ section of the electronic programme guide of the Sky digital satellite platform.

The licences for the above services are all held by Satellite Entertainment Limited (“SEL” or “the Licensee”).

#### **Summary of Decision**

In Ofcom’s Finding, published on 4 March 2013 in issue 225 of Ofcom’s Broadcast Bulletin<sup>1</sup>, Ofcom noted that – during the period of 24 September 2012 to 8 February 2013 – each of the SEL Licensed Services carried continued and repeated broadcast of promotional references to the “bluebird.tv” website (“the website”), in the form of an on-screen text graphic showing the website URL above the chat service’s phone number. At the time of the Finding the website contained material within the recognised character of pornography as its home page linked to “Bluebird Films”, which contained explicit pornographic material (equivalent to British Board of Film Classification R18-rated content<sup>2</sup>).

Ofcom found that the broadcasts breached Rule 30.3 of the UK Code of Broadcast Advertising (“the BCAP Code”), which states:

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

The broadcast of an advertisement, on channels without mandatory restricted access, for a website containing pornographic material was a serious breach of the BCAP Code. The promotion of the website was prominent and constant during the period of the breach, consisting of a textual reference to the “bluebird.tv” website integrated into the on-screen graphic promoting the chat service’s phone number.

Ofcom was particularly concerned that the Licensee in these instances broadcast the

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb225/obb225.pdf>

<sup>2</sup> The ‘R18’ category is a special and legally restricted classification primarily for explicit works of consenting sex or strong fetish material involving adults. Films may only be shown to adults in specially licensed cinemas, and video works may be supplied to adults only in licensed sex shops. ‘R18’ videos may not be supplied by mail order.

advertisement for extended periods both during daytime and immediately after the watershed when children were available to view.

In addition, when responding to Ofcom's preliminary breach finding, the Licensee initially failed to recognise that its promotion of the website amounted to a breach, based on a belief that the site was compliant. A basic check of the relevant tab at the time Ofcom first contacted the Licensee would have shown the breach concerned, and action taken at that point would have averted any continuing risk of harm to children. To the extent that SEL were unaware that the website linked through to material within the recognised character of pornography, this would represent a serious compliance failure.

In accordance with Ofcom's Penalty Guidelines, Ofcom decided it was appropriate and proportionate in the circumstances to impose a financial penalty of **£40,000** on Satellite Entertainment Limited in respect of the breaches of the BCAP Code (payable to HM Paymaster General).

The full adjudication is available at:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/satellite-ltd.pdf>



## Note to Broadcasters

### Extension of pilot period: on air references to websites used for paid-for viewer participation and interaction

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#### The pilot period: background

In a Note to Broadcasters in issue 188 of the Broadcast Bulletin<sup>1</sup>, published on 22 August 2011, Ofcom announced the terms of a pilot period during which websites could be referred to on air as acceptable routes for paid-for audience participation or interaction with programmes, subject to certain conditions.

Rule 9.26 of the Code currently prohibits paid interaction with programmes other than by "...means of premium rate telephone services or other telephony services based on similar revenue-sharing arrangements". The pilot period was intended to offer an opportunity to test a potential relaxation of this rule, allowing the use of web-based routes for paid participation in viewer voting schemes and competitions publicised within programmes.

The pilot period originally began on Monday 22 August 2011 and ran until 20 August 2012.

We had anticipated that the pilot period would generate sufficient information about all aspects of web-based paid-for voting and competition entry to allow Ofcom to undertake a re-assessment of Rule 9.26. In particular, we had hoped to be able to assess any effects the potential relaxation of Rule 9.26 may have on the prevalence of programme votes and competitions, on compliance processes and on the maintenance of editorial independence.

However, by the end of the original year we had become aware of only limited use by broadcasters of the greater freedoms for audience participation and interaction provided by the pilot period. In our view this limited use was not a sufficient basis to allow proper re-consideration of Rule 9.26.

Because of this, a Note to Broadcasters in issue 211 of the Broadcast Bulletin<sup>2</sup> extended the period for a further year. That Note made clear that the limited adoption of web-based paid participation by licensees had restricted any re-assessment of Rule 9.26. The pilot period was therefore extended until Monday 19 August 2013.

In Ofcom's view this remains the position at the end of the second year of the pilot period. Broadcasters have made relatively little use of the greater opportunities available during the second year. Ofcom does not consider the evidence likely to be available to be sufficient for a reliable assessment to be made.

In considering next steps we have placed due weight on the early technical difficulties that licensees have experienced in the use of web-based programme interaction. We have also been made aware of the difficulties broadcasters have faced in introducing web-based participation within the timeframe of the pilot period.

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<sup>1</sup> The announcement of the pilot period can be found at:  
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb188/obb188.pdf>

<sup>2</sup> The announcement of the first extension can be found at:  
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb211/obb211.pdf>

We understand that certain broadcasters are now in a position to trial such participation further and intend to do so during any extension of the pilot period.

More generally, Ofcom is aware that innovation and development continues at pace, including increasing convergence of TV and web platforms. These changes have the potential greatly to change the way in which viewers interact with programming, notably 'reality' shows. We are mindful that such development does need time to become established technically and be accepted and understood by viewers.

We are therefore extending the pilot period until **Wednesday 31 December 2014**.

During the second year of the pilot period we sought information from those broadcasters that used web-based routes for paid voting or competition entry. We will repeat that exercise in the Autumn of 2013 to cover information generated during the second year of the pilot period. We are also likely to contact some other broadcasters to seek comments on the pilot period and decisions they may have taken in light of it.

### **The pilot period: terms**

We wish to reiterate the terms of the pilot period:

- **The pilot period that began on Monday 22 August 2011 will now end on Wednesday 31 December 2014.**
- **The pilot period applies only to audience voting and competition schemes.** The pilot period therefore does not allow on air references to websites as a means for paid-for audience interaction with or participation in programmes for any other reasons such as advice from a studio guest, submitting comments or views on news stories or taking part in TV call-ins.
- **A PRS means of entry must be one of the routes available, and third party verification will therefore apply across all available routes.**
- **Provided that all the above conditions are met, self-standing websites or apps downloadable to mobile phones and related devices, or both, may be referred to on air as means for viewers to vote or submit competition entries, subject to other relevant Code rules.**

Websites, apps and mobile devices are proprietary communication tools whose branding and web addresses amount to "products" under Ofcom's rules (as opposed to generic means of communication such as the public telephone network). Broadcasters must be mindful of the need to ensure that **references to proprietary properties are not promotional or unduly prominent – in the context of voting shows and competitions – and must comply with Rules 9.1 to 9.5 of the Code.**

Where a vote or competition entry is free (including where no more than normal carriage cost is chargeable) any means of contact may be used: Rule 9.26 does not apply.

After the further extended pilot period Ofcom will assess its impact and associated issues. If appropriate in the light of that assessment we may decide to undertake a more wide-ranging formal review of this area of the Code and its application.

Broadcasters should contact John Stables at Ofcom ([john.stables@ofcom.org.uk](mailto:john.stables@ofcom.org.uk)) if they have any questions about the further extended pilot period.

## Standards cases

### In Breach

#### Audio description and subtitling provision

*ESPN, January to December 2012*

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#### Introduction

##### Ofcom's duties regarding television access services

Ofcom has a specific duty under section 303 of the Communications Act 2003 ("the Act") to draw up and from time to time review and revise a code promoting the understanding and enjoyment of television services by individuals with sensory impairments. The legislation includes specific targets in respect of subtitling, audio description and signing of relevant programmes. Ofcom also has a general duty to further the interests of citizens and consumers under section 3 of the Act, including a duty to promote the availability of a wide range of television services and, in doing so, to have regard to the needs of disabled people.

The Ofcom Code on Television Access Services ("the Television Access Services Code") addresses the legal duties set out in section 303 of the Act by requiring Ofcom-licensed television broadcasters to provide access services (subtitling, signing and audio description services) to accompany a proportion of their programming. They are required to meet targets that rise annually from the date when the licensee began to provide services or from the introduction of the Act in December 2003, whichever is the most recent.

Rule 8 of the Television Access Services Code states that "...broadcasters are required to meet the targets set out below".

| <b>Anniversary of relevant date</b> | <b>Subtitling</b> | <b>Signing</b> | <b>Audio Description</b> |
|-------------------------------------|-------------------|----------------|--------------------------|
| First                               | 10%               | 1%             | 2%                       |
| Second                              | 10%               | 1%             | 4%                       |
| Third                               | 35%               | 2%             | 6%                       |
| Fourth                              | 35%               | 2%             | 8%                       |
| Fifth                               | 60%               | 3%             | 10%                      |
| Sixth                               | 60%               | 3%             | 10%                      |
| Seventh                             | 70%               | 4%             | 10%                      |
| Eighth                              | 70%               | 4%             | 10%                      |
| Ninth                               | 70%               | 4%             | 10%                      |
| Tenth                               | 80%               | 5%             | 10%                      |

### ESPN's access service requirements

ESPN is a sports television channel broadcasting a combination of live sports events and sports related programming. The licence for this service is held by ESPN (Europe, Middle East, Africa) Limited ("ESPN" or "the Licensee").

Condition 9(1) of ESPN's licence states "the Licensee shall ensure that the provisions of the Code on Subtitling, Signing and Audio-Description are observed in the provision of the Licensed Service."

In 2012, under the Television Access Services Code, ESPN was required to audio describe 5% of relevant content and subtitle 22.5% of relevant content. This requirement was communicated to ESPN by Ofcom in 2011.

In addition, Ofcom had also understood that ESPN would make up a previous 3% shortfall on its audio description provision, giving a revised audio description target of 8%. Ofcom had found ESPN in breach of its 2011 requirement for audio description. The breach decision was published in June 2012<sup>1</sup>, and what was considered to be the revised target for ESPN was subsequently reflected in Ofcom's mid-year report for 2012<sup>2</sup>.

ESPN's end-of-year returns to Ofcom indicated that, in 2012, ESPN had not met its requirements for subtitling and audio description. In light of this, Ofcom initiated an investigation in February 2013 regarding a possible breach of the Television Access Services Code.

### ESPN's access service delivery in 2012

Each year Ofcom publishes two reports outlining the performance of relevant broadcasters against the targets set under the Television Access Services Code. The first of these reports, normally published in September, covers the first six months of that year whilst the second, normally published the following March, covers the full year.

On 26 September 2012 Ofcom published the television access service report covering the first six months of 2012<sup>3</sup>. In this it was noted that ESPN had reported to Ofcom it had provided audio description on 2.45% of relevant content and subtitling on 11.4% of relevant content over the first six months of 2012. Therefore Ofcom noted in the report that ESPN's delivery of audio description was "...still some way short of the target, and [was] also under-delivering against its subtitling target." Ofcom also noted that it "...expects ESPN to take the necessary measures to become compliant by the end of 2012."

On 26 March 2013 Ofcom published the full year report for 2012, based on broadcaster returns. The report noted that ESPN had provided audio description on 2.3% of relevant content. This represented a 2.7% shortfall against its standard 2012

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb207/obb207.pdf>

<sup>2</sup> <http://stakeholders.ofcom.org.uk/market-data-research/market-data/tv-sector-data/tv-access-services-reports/full-year-2012/>

<sup>3</sup> <http://stakeholders.ofcom.org.uk/market-data-research/market-data/tv-sector-data/tv-access-services-reports/full-year-2012/>

target of 5% and a 5.7% shortfall against its revised target of 8% (taking into account the 2011 shortfall of 3%). The report also noted that ESPN had provided subtitling on 15.7% of relevant content, a shortfall of 6.8% against its target for 2012.

In light of the shortfall in provision for both audio description and subtitling, Ofcom considered the matter warranted a review under the procedures for investigating potential breaches of the Television Access Services Code<sup>4</sup>. Ofcom therefore wrote to ESPN on 7 February 2013 to ask for comments in relation to the reported under delivery. ESPN was asked in this request if it considered it had “complied with the Code in general and specifically [Rule] 8, ‘Targets,’” and was also given the opportunity to “provide comments as to why ESPN has been unable to meet these targets.”

## **Response**

### Subtitling

ESPN did not dispute that it had failed to meet the target set out in the Television Access Services Code of 22.5% of relevant content being subtitled in 2012.

ESPN stated that its under-delivery in 2012, “was due in part to the need to acquire and install the capability to introduce live subtitling to reach the higher quotas, and the schedule changes made after introducing audio description.” It went on to outline that in 2013 it is so far providing subtitling in excess of its 35% target for the year. It described the 2012 shortfall as an “anomaly”.

ESPN also stated that it had “exceeded its targets for subtitling starting in 2010 and until the end of 2011. We note that prior over-provision is not to be credited against subsequent under-provision (notwithstanding Ofcom’s discretion to allow the reverse to be the case) but we believe that should nevertheless be taken into account when considering ESPN’s subtitling performance.”

Ofcom subsequently wrote to ESPN requesting clarification on some points in its response. In this letter, Ofcom proposed that the 6.8% subtitling shortfall from 2012 should be added to ESPN’s subtitling target for 2013. Ofcom invited ESPN formally to confirm that it accepted this revised target (of 41.8%) or, if it was unable to do so, to confirm what ESPN will formally commit to that addresses the exclusion of hearing impaired consumers and potential for ESPN to profit from the breach.

In response (1 July 2013), ESPN noted that ownership of the service was in the process of being transferred to BT<sup>5</sup>, which was itself launching two new channels (BT Sports 1 and 2) which may broadcast certain events in relation to which ESPN had rights, including some events with typically relatively high ratings. As new services, BT Sports 1 and 2 would not be subject to a subtitling target in 2013.

ESPN proposed that, as an alternative to making up the 6.8% shortfall wholly on the ESPN, it could do so through a combination of additional subtitling on ESPN and subtitling on BT Sports 1 and 2, specifically for Barclays Premier League, Scottish Premier League, UEFA Europa League and Aviva Premiership Rugby matches only.

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<sup>4</sup> <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/>

<sup>5</sup> Please note, British Telecommunications plc took control of ESPN's licensed services on 1 August 2013. BT Sports 1 and 2 began broadcasting on 1 August 2013.

### Audio description

ESPN did not dispute that it had failed to meet the target set out in the Television Access Services Code of 5% of relevant content being audio described. ESPN did, though, dispute that its target for 2012 had been increased to 8% due to its shortfall in 2011.

In its response to Ofcom's request for comments on 2012 provision, ESPN set out the difficulties that it believes it faces in meeting its requirements, reiterating its previous position that "...with so much live content, and, crucially so much of the non-live content being "current" and having a repeat pattern that tends not to go much beyond a day, it remains difficult to reach the necessary levels. By contrast, the most obvious comparison channel, Sky Sports, is able to spread live content across several live sports channels, leaving space in each channel's schedule for repeats of longer shelf-life documentary and other programming. ESPN is typically only able to show such programming on the ESPN Classic channel, rather than the ESPN live sports channel and therefore struggles to find sufficient hours of programming that can be audio described."

ESPN expanded on this saying "In relation to live sport, our audio description service provider has confirmed to us that other broadcasters of sport...do not audio describe live sport, and...it would not be practical to do so with any expectation of that providing an acceptable quality of service, even if the technical difficulties could be overcome."

ESPN set out the main categories of non-live output on the channel:

- "...near live or recent repeat showings of live matches;
- ...studio discussion shows which are often first aired live, or near-live and then repeated; and
- ...specific league preview and review shows."

ESPN stated its view that this programming gives "...little or no opportunity to audio describe them prior to transmission." ESPN also noted that the guidance on the audio description of sport offered by Ofcom's predecessor, the ITC, stated that the "description of sport and other live programmes, in the presence of an existing commentator, is impractical since it is impossible to know when the commentator will speak or what he or she will say...[and]... there will often be insufficient time to prepare a description for pre-recorded sporting events since they are usually broadcast only after a short delay."

Regarding the 2011 shortfall of 3%, ESPN argued that "It was never our stated intention to catch up with past under provision specifically during 2012 (given we were not able to start providing the service until the second quarter) but it was our intention (as discussed with Ofcom) to catch up over the course of 2012 and 2013, if practicable, subject to reaching agreement with Ofcom in relation to any programming that might be excluded from the requirements." Instead, ESPN said that: "In our correspondence last year we said that it was our intention to make up for the delayed start in providing audio description services on ESPN and to seek to make good past under-provision. We commenced audio description in May 2012 and adjusted the summer schedule (when there is less live sport shown) to enable us to get off to a relatively fast start. However, we noted to Ofcom that we continued to anticipate difficulty in meeting the quotas and the fast start over the summer was not able to be maintained."

In terms of future provision, ESPN stated that: “We have however worked with our audio description services provider to devise a new plan to further optimise the amount of audio described non-live programming on the channel. This will involve turnaround times which are out of the ordinary and processes that are untested. We may also have to resort to audio describing programming that would not normally be considered as qualifying programming due to the preponderance of static talking heads, as however unsatisfactory this may be we do not believe it is possible to reach the targets in any other way.”

ESPN has confirmed its view that “...with these processes and some adjustment to the schedule it should be possible over the coming months to achieve the 7.5% target that in the normal course would have been the ESPN quota for 2013. Given past under-delivery and stated intention to try to make good, we are targeting a higher percentage (10% or more, particularly during the summer months) but given the tight timescales it remains to be seen if that can be achieved as some programming may not be able to be sent to the provider and returned in time for a first repeat.”

As noted above, Ofcom subsequently wrote to ESPN requesting clarification on some points in its response. In terms of audio description provision, Ofcom asked for clarification as to the level of audio description provision ESPN was willing to commit to delivering, noting the combined 2011/12 shortfall of 5.7%.

In its response (1 July 2013), ESPN stated that, “we cannot commit to making up the 5.7% cumulative shortfall over 2013”. It reiterated that the nature of the schedule of live sport made it, “impossible to do so, unless agreement is reached [with Ofcom] on programming that can be excluded.”

## **Decision**

### Subtitling

As noted above, ESPN did not dispute that it failed to meet its 22.5% target for 2012 but instead offered an explanation as to why the 2012 target was missed and offered assurances that current provision should be sufficient to meet (and possibly exceed) its requirements in 2013, albeit with the uncertainty engendered by the transfer of ownership to BT and associated scheduling changes.

While Ofcom acknowledged that the need to install equipment to deliver the higher target may well have played a part in ESPN’s under-delivery of subtitling, the Television Access Service Code clearly sets out the levels of subtitling required each year and how this requirement increases over time. This clarity has enabled other broadcasters to plan accordingly to meet increased targets. ESPN should therefore have had sufficient time in which to upgrade equipment prior to 2012. As such, Ofcom is of the view that technical issues such as this should not have prevented ESPN from meeting its higher target.

ESPN argued that some of the under-provision may be due to schedule changes made to increase audio description provision. However, audio-description and subtitling are different services addressing different types of impairment, and the Act and the Television Access Services Code do not allow for under-delivery in one area in order to facilitate provision in another. Ofcom noted that a wide range of other channels continue to meet all access service targets. As such, Ofcom does not regard the need to deliver audio description as a valid reason for the under-delivery of subtitling. Additionally, Ofcom noted that, to the extent there were schedule



changes to accommodate audio description, they did not actually result in the audio description target being met (see below).

Ofcom also noted ESPN's description of the 2012 subtitling figures as an "anomaly" and its request for Ofcom to take account of ESPN's overall subtitling performance in considering this matter. However, the Act and the Television Access Services Code are very clear that the targets represent minimum obligations in each year. Where targets are exceeded (which several channels have achieved) this is welcome, but does not reduce the obligation for subsequent years or offer mitigation for under-delivery. Nor are channels generally allowed to make up shortfalls by over-provision in subsequent years (although on occasion Ofcom has agreed with individual channels to allow this on a one-off basis).

As a result of ESPN's under-provision of subtitling, hearing impaired consumers have been excluded from 6.8% of ESPN's relevant content in 2012.

Ofcom accepted ESPN's commitment to make up this shortfall over 2013. That is, in addition to its statutory target of 35% for 2013, ESPN would also deliver an additional 6.8% during the course of the year.

In light of the unusual circumstances of the transfer to BT and connected schedule changes, and taking into account the likely audience value that would be delivered by the subtitling of the most high profile sports to be shown across the BT portfolio, we also accepted ESPN's proposal that subtitling of these high profile events may also contribute towards the delivery of the additional 6.8% (although for the avoidance of doubt, ESPN remains under an obligation to deliver at least 35% subtitling).

**In light of these commitments, Ofcom does not propose to consider this breach of subtitling requirements for the imposition of a statutory sanction.**

#### Audio description

As noted above, ESPN did not dispute that its audio description provision was below its 5% target for 2012 under the Television Access Services Code. ESPN did, though, dispute that its target for 2012 had been increased to 8% due to its shortfall in 2011.

In relation to 2011 under-provision, Ofcom's June 2012 breach finding in relation to ESPN noted that, "ESPN advised Ofcom that it had planned its budgets with the aim of surpassing future targets once it begins to offer audio description, to compensate for missing targets in previous years. It argued that it had therefore not profited by failing to provide audio description." It appeared to us, therefore, that ESPN planned to surpass future targets to make up to visually impaired consumers, and to ensure it did not profit from the breach. This was not explicitly stated in the decision, although the revised 8% target was stated in the biannual access service report on 26 September 2012.

However, Ofcom does not need to decide whether ESPN understood the position on the revised target of 8%, since it fell short of the statutory target of 5% for 2012 in any event.

In relation to 2012, ESPN, as noted above, offered a number of explanations in mitigation of its under-provision of audio description in 2012. In particular, these related to the challenges of audio-describing live sport.

As Ofcom noted in its June 2012 breach finding: “ESPN had raised these difficulties with Ofcom when it first became clear that it would need to provide access services, but Ofcom advised at the time that it did not regard them as insuperable. Ofcom noted that subsequently (August 2011), ESPN had said that it had resolved the difficulties it faced, and expected to meet the audio description targets. Ofcom also noted that though the Television Access Services Code allows broadcasters to seek exemptions from the targets on grounds of technical difficulty, we noted that ESPN had not done so.”

Ofcom also noted that, during the 2011 breach procedure, ESPN stated that “...by changing the schedule in this way [to accommodate content suitable for audio description] we will be able to meet our short term targets.” (March 2012). This indicated ESPN considered the difficulties challenging but not insuperable and intended to meet at least the statutory target.

The archived ITC guidance referenced by ESPN is referred to in Ofcom’s current Television Access Services Code as potentially helpful reference material, but it is not suggested that the material forms part of Ofcom’s own Television Access Services Code.

The ITC guidance noted the practical challenges of audio-describing live sport or sport broadcast after only after a short delay as they existed at the time, and Ofcom accepts that some forms of programming are more challenging to audio describe than others. However, ESPN provides programming in addition to live sport, and had indicated during the procedure relating to the 2011 breach that it did not consider the challenges insuperable. No exemption from its 2012 requirements had been given by Ofcom, and so they remained at the statutory level.

Ofcom was concerned that since the start of 2011 ESPN has provided the required audio description on 0% of its content in 2011 (against a target of 3%) and on 2.3% of its content in 2012 (against a target of 5%). This was despite repeated assurances that targets would be met. Visually impaired consumers were therefore excluded from content provided by ESPN that, under the requirements of the Act and the Television Access Services Code required by the Act, should have been made accessible to them.

This decision is without prejudice to any consideration of a formal request from ESPN for certain content to be excluded in future from its obligations to audio-describe. However, ESPN has expressed the view that any exclusion should be applied retrospectively to 2011 and 2012. Ofcom considers it is important that licensees continue to meet their statutory obligations until such time as any exclusion is granted. It is not appropriate to under-deliver against requirements in anticipation of an exemption, particularly where (as in this case) the licensee has indicated that it has made changes intended to help enable it to meet its statutory requirements.

As a result of ESPN’s under-provision of audio-provision, visually impaired consumers have been excluded from 2.7% of ESPN’s relevant content in 2012 (in addition to the 2011 shortfall of 3%). Unlike in the subtitling matter above, in light of the difficulties ESPN has set out regarding its ongoing provision of audio description, it has stated that it cannot commit to making up the shortfall from 2011 and 2012 during 2013 unless Ofcom were to agree to the exclusion of certain programming with effect from 2013 onwards. Therefore, there is no mechanism to make up the shortfall to those consumers or to ensure ESPN do not profit from the breach.

Ofcom considered the under-provision of audio-description in 2012 constituted a serious and, in the light of the 2011 breach, repeated breach of Rule 8 of the Television Access Services Code.

**In light of these facts Ofcom is minded to consider this repeated breach of the audio description requirements for the imposition of a statutory sanction.**

**Subtitling: Breach of Rule 8 of the Code on Television Access Services  
Audio Description: Breach of Rule 8 of the Code on Television Access Services.**

## In Breach

### Studio 66 Days

*Studio 66 TV 1 (Channel 912), 4 April 2013, 11:30 to 12:05*

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#### Introduction

*Studio 66 Days* is a segment of interactive 'daytime chat' advertising content broadcast on the service Studio 66 TV 1 (Sky Channel 912). The service is freely available without mandatory restricted access and is situated in the 'adult' section of the Sky electronic programme guide ("Sky EPG"). Viewers are invited to contact on-screen presenters via premium rate telephony services ("PRS"). All dress and behaviour should be non-sexual in tone and apparent intent.

The licence for Studio 66 TV 1 is owned and operated by 914 TV Limited ("914 TV" or "the Licensee").

As part of its routine monitoring, Ofcom assessed some advertising content broadcast on 4 April 2013 between 11:30 and 12:05 (except for a four minute switch to another presenter on another set at 11:45) featuring a female presenter. The presenter was wearing a low cut, black and white spotted strapless one-piece, and shown lying on her side with her legs apart while thrusting her body backwards and forwards, and gyrating her hips. Ofcom further noted that:

- on several occasions one of the presenter's nipples was partially exposed, due to the one-piece falling down. Furthermore, the presenter was shown repeatedly pulling the top of the one-piece up to ensure that her nipples were adequately covered;
- from 11:42 to 11:45, the presenter switched position to lie on her back, with her legs apart, while she continued to gyrate her hips and thrusting backwards and forwards; and
- at various times, the presenter caressed her inner thigh, breasts, and buttocks.

Ofcom considered the above material raised issues warranting investigation under the UK Code of Broadcast Advertising ("the BCAP Code") Rule 32.3, which states:

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

We therefore asked the Licensee how this advertising content complied with this rule of the BCAP Code.

#### Response

914 TV apologised for this incident. The Licensee said that: "we agree that this piece of content fell short of complying with both our own internal guidelines and Ofcom's published guidance regarding 'Daytime Chat'". The Licensee, however, made a number of representations by way of mitigation. In summary these were as follows.

914 TV said that as a live teleshopping channel, it is heavily reliant on “income derived from user interaction with our on screen ‘Glamour Models’ who make a living out of their looks and are very much used to photo/video shoots where creating beautiful, sexy images is the sole objective”. It said that it had to regularly remind the presenters to not be “too sexy”. The Licensee added that it monitors its output “as carefully as we can...across four channels<sup>1</sup>” and where compliance failings occur “we take measures to adjust our content, processes and/or internal guidelines accordingly”.

914 TV said that, although the advertising in this case was “not up to the standard we aim for”, “in the unlikely event that children were to stumble across it, the likelihood of it causing harm or distress to children is almost non-existent.”

The Licensee accepted that: “... in this instance, the presenter was not adequately prepared” and that her movements “overstepped the mark and allowed her performance to tend towards having a sexualised undertone”. 914 TV said that as a consequence the presenter and the production team had been required to attend a meeting “to discuss why sufficient measures in line with our internal guidelines were not taken, and to reinforce the importance of adhering to those guidelines and Ofcom’s published guidance”.

Finally, the Licensee described the steps it had taken “to ensure these issues do not occur in the future”. These included “a company-wide compliance meeting, where: the content in this case was reviewed and ‘the failings’ noted; those present “were reminded of their responsibilities and duties with a view to achieving a more effective level of compliance moving forwards”; and the Licensee’s latest internal guidance<sup>2</sup> was distributed.

## Decision

Under the Communications Act 2003, Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that “the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented”. This objective is reflected in the rules set out in the BCAP Code.

The BCAP Code contains rules which permit ‘adult chat’ services to be advertised within prescribed times and on free-to-air channels that are specifically licensed by Ofcom for that purpose, but which carefully circumscribe their content to exclude inappropriate material. These rules apply to both ‘daytime chat’ and ‘adult chat’ services.

When setting and applying standards in the BCAP Code to provide adequate protection to members of the public from serious or widespread offence, Ofcom must have regard to the need for standards to be applied in a manner that best guarantees an appropriate level of freedom of expression in accordance with Article 10 of the

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<sup>1</sup> As mentioned above, the licence for Studio 66 TV 1 is owned and operated by 914 TV. Both 914 TV and 965 TV Limited (“965 TV”) – the licensee for three other Studio 66 channels (the services Studio 66 TV 2, Studio 66 TV 3 and Studio 66 TV 4) – have the same sole shareholder and director. Further, according to Ofcom’s records, 914 TV and 965 TV have the same individual responsible for compliance at all four services.

<sup>2</sup> 914 TV provided Ofcom with a copy of this Guidance document, which was dated “12/06/2013”.

European Convention on Human Rights, as incorporated in the Human Rights Act 1998. However, the advertising content of ‘adult chat’ services has much less latitude than is typically available to editorial material in respect of context and narrative. The primary intent of advertising is to sell products and services, and consideration of acceptable standards will take that context into account.

Rule 32.3 of the BCAP Code states: “Relevant timing restrictions must be applied to advertisements that, through their content, might harm or distress children of particular ages or that are otherwise unsuitable for them.”

Appropriate timing restrictions are judged according to factors such as: the nature of the content; the likely number of children in the audience; the likely age of those children; the time of the broadcast; the position of the channel in the relevant electronic programme guide (e.g. the ‘adult’ section); any warnings; and mandatory restricted access. Ofcom has also made clear in a number of published decisions the type of material that is unsuitable to be broadcast in ‘adult chat’ advertising content that is available without mandatory restricted access.

On 4 February 2013 Ofcom published revised guidance on the advertising of telecommunications-based sexual entertainment services and PRS ‘daytime chat’ services (the “Chat Service Guidance”)<sup>3</sup>. This clearly sets out what Ofcom considers to be acceptable to broadcast on these services pre-watershed. For example, this guidance explicitly states that ‘daytime chat’ broadcasters should:

- “ensure that presenters are wearing appropriate clothing, that adequately covers their bodies, in particular their breasts, genital areas and buttocks”;
- “not broadcast images of presenters touching or stroking their bodies in a suggestive manner”; and
- “not broadcast images of presenters mimicking sexual intercourse by rocking and thrusting their bodies, or otherwise adopting sexual poses”.

Ofcom has also made clear in published decisions what sort of material is unsuitable to be broadcast in ‘daytime chat’ advertising content<sup>4</sup>.

In applying BCAP Code Rule 32.3, Ofcom had first to decide if the broadcast material was unsuitable for children.

Ofcom noted that the female presenter was wearing clothing that did not adequately cover her body, in particular a one-piece which repeatedly slipped down to expose one of the presenter’s nipples. While wearing this outfit, the presenter acted in a sexualised manner: she was shown lying on her side for prolonged periods of time, her legs apart whilst thrusting her body backwards and forwards, and gyrating her hips (albeit away from camera), so as to mimic sexual intercourse. She also caressed her breasts, inner thighs and buttocks in a sexually suggestive manner. Ofcom concluded that this material was unsuitable for children.

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<sup>3</sup> See: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/bcap-guidance.pdf>

<sup>4</sup> For example most recently: GirlGirl, ChatGirl TV (Sky Channel 937), 22 August 2012, 07:30 to 08:30, in issue 219 of Ofcom’s Broadcast Bulletin, 3 December 2012, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb219/obb219.pdf>

Ofcom then considered whether relevant timing or scheduling restrictions had been applied by the Licensee to this broadcast. Ofcom took account of the fact that the channel is in the 'adult' section of the Sky EPG. However, this material was broadcast on a channel without mandatory restricted access during the day from 10:30, when children were available to view at a time when some were potentially unaccompanied by an adult. Ofcom noted that this material was broadcast on 4 April during the Easter school holidays so it was likely that more children were available to view in the daytime during this period.

Ofcom also had regard to the likely expectations of the audience for programmes broadcast at this time of day on a channel in the 'adult' section of the Sky EPG without mandatory restricted access. In Ofcom's opinion, viewers (and in particular parents) would not expect such material to be broadcast and available to view at this time of day, particularly given that material broadcast on such services prior to 21:00 should be non-sexual in tone and apparent intent. The broadcast of such sexualised content was inappropriate to advertise a 'chat' service aimed at adults during the day and before the watershed.

In reaching our decision in relation to this piece of content, we took into account that it was broadcast soon after publication by Ofcom of our revised Chat Service Guidance on 4 February 2013<sup>5</sup>. When we published the revised Guidance, we also published a Note to Broadcasters in issue 223 of Ofcom's Broadcast Bulletin<sup>6</sup> in which, amongst other things, we required 'daytime chat' and 'adult chat' broadcasters to take careful note of the following in the revised Chat Service Guidance:

"Presenters' clothing on daytime chat services

During daytime chat content, all dress and behaviour should be non-sexual in tone and apparent intent. Therefore presenters should wear clothing that **adequately covers their bodies** (in particular their breasts, genital areas and buttocks)...".

We also took account of the fact that on 21 February 2013, we gave directly to the Licensee some unpublished, written guidance to remind 914 TV that the following content is prohibited during daytime: buttocks being inadequately covered; the stroking of breast, buttocks and thighs by presenters; and, presenters gyrating and rocking their hips.

In addition, in reaching our decision in this case, we also took into account the various representations made by the Licensee. We noted that the Licensee accepted that the advertising content in this case did not comply with its own internal guidelines and was not consistent with Ofcom's Chat Service Guidance. Although Ofcom recognises that there may be challenges for licensees in the daytime and adult chat sector ensuring that their live advertising content complies with the BCAP Code at all times, this is a clear licence obligation. Licensees must take all necessary measures to fulfil this duty.

For these reasons this material broadcast on 4 April 2013 breached BCAP Code Rule 32.3.

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

<sup>6</sup> See <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb223/obb223.pdf>

## Conclusion

In issue 223 of Ofcom's Broadcast Bulletin, published on 4 February 2013, we recorded breaches of BCAP Rules 30.3 and 32.3 against 914 TV for material broadcast on Studio 66 TV 1<sup>7</sup>. We are therefore concerned that the Licensee has breached the BCAP Code again<sup>8</sup>.

As mentioned in footnote 1, both 914 TV and 965 TV – the licensee for three other Studio 66 channels (the services Studio 66 TV 2, Studio 66 TV 3 and Studio 66 TV 4) – have the same sole shareholder and director. Further, according to Ofcom's records, 914 TV and 965 TV have the same individual responsible for compliance at these four services.

In view of these earlier findings and subsequent guidance, Ofcom is very concerned that 914 TV has again broadcast material that has breached Rule 32.3 of the BCAP Code (also see the new breaches recorded against 965 TV Limited on page 25 of this issue of Ofcom's Broadcast Bulletin). Given the Code breaches recorded in this Finding, Ofcom is requiring the Licensee to attend a meeting to discuss its compliance procedures.

### **Breach of BCAP Rule 32.3**

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<sup>7</sup> See footnote 6.

<sup>8</sup> We noted that the Licensee objected to Ofcom, in our Preliminary View, linking the present case with breaches of Rules 30.3 and 32.3 of the BCAP Code recorded previously against 914 TV in issue 223 of Ofcom's Broadcast Bulletin. Although we acknowledged the contraventions in issue 223 of Ofcom's Broadcast Bulletin took place in different circumstances, these breaches were also recent compliance failures by 914 TV, and therefore it was appropriate to highlight the breaches of the BCAP Code recorded against 914 TV in issue 223 of Ofcom's Broadcast Bulletin in the context of the present case.



## In Breach

### **Studio 66 TV Nights**

*Studio 66 TV 3 (Channel 941), 5 March 2013, 00:20 to 00:30*

### **Studio 66 TV Days**

*Studio 66 TV 3 (Channel 941), 17 April 2013, 10:30 to 11:45*

### **Studio 66 TV Nights**

*Studio 66 TV 2 (Channel 938), 17 April 2013, 21:04 to 21:08*

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## **Introduction**

*Studio 66 2 Nights* and *Studio 66 3 Days* are segments of interactive ‘adult chat’ and ‘daytime chat’ advertising content broadcast on the services Studio 66 TV 2 (Sky Channel 938) and Studio 66 TV 3 (Sky Channel 941) respectively. The two services are freely available without mandatory restricted access and are situated in the ‘adult’ section of the Sky electronic programme guide (“Sky EPG”). Viewers are invited to contact on-screen presenters via premium rate telephony services (“PRS”). In ‘adult chat’ content the female presenters dress and behave in a sexually provocative way. During ‘daytime chat’, all dress and behaviour should be non-sexual in tone and apparent intent.

The licences for both the Studio 66 TV 2 and Studio 66 TV 3 channels are owned and operated by the same licensee, 965 TV Limited (“965 TV” or “the Licensee”). The Licensee also has the same individual responsible for compliance at these two services.

Following some recent BCAP Code breaches in this sector, Ofcom conducted a monitoring exercise of ‘daytime chat’ and ‘adult chat’ channels as set out in issue 223 of Ofcom’s Broadcast Bulletin<sup>1</sup>.

#### 5 March 2013, *Studio 66 TV 3* at 00:20 (Channel 941)

Ofcom noted a female presenter wearing red shoes, a black thong, red bra and red fishnet tights. During the broadcast the presenter lay on her back with her legs open to camera and repeatedly gyrated and thrust her hips as if to mime sexual intercourse. She held this position for a prolonged period. Her underwear did not adequately cover her anal area which was clearly visible during this broadcast.

Ofcom considered the material raised issues warranting investigation under BCAP Code Rule 4.2 which states:

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

#### 17 April 2013, *Studio 66 TV 3* at 10:30 (Channel 941)

A female presenter was initially shown lying face downwards and wearing a short black crop top that was covering some of her shoulders and breasts, and a pair of cutaway leopard print knickers, exposing the cheeks of her buttocks. Ofcom noted that:

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb223/obb223.pdf>

- the presenter was shown repeatedly rocking her buttocks; and
- at various times, the presenter adjusted her position so that her crop top did not fully cover the bottom half of her breasts.

17 April 2013, Studio 66 TV 2 at 21:04 (Channel 938)

A female presenter was initially shown lying sideways facing the camera, with bare breasts except for her nipples being covered by a thin strip of black plastic tape. Another thin strip of black plastic tape had been stuck around the presenter's stomach. The presenter's only other clothing was a skimpy pair of black knickers, with what appeared to be a black G-string worn underneath. While the presenter was lying on her side:

- she was shown occasionally: rocking her body backwards and forwards; and at times touching her breasts, apparently to check to see if the plastic tape was adequately covering her nipples; and
- the camera occasionally zoomed in and moved down the presenter's body.

At approximately 21:06 the presenter turned to lie on her front, thrusting and rocking her buttocks up and down. In this position, it was apparent that the presenter's knickers were cut away exposing the cheeks of her buttocks.

Ofcom considered these two broadcasts raised issues warranting investigation under BCAP Code Rule 32.3, which states:

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

We therefore asked the Licensee how this advertising content complied with this rule of the BCAP Code.

### **Response**

The Licensee provided in comments in relation to the three pieces of content. It accepted that in all three cases the advertising content “did not meet the requirements contained within our own internal guidelines and Ofcom's published guidance”. 965 TV however went on to make various points in mitigation which are as follows in summary.

5 March 2013, 00:20

The Licensee said this content: was “a 6-minute section of a much longer broadcast”; was broadcast after midnight, within the ‘adult’ section of the Sky EPG; and “although it did not meet the standards we would expect from our broadcasts, we feel that the likelihood of it causing ‘serious or widespread offence against generally accepted moral, social or cultural standards’ is minimal, if existent at all”.

17 April 2013, Studio 66 3 Days at 10:30

Although accepting that this piece of advertising content “did not meet the requirements contained within our own internal guidelines and Ofcom's published

guidance”, 965 TV expressed its view that “to record a breach of Rule 32.3 in this instance would be a heavy-handed approach”. The Licensee also said that as a live teleshopping channel, it is heavily reliant on “income derived from user interaction with our on screen ‘Glamour Models’ who “make a living out of their looks and are very much used to photo/video shoots where creating beautiful, sexy images is the sole objective”. It said that it had to regularly remind such presenters to not be “too sexy.” The Licensee added that it monitors its output “as carefully as we can...across four channels<sup>2</sup>” and where compliance failings occur “we take measures to adjust our content, processes and/or internal guidelines accordingly”.

965 TV also said that, although the advertisements in this case were “not up to the standard we aim for”, “in the unlikely event that children were to stumble across it, the likelihood of it causing harm or distress to children is almost non-existent.”

#### 17 April 2013, *Studio 66 2 Nights at 21:04*

The Licensee, whilst accepting “there was an issue here”, stated its view that “the likelihood for the content to cause harm or distress to children of particular ages is extremely minimal”. This was because, in 965 TV’s view, the content was broadcast: post-watershed “when most children are in bed”; and within the adult section of the Sky EPG. In addition, the Licensee said that “Sky set-top boxes offer parents the option to restrict access to the adult section of the [Sky] EPG”.

The Licensee did add that in light of this content, and “having experienced issues in the past with the transition from pre- to post-watershed we have now decided to revise our internal guidelines in these matters”. Specifically, 965 TV said that it would be “shifting the end and start time of our day-time and night-time shows by 30 minutes. This will mean the Non-Adult day-time show will finish at 21:30 with the Adult Night-time show starting at 21:30”. In addition, it said that it would “continue to work on making sure that the transition” between daytime and night time content would be “as smooth as possible and that the graduation in the level of the content is done over an extended period”.

In relation to all three pieces of content in this case, the Licensee objected to Ofcom linking these with breaches of rules 30.3 and 32.3 of the BCAP Code recorded against 914 TV<sup>3</sup> in Broadcast Bulletin 223. This was because, in the Licensee’s view “it is unfair to seek to link these breaches as they were of a totally different nature and occurred for totally different reasons”.

Finally, the Licensee outlined the steps it had taken to improve compliance in this case. These included: the presenters and the production teams being required to attend a meeting to highlight “the issues raised” and make clear “our expectations moving forwards”; a company-wide compliance meeting, where those present “were reminded of their responsibilities and duties with a view to achieving a more effective

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<sup>2</sup> As mentioned above, the licences for Studio 66 TV 2 and Studio 66 TV 3 are owned and operated by 965 TV. 965 TV also owns and controls the licence for Studio 66 TV 4. Both 965 TV and 914 TV Limited (“914 TV”) – the licensee for Studio 66 TV 1 – have the same sole shareholder and director. Further, according to Ofcom’s records, 965 TV and 914 TV have the same individual responsible for compliance at all four services.

<sup>3</sup> See footnote 2 for an explanation of the links between the Licensee and 914 TV.

level of compliance moving forwards” and the licensee’s latest internal guidance<sup>4</sup> was distributed.

## Decision

Under the Communications Act 2003, Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that “the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented”. This objective is reflected in the rules set out in the BCAP Code.

The BCAP Code contains rules which permit ‘daytime chat’ and ‘adult chat’ services to be advertised within prescribed times and on free-to-air channels that are specifically licensed by Ofcom for that purpose, but which carefully circumscribe their content to exclude inappropriate material. These rules apply to both ‘daytime chat’ and ‘adult chat’ services.

When setting and applying standards in the BCAP Code to provide adequate protection to members of the public from serious or widespread offence, Ofcom must have regard to the need for standards to be applied in a manner that best guarantees an appropriate level of freedom of expression in accordance with Article 10 of the European Convention on Human Rights, as incorporated in the Human Rights Act 1998. However, the advertising content of ‘adult chat’ and ‘daytime chat’ services has much less latitude than is typically available to editorial material in respect of context and narrative. The primary intent of advertising is to sell products and services, and consideration of acceptable standards will take that context into account.

### 5 March 2013, 00:20 – Rule 4.2

Rule 4.2 of the BCAP Code states: “Advertisements must not cause serious or widespread offence against generally accepted moral, social or cultural standards”.

On 4 February 2013, Ofcom published revised guidance on the advertising of telecommunications-based sexual entertainment services and PRS ‘daytime chat’ services (“the Chat Service Guidance”)<sup>5</sup>.

This clearly sets out what Ofcom considers to be acceptable to broadcast on these services post-watershed. For example the guidance explicitly states that ‘adult chat’ broadcasters should:

- “at no time broadcast invasive shots of presenters’ bodies. Ofcom cautions against physically intrusive, intimate shots of any duration; and against less intrusive shots that may become unacceptable by virtue of their being prolonged”; and
- “ensure that presenters’ clothing adequately covers their anal, labial or genital areas. They should also avoid adjusting their clothing (including clutching or bunching) which results in anal, labial or genital areas being exposed”.

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<sup>4</sup> 965 TV provided Ofcom with a copy of this Guidance document, which was dated “12/06/2013”.

<sup>5</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/bcap-guidance.pdf> (published 4 February 2013)

Ofcom has also made clear in a number of published decisions the type of material that is unsuitable to be broadcast in 'adult chat' advertising content that is available without mandatory restricted access<sup>6</sup>. In particular, Ofcom has highlighted in previous published breach decisions relating to this Licensee, and others operating in the adult PRS chat market, examples of where material has been found to be intrusive, invasive or prolonged.

Ofcom noted that in conjunction with the images highlighted above the broadcast included a shot of the presenter, lying on her back with her legs open and her knees drawn back. Her crotch was the focus of the shot and, given this shot of the presenter remained onscreen for the majority of this broadcast, we considered the material was prolonged and intrusive. In addition this shot was in sufficient close-up clearly to show anal detail which was further emphasised when the presenter pulled her fishnet stockings away from her crotch and continued to rock her hips as if to mime sexual intercourse. In Ofcom's view these images were capable of causing offence.

The combination of these images and actions resulted in the material being of a strong sexual nature. Ofcom considered the broadcast included images that are not permitted in 'adult chat' broadcast advertisements that are freely available without mandatory restricted access. Under BCAP Code Rule 4.2 in order to assess whether serious or widespread offence was caused against generally accepted standards, Ofcom took into account whether appropriate scheduling restrictions were applied to this content. Ofcom noted that this content was broadcast well after the watershed and that viewers generally expect on all channels that stronger material may be shown at this time. Ofcom also took account of the fact that the channels are positioned in the 'adult' section of the Sky EPG and that viewers tend to expect the broadcast of stronger sexual material on channels in this section of the Sky EPG than on other channels in other sections.

In reaching our decision, we took account of the Licensee's representations (see above in the Response section under the sub-heading 5 March 2013, 00:20).

In this case, given that the content included prolonged, intrusive shots and clear images of anal detail, the location of the channel in the adult section of the EPG was not sufficient to ensure serious or widespread offence against generally accepted standards was not caused. This was regardless of the fact the content was shown between the hours of 00:00 and 01:00.

We noted 965 TV's apology and admission that this advertising content was not consistent either with the Chat Service Guidance or its own internal guidelines and Ofcom's published guidance. We also noted the various steps 965 TV had taken to improve compliance. However, given all the above, Ofcom concluded that relevant scheduling restrictions were not applied so as to ensure that the material which was broadcast was not capable of causing serious or widespread offence against generally accepted moral, social or cultural standards. Specifically, this material

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<sup>6</sup> For example:

*Studio 66 TV 2 (938), 15 July 2012, 03:00 to 03:55; and  
Studio 66 TV 1 (912), 13 September 2012, 21:15 to 21:40*

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb223/obb223.pdf>; and

*Get lucky, 15 February 2012, 21:01 to 21:30*

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb204/obb204.pdf>

should not have been broadcast within the context of 'adult chat' advertising content that was freely available without mandatory restricted access.

Therefore Ofcom found this material in breach of Rule 4.2 of the BCAP Code.

### 17 April 2013 – Rule 32.3

Rule 32.3 of the BCAP Code states: "Relevant timing restrictions must be applied to advertisements that, through their content, might harm or distress children of particular ages or that are otherwise unsuitable for them."

Appropriate timing restrictions are judged according to factors such as: the nature of the content; the likely number of children in the audience; the likely age of those children; the time of the broadcast; the position of the channel in the relevant electronic programme guide (e.g. the 'adult' section); any warnings; and mandatory restricted access. Ofcom has also made clear in a number of published decisions the type of material that is unsuitable to be broadcast in 'daytime chat' and 'adult chat' advertising content that is available without mandatory restricted access.

We considered each of the following pieces of content against Rule 32.3 in turn.

### Studio 66 3 Days at 10:30

The Chat Service Guidance clearly sets out what Ofcom considers to be acceptable for broadcast on 'daytime chat' services pre-watershed. For example, the guidance explicitly states that 'daytime chat' broadcasters should:

- "ensure that presenters are wearing appropriate clothing, that adequately covers their bodies, in particular their breasts, genital areas and buttocks"; and
- "not broadcast images of presenters mimicking sexual intercourse by rocking and thrusting their bodies, or otherwise adopting sexual poses".

Ofcom has also made clear in published decisions what sort of material is unsuitable to be broadcast in 'daytime chat' advertising content<sup>7</sup>.

In applying BCAP Code Rule 32.3, Ofcom had first to decide if the broadcast material was unsuitable for children.

Ofcom noted that the female presenter was wearing clothing that did not adequately cover her body, in particular: a short black crop top, which did not fully cover the bottom half of the presenter's breasts; and a pair of cutaway leopard print knickers, exposing the cheeks of her buttocks. While wearing this outfit, the presenter acted in a sexualised manner. She was shown lying on her stomach for prolonged periods of time, repeatedly rocking her buttocks. The cumulative effect of her outfit and movement was to create a sexualised tone. Ofcom concluded that this material was unsuitable for children.

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<sup>7</sup> For example most recently: GirlGirl, ChatGirl TV (Channel 937), 22 August 2012, 07:30 to 08:30, in issue 219 of Ofcom's Broadcast Bulletin, 3 December 2012, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb219/obb219.pdf>

Ofcom then considered whether relevant timing or scheduling restrictions had been applied by the Licensee to this broadcast. Ofcom took account of the fact that the channel is in the 'adult' section of the Sky EPG. However, this material was broadcast on a channel without mandatory restricted access during the day from 10:30, when children were available to view at a time when some were potentially unaccompanied by an adult.

Ofcom also had regard to the likely expectations of the audience for programmes broadcast at this time of day on a channel in the 'adult' section of the Sky EPG without mandatory restricted access. In Ofcom's opinion, viewers (and in particular parents) would not expect such material to be broadcast and available to view at this time of day, particularly given that material broadcast on such services prior to 21:00 should be non-sexual in tone and apparent intent. The broadcast of such sexualised content was inappropriate to advertise 'adult chat' during the day and before the watershed.

In reaching our decision, we took into account the fact that this content was broadcast soon after Ofcom had published its revised Chat Service Guidance on 4 February 2013<sup>8</sup>. When we published the revised Guidance, we also published a Note to Broadcasters in issue 223 of Ofcom's Broadcast Bulletin<sup>9</sup> in which, amongst other things, we required 'daytime chat' and 'adult chat' broadcasters to take careful note of the following in the revised Chat Service Guidance:

"Presenters' clothing on daytime chat services

During daytime chat content, all dress and behaviour should be non-sexual in tone and apparent intent. Therefore presenters should wear clothing that **adequately covers their bodies** (in particular their breasts, genital areas and buttocks)...".

We took account of the fact that on 21 February 2013, we gave directly to the Licensee some unpublished, written guidance to remind 965 TV that the following content is prohibited in 'daytime chat' advertising content: buttocks being inadequately covered; and, presenters gyrating and rocking their hips.

In addition, we also had regard to the Licensee's representations in relation to this content (see above in the Response section under the sub-heading 17 April 2013 – Studio 66 3 Days at 10:30).

We noted that the Licensee accepted that the advertising content in this case did not comply with its own internal guidelines and was not consistent with Ofcom's Chat Service Guidance. Although Ofcom recognises that there may be challenges for licensees in the daytime and adult chat sector ensuring that their live advertising content complies with the BCAP Code at all times, this is a clear licence obligation. Licensees must take all necessary measures to fulfil this duty.

We noted the various steps 965 TV had taken to improve compliance. However, Ofcom is concerned that, despite both the revised Chat Service Guidance and the specific guidance given direct to the Licensee in February 2013, this material was

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<sup>8</sup> See: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/bcap-guidance.pdf>

<sup>9</sup> See <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb223/obb223.pdf>

broadcast on 17 April 2013 – which for the reasons set out above breached BCAP Code Rule 32.3.

Studio 66 2 Nights at 21:04

As already noted above, on 4 February 2013 Ofcom published the revised Chat Service Guidance. This clearly sets out what Ofcom considers to be acceptable to broadcast on these ‘adult chat’ services post-watershed. In particular, the Chat Service Guidance states that with regard to material broadcast after 21:00 ‘adult chat’ broadcasters should ensure that: “After 9pm any move towards stronger – but still very restrained – material containing sexual imagery should be gradual and progressive. There should not for example be any miming of sexual acts between 9 and 10pm”. The Chat Service Guidance continues: “Adult chat broadcasters should ensure that the transition to more adult material at 9pm...is not unduly abrupt”.

In addition, Ofcom has also made clear in numerous previous published findings that stronger material in ‘adult chat’ services should appear later in the schedule and that the transition to more adult material should not be unduly abrupt at the 21:00 watershed<sup>10</sup>.

In applying BCAP Code Rule 32.3, Ofcom had first to decide if the material broadcast in *Studio 66 2 Nights* soon after the 21:00 watershed was unsuitable for children.

Ofcom noted that between 21:04 and 21:08 the female presenter wore a strip of thin black plastic tape that revealed the majority of her breasts and a skimpy pair of black panties that exposed her buttock cheeks. We considered the two pieces of thin plastic tape that the presenter wore (one over her breasts and one over her stomach) could be construed as evoking a form of fetish clothing, and would in our view have added to the sexualised nature of the content. While wearing this outfit, the presenter in turn acted in a sexualised manner. She was shown lying on her side, rocking her body backwards and forwards; and at times touching her breasts, apparently to check to see if the plastic tape was adequately covering her nipples. In addition, the presenter was shown lying on her front, thrusting and rocking her buttocks up and down. She was also shown touching her breasts, and on several occasions the camera zoomed in and moved down the presenter’s body. Ofcom concluded that this material was unsuitable for children.

Ofcom then considered whether relevant timing or scheduling restrictions had been applied by the Licensee to this broadcast. Ofcom took account of the fact that the channel is in the ‘adult’ section of the Sky EPG. However, this material was broadcast on a channel without mandatory restricted access. This material was broadcast from 21:04, very shortly after the watershed, when some children may have been available to view, some unaccompanied by an adult. Ofcom also had regard to the likely expectations of the audience for programmes broadcast at this time of day on a channel in the ‘adult’ section of the Sky EPG without mandatory restricted access directly after the 21:00 watershed.

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<sup>10</sup> For example: ChatGirl TV, Adult Channel (Channel 901), 4 November 2011, 21:00 to 21:30, in issue 201 of Ofcom’s Broadcast Bulletin, 5 March 2012, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb2001/obb201.pdf>

Studio 66 Nights, Studio 66 TV 2 (Channel 938), 25 October 2012, 21:00 to 21:30, in issue 224 of Ofcom’s Broadcast Bulletin, 18 February 2013, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb224/obb224.pdf>



We noted that, in light of this content, and “having experienced issues in the past with the transition from pre- to post-watershed” the Licensee has now revised its internal guidelines and specifically would be “shifting the end and start time of [its] day-time and night-time shows by 30 minutes” to 21:30. We also noted the other steps 965 TV has taken to improve compliance. However, in Ofcom’s opinion, viewers (and in particular parents) would not expect such material to be broadcast and available to view so soon after 21:00, particularly given that material broadcast on such services prior to 21:00 should be non-sexual in tone and apparent intent. The broadcast of such sexualised material was inappropriate to include in an ‘adult sex’ chat service so soon after the 21:00 watershed.

This broadcast was therefore in breach of BCAP Code Rule 32.3.

### Conclusion

In February 2013<sup>11</sup> Ofcom formally notified ‘daytime chat’ and ‘adult chat’ broadcasters that as a result of our continuing concerns about the compliance of material broadcast on ‘daytime chat’ and ‘adult chat’ services with BCAP Code requirements, we were commencing a targeted monitoring exercise of all services broadcasting ‘daytime chat’ and ‘adult chat’ content. Broadcasters were put on notice that any serious or repeated failings in this area were likely to result in Ofcom taking further regulatory action.

In issue 224 of Ofcom’s Broadcast Bulletin, published on 18 February 2013, we recorded against 965 TV breaches of BCAP Rules 30.3 and 32.3 for material broadcast respectively on Studio 66 TV 4 and Studio 66 TV 2<sup>12</sup>. At that time we put the Licensee on notice that we were minded to consider the imposition of a statutory sanction if there were any recurrence of those, or similar, compliance failings. Given the Code breaches recorded in this Finding, Ofcom is requiring the Licensee to attend a meeting to discuss its compliance procedures.

***Studio 66 TV Nights Studio 66 TV 3, 5 March 2013, 00:20 to 00:30 – Breach of BCAP Rule 4.2***

***Studio 66 TV Days Studio 66 TV 3, 17 April 2013, 10:30 to 11:45 – Breach of BCAP Rule 32.3***

***Studio 66 TV Nights Studio 66 TV 2, 17 April 2013, 21:04 to 21:08 – Breach of BCAP Rule 32.3***

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<sup>11</sup> Note to Broadcasters: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb223/obb223.pdf>

<sup>12</sup> See <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb224/obb224.pdf>. We noted that the Licensee objected to Ofcom, in our Preliminary View, linking the present case with breaches of Rules 30.3 and 32.3 of the BCAP Code recorded against 965 TV in issue 224 of Ofcom’s Broadcast Bulletin. However, although we acknowledged the contraventions in issue 224 of Ofcom’s Broadcast Bulletin took place in different circumstances, these breaches were also recent compliance failures by 965 TV, and therefore it was appropriate to highlight the breaches of the BCAP Code recorded against 965 TV in issue 224 of Ofcom’s Broadcast Bulletin in the context of the present case.

## In Breach

### **Murder Files: The Sketchbook Killer**

*Channel 5, 11 December 2012, 20:00 to 21:00*

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#### **Introduction**

*Murder Files: The Sketchbook Killer* was an episode of the factual documentary strand *Murder Files*, which explores how the police have caught suspects in major criminal investigations. This episode was broadcast on a Tuesday evening.

A complainant alerted Ofcom to violent themes and imagery in this programme, which the complainant considered unsuitable to be broadcast before the 21:00 watershed when children might be watching.

This episode featured the crimes of the eponymous Sketchbook Killer, John Sweeney. He was convicted in April 2011 of murdering two women, one in Amsterdam in 1990, and one in London in 2000. He dismembered their bodies and dumped their body parts in canals, and he used the murders as inspiration for his art work. The episode opened with actual footage, dating from 2001 and filmed from a police helicopter. It was described in the commentary as showing the “horrific discovery” of holdalls located in the Regent’s Canal in London in 2001 which were found to contain ten parts of the dismembered body of Paula Fields. The programme went on to explain how a similar discovery of a dismembered body, later named as Melissa Halstead, in a Rotterdam canal some 11 years previously, was, after many years of investigation linked to the same murderer, John Sweeney. The programme explored: Sweeney’s life before he met his first murder victim, Melissa Halstead, and his violent relationship with her; the subsequent violent relationships he formed with two other women, Delia Balmer and Paula Fields; and the events leading to his arrest for the murders of the two women found in the canals.

Ofcom noted that the programme included the following:

- A series of reconstructions using actors, darkly lit and in soft focus and largely consisting of a series of brief shots tightly edited together, of the violence inflicted by Sweeney on Melissa Halstead and Delia Balmer. These included, at the times indicated:
  - 20:14: an attack by Sweeney on his first victim, Melissa Halstead, in a hotel room in Austria which had taken place prior to Melissa Halstead’s murder. This reconstruction was introduced by the narration: “...it’s here that Sweeney’s savage nature brought him right to the brink of murder.” The reconstruction which followed showed a man and woman arguing, the man pushing the woman onto the bed, a brief shot of a hammer being picked up, and the man moving his arm up and down violently, accompanied by the thumping sound effect of a hammer. The voiceover continued over the reconstruction: “It’s never been established what prompted this attack but it left Melissa with a fractured skull and other injuries which needed emergency surgery”. This final image of the male actor wielding the hammer continued, until the British Detective Inspector, Steve Smith, who investigated Sweeney’s crimes, appeared saying: “he [Sweeney] was convicted of attacking her [Melissa Halstead] with a hammer. He was imprisoned in Vienna...but Melissa...petitioned the judge

*and asked for clemency.*" The visuals then returned briefly to the actor playing Sweeney using the hammer and the accompanying hammering sound effects, before this sequence concluded with a final comment from the detective.

- 20:23: the first attack by John Sweeney in London on his then partner, Delia Balmer. (Sweeney met her in London following the murder of Melissa Halstead). The voiceover explained that Delia Balmer decided to end her affair with John Sweeney after two years and that when she told him "*she found out what sort of a man she had been living with.*" The reconstruction then showed a man pushing a woman on to a bed and shouting "*you are not going anywhere*" and "*I'm in charge.*" There followed a brief shot of some rope and then a brief shot of the woman nodding. Paul Cheston, a journalist with The Evening Standard, who reported on the case, then appeared and commented: "*This was a truly savage attack which lasted all weekend.*" The journalist continued to speak over visuals (showing the man tying the woman to the bedstead with a rope, then holding a knife as he speaks to her in a threatening manner) that Delia was kept prisoner all weekend, tied up with a rope and "*subjected to the most awful torture, including trying to rip her tongue out.*" The journalist then reappeared and explained that as part of the torture Sweeney put a gun to Delia's head pretending it was loaded and pulled the trigger. This comment was accompanied by reconstruction pictures showing the man holding a gun to the woman's temple.
- 20:24: a second attack on Delia Balmer, which was introduced by a voiceover explaining that Delia had cycled home from her shift at the hospital when Sweeney attacked her violently with an axe and knife. The reconstruction was then narrated by Delia Balmer who recounted the events herself: "*I looked to the right and there he was...he reached over and out came the axe and he bashed me on the side of the head, out came the knife, and I thought I've got to do something so with my broken bleeding arms...I pulled the bicycle on top of me.*" There was then a brief clip of a woman trying to hold a bicycle on top of her as a man struggled to pull it off. Detective Inspector Steve Smith was then shown, explaining that Delia was using the bike as a shield. His commentary continued, over visuals of the man raining blows of an axe down onto the bicycle with accompanying sound effects, explaining that Delia could "*hear the blows, which was quite chilling.*" Delia appeared again and continued the narration: "*...he stabbed me through the breast into the lung, stab wound to the thigh...and then he swung the axe and I saw my little finger fly through the air. And I thought that's it, I've had enough, I want to die. So I had my hand over my head...and shut my eyes...*". A short clip showing the shadow of an axe being brought down was shown in slow motion to dramatic music. This segment concluded with the detective explaining that Delia's neighbour heard her screams and intervened and Sweeney ran away.
- 20:31: a shortened version of the reconstruction of Sweeney's hammer attack on Melissa Halstead in Austria (shown at 20:14);
- 20:46: a shortened version of the reconstruction of the axe and knife attack on Delia Balmer (shown at 20:24);
- 20:48: a brief reconstruction, based on the "graphic account" of what police said happened to Melissa Halstead during Sweeney's trial, lasting about 40

seconds. This included a man attacking a woman and pushing her down on to a bed which was described in voiceover as the *“final encounter in the Amsterdam apartment”*. The voiceover continued: *“Having killed her he probably used the saw from his carpenter’s kit to butcher Melissa’s body”* and this narration was accompanied by visuals of a tool box and a hand removing a saw from the box. There followed a close-up image of a man’s face moving backwards and forwards to a sawing sound effect. An anatomical sketch then appeared briefly showing a headless and armless torso. A reconstruction of the route Sweeney *“probably”* took to the canal to dump the body followed with the concluding narration: *“Melissa’s head and hands have never been recovered.”*

- Dutch police photographic evidence of the bags containing the dismembered body parts of Melissa Halstead, which had been retrieved from a Rotterdam canal in 1990. The programme also included artists’ sketches and diagrams, and voiceover descriptions, of the dismembered torso of Melissa with *“head and hands cut off”*, *“head and hands never recovered”* and *“a naked body trussed with string, her head and hands sawn off.”* This material was shown twice during the programme.
- Aerial police footage of bags in the Regent’s Canal in London (which the programme later said were found to contain the dismembered body parts of another of Sweeney’s victims, Paula Fields), photographs of some of the wrapped up body parts found in the bags, and an anatomical diagram showing how the body was dismembered with the voiceover explaining: *“this time not just the head and hands were cut off but the feet as well.”* The footage was also shown twice during the programme.

Ofcom considered the violent themes and subject matter of this pre-watershed programme raised issues warranting investigation under Rule 1.3 of the Code, which states:

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

We therefore sought the comments of Channel 5 Broadcasting Limited (“Channel 5” or “the Licensee”) as to how the material complied with this rule.

## Response

Channel 5 stated that the title of the programme, *Murder Files: The Sketchbook Killer*, made clear to viewers that this programme was about a murderer, and that the programme was preceded with a clear continuity announcement which said: *“Now with descriptions and dramatic reconstructions of real life crimes, Channel 5 examines the mind of the Sketchbook Killer in Murder Files.”* Therefore, according to the Licensee, both the title of the programme and the announcement would have given viewers a clear indication of the content of the programme and enabled them to decide whether or not to watch (or prevent others from doing so).

In terms of the editorial content of the programme, the Licensee said the tone of the programme was serious and informative and consisted of mainly ‘talking heads’ and was not targeted at, nor would it have been particularly attractive to, children. Channel 5 pointed out that: its viewing figures for the programme indicated that only 2% of the total audience of this programme were children; and this documentary followed the *5 News Update* (of which 2% of the total audience were children), which

was in turn preceded by *Highland Emergency* (of which, again, only 2% of the average total audience were children).

In the Licensee's view, the pre-programme information was clear and viewers would have been "left in no doubt that the murders would be both described and reconstructed." In addition, Channel 5 argued that the commentary and police footage and drawings were not "any worse than would be shown in an 8pm [news] bulletin" and noted Ofcom's view that this programme was broadcast "within a well-established crime investigation genre programme slot in Channel 5's schedule." For these reasons Channel 5 stated the programme would not have exceeded the likely expectation of viewers.

In terms of the specific footage used in the programme, Channel 5 provided the following information:

### Reconstructions

Channel 5 stated that there were no reconstructions of John Sweeney's attacks in the first part of the programme (approximately 20:00 to 20:09). The Licensee submitted that the reconstructions included later were very brief and all shot in a dark and blurred way so that the footage was rather indistinct and at times very difficult to make out. In addition, a commentary was heard over the reconstructions and they were interspersed with contributions from those involved in the case such as the police, a journalist and a forensic psychologist. None of the reconstructions showed extended, graphic or close-up depictions of violence and, at no point, did the reconstructions show any blood or violent impacts. Channel 5's view was that their inclusion was "justified to help with the narrative flow of the accounts given" of John Sweeney's activities.

With regard to the reconstruction of John Sweeney's hammer attack on Melissa broadcast at 20:14, Channel 5 stated that this was a "brief reconstruction" showing "indistinct footage of a man and woman arguing in a bedroom, the man pushing the woman onto a bed and then a close-up of Sweeney's face and the top of his shoulder moving backwards and forwards a few times." In addition to this there was "a muted sound effect of a hammer under music." Channel 5 stated that none of the images were graphic and the reconstruction was interspersed with factual comments from Detective Inspector Steve Smith of the Metropolitan Police. Channel 5 concluded: "These statements were made in a factual manner and we don't believe the language was too explicit for this time."

Regarding the two reconstructions featuring the victim Delia Balmer, Channel 5 said that because she appeared recounting her experiences viewers would have known she was "alive and well". The first reconstruction (shown at 20:23) was "dark and difficult to decipher" and showed images of a close-up of a woman's face, a piece of rope around a bedpost, a man shouting at a woman on a bed and a very brief two second image of a knife and gun. Channel 5 said that these images were interspersed with a contributor describing the attack briefly. Similarly, the second reconstruction of Delia recounting the knife and axe attack when John Sweeney tried to murder her (shown at 20:24) was presented in a very matter of fact way, and the "very brief reconstruction showed only dark footage and no detail was shown". Consequently, Channel 5 considered that the violence in both these scenes was limited and suitable for broadcast pre-watershed.

Finally, Channel 5 said that the reconstruction of John Sweeney "dismembering" the body of Melissa with a saw broadcast at 20:48 showed "the side of a man's face

moving back and forth for a couple of seconds” and there was a “very muted sound effect of a saw” which was “barely recognisable” under the music and voiceover.

In response to concerns that the cumulative effect of the reconstructions resulted in material which would have been more suitable for an adult audience, Channel 5 argued that the matter of fact commentary and voiceover “lessened the impact and tone and these, with the talking heads, would not have been frightening or particularly appealing to children.” The commentary “explained the cycle of events in a factual manner using inexplicit and unsensational language.” In addition, the sound effects were muted, difficult to decipher and extremely limited consisting across the whole programme of one instance of seven seconds of a low banging sound, one example of six seconds of clanging metal and one instance of five seconds of a sawing sound. The Licensee said the incidental music was played throughout the programme, not just over the reconstructions, and asserted it was “atmospheric” and not frightening for children. The music did not increase or decrease in intensity during the reconstructions.

British police video footage, anatomical drawings and photographs of Paula Fields’ dismembered body parts and Dutch police photographs and anatomical drawings of Melissa Halstead’s dismembered body parts

These brief images consisted of photos of duffle bags (retrieved by the Dutch police and containing Melissa Halstead’s body parts) and holdalls (retrieved by the British police containing Paula Fields’ body parts) and anatomical drawings. Channel 5 said these were appropriately limited and shown for only a few seconds at a time. The Licensee did not believe that this police evidence was inappropriate to show in the context of a documentary about someone who killed two people in the same manner and how the link between the Amsterdam and London murders was eventually established through the evidence. Channel 5 stated: “The rudimentary sketches were unrealistic and we do not think they were frightening or gory”. The content, the Licensee said, was “clearly relevant to the story and we took great care to ensure references were not gratuitous or sensationalist.”

Channel 5 argued that the content included in this programme was “not of a different order to previous murder documentaries considered by Ofcom in this strand or, indeed, the sort of information provided in news programmes at this time of day.”

In conclusion, Channel 5 stated that the Code does not prohibit the broadcast of the subjects covered in this programme before the watershed – provided the context is appropriate. Channel 5 said: “Great care was taken by the legal team at an early stage to ensure that the overall tone and treatment of the subject matter was appropriate for the timeslot”. Overall, Channel 5 was of the view that the theme, brief reconstructions and images shown would not have exceeded the expectation of viewers watching a documentary about a murderer.

## **Decision**

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appears 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.

In considering the material in this episode, Ofcom took the view that the subject matter of *Murder Files: The Sketchbook Killer*, namely a documentary exploring the hunt for a murderer who dismembered his victims and dumped their body parts in canals, did not necessarily exceed the boundaries of acceptability for pre-watershed broadcast as long as it complied with Section One of the Code.

Ofcom first considered whether the material was suitable for children. While Ofcom acknowledges that the use of reconstructions and real life police footage and photographic evidence is central to murder investigation documentaries like *Murder Files*, this particular episode included a number of reconstructions throughout the programme (as detailed above), some of which were repeated albeit in an edited form. In our opinion these reconstructions when assessed individually were reasonably limited, showing for example, no detail of the head wounds inflicted with the hammer on Melissa Halstead, the attack with the axe on Delia Balmer, or the dismembering of the body of Melissa. The images used in Ofcom's view implied the horrific violence perpetrated rather than explicitly depicted it.

Channel 5 argued that the reconstructions were made suitable for broadcast pre-watershed, when assessed in the context of the programme as a whole, because: they were interspersed with commentary from, for example, one of Sweeney's victims (Delia Balmer), the journalist who reported on Sweeney's crimes (Paul Cheston), or the British detectives and Dutch prosecutor who investigated the murders of Melissa Halstead and Paula Fields; and that this commentary was factual and not explicit. Ofcom disagreed. In our opinion, the fact that the limited reconstructions were then accompanied by and interspersed with voiceover or commentary from these contributors, as well as sound effects of hammer blows and sawing (albeit muted), and menacing music throughout, resulted in the overall impact of the reconstructions being increased.

For example, like all the reconstructions, that of Sweeney's attack on Melissa in Vienna (broadcast at 20:14) was in itself brief, and limited in detail and focussed on Sweeney throwing Melissa on to a bed, holding her down, a brief shot of a hammer and a series of arm movements. However, it was accompanied by muted sound effects of hammer blows, a detailed commentary stating that Sweeney attacked Melissa violently with a hammer and narration and contributions which included: "...Sweeney's savage nature brought him to the brink of murder"; and, that the attack resulted in "a fractured skull and other injuries which needed emergency surgery." Similarly, the reconstruction of the first attack on Delia at 20:23 was also in itself limited in detail but was accompanied by comments such as it was "a truly savage attack" and that Sweeney tried to "rip her tongue out". The reconstruction of Sweeney's second attack on Delia at 20:28 included relatively graphic descriptions of the attack by the victim herself, including that of a knife being plunged into her breast and then her lung, and of Sweeney swinging an axe at her and Delia seeing her "finger fly through the air" (although Ofcom noted the actual visuals were limited in detail and tightly edited, and at times dark and difficult to decipher).

Ofcom acknowledges that there is no reason in principle why broadcasters should not include police film footage, anatomical drawings and photographs related to murder investigations in programmes shown before the watershed, provided they comply with the Code. The Licensee argued that in this case British police footage and Dutch police photographs, anatomical drawings and photographs included in this programme were brief and were justified by the context "within a documentary about

someone that killed two people in the same manner and how the link between the two murders was eventually established through the evidence had an editorial purpose.” Channel 5 also said no detail was shown and that the sketches of the dismembered bodies were “rudimentary”. Ofcom however was of the view that the accompanying commentary to these images (which referred to, for example, a body being found with “*no head and no hands*”, “*a woman’s naked body trussed with string with hand and hands sawn off*” and “*this time not just the head and hands were cut off but the feet as well*”) meant that taken together the viewer was left in no doubt as to the violent and gruesome details of these crimes.

Ofcom was of the view that the overall effect of the (albeit limited) reconstructions, accompanied by detailed commentary on Sweeney’s savage acts and the menacing music, resulted in material which would have been more suitable for an adult audience. We noted how the British police footage and Dutch police photographs, anatomical drawings and photographs were combined with relatively explicit descriptions of the dismembered body parts. In Ofcom’s opinion these factors, taken together, meant that this programme was unsuitable for children.

Ofcom noted Channel 5’s additional comments submitted in response to the Preliminary View in this case (that there was a breach of Rule 1.3) regarding individual aspects of the reconstructions such as the voiceovers, music and sound effects and the commentary accompanying the footage, drawings and photographs included in this programme. These in the Licensee’s view, were all separately suitable for broadcast and would not have exceeded audience expectations. However, Ofcom’s opinion is that the suitability of a programme broadcast pre-watershed must be assessed as a whole and not necessarily by considering separate elements of it (such as music, sound effects or the words used by contributions) individually.

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

We have set out above in some detail the nature of the content in this programme that Ofcom considered unsuitable for children and why. In summary, Ofcom’s view was that the cumulative effect of the reconstructions combined with relatively graphic descriptions of, and comments on, Sweeney’s horrific and violent crimes resulted in a crime programme containing themes and a tone which would have been more appropriately scheduled after the watershed. In reaching this view, Ofcom took into account its research carried out in 2012 to establish whether parents had concerns about the watershed<sup>1</sup>. One of the key findings from the research was that of the sample group among all parents surveyed, the concerns most frequently mentioned about pre-watershed content were violence (15 per cent), sexually explicit content (15 per cent) and offensive language (15 per cent).

Ofcom noted Channel 5’s view that the title and the pre-programme information sufficiently advised viewers of what to expect and to choose whether they wished to view this programme. The continuity announcement said: “*Now with descriptions and dramatic reconstructions of real life crimes, Channel 5 examines the mind of the Sketchbook Killer in Murder Files.*” It is Ofcom’s view that programmes within the genre of murder crimes investigation documentaries generally include reconstructions and descriptions of real life crimes. Therefore, the title in itself and the pre-programme information provided in this case did not specifically inform

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/ofcom-for-parents/prewatershed-tv-programming.pdf> (see pages 2 to 3).



viewers as to nature of the particular crime being investigated or the nature of the likely content of the material in this programme that followed.

Channel 5 argued that the scheduling of this programme, after *5 News* and in a regular crime documentary slot, meant it was not “attractive” to a child audience and this was demonstrated by the fact that the programme attracted only a 2% child audience share (aged 4 to 15). However, Ofcom took into account that this programme was broadcast on a public service channel rather than for example a dedicated crime channel, and was broadcast at a time when children were available to view in relatively large numbers.

Having viewed similar crime investigation programmes broadcast on Channel 5 at around 20:00, which have not raised issues under the Code, Ofcom was of the view that generally these programmes have focussed less on the individual details of the murders and violent acts of the killer and more on the motives for murder and the steps taken in the course of the investigation. Ofcom noted that this episode was broadcast within a well established crime investigation genre programme slot in Channel 5’s schedule. Nonetheless our opinion was that this particular broadcast would on balance have exceeded the likely expectations of the audience – and especially those of parents – for a programme of this nature shown at 20:00 on a public service channel.

Ofcom noted Channel 5’s comment that the police footage was not any stronger than material shown on an 8pm news bulletin. In Ofcom’s view this point is not relevant given that the audience expectations for, and context of, a news bulletin are different to those for an hour long real life crime documentary broadcast at 8pm on a general entertainment service.

For all these reasons, this particular programme was not appropriately scheduled and therefore breached Rule 1.3.

### **Breach of Rule 1.3**

## In Breach

### Inside Hollywood

5 USA, 15 May 2013, 18:55

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#### Introduction

5 USA is owned and operated by Channel 5 Broadcasting Limited (“Channel 5” or “the Licensee”). The channel is dedicated to American drama, comedy, film and sport. *Inside Hollywood* is a two minute daily show which previews upcoming films and television dramas, including trailers, behind the scenes footage and brief interviews with stars of film and television. *Inside Hollywood* was broadcast at 18:55 between episodes of *Law and Order* and *CSI: NY*.

A complainant alerted Ofcom to a sexual scene in clips shown during a film trailer.

Ofcom assessed the material, which included a montage of brief clips from a forthcoming film. One of the clips shown featured a mid shot of a woman being held down on her back by a man, followed by a shot of the man’s head and shoulders, thrusting, as he said “*It’s what you want*”. There was then a reaction shot of the woman on her back and looking away from the man. There was no nudity, but the clear impression was of the couple having sex, possibly against the woman’s will.

Ofcom considered the broadcast raised issues warranting investigation under Rule 1.3 of the Code, which states:

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

We therefore requested comments from the Licensee as to how this complied with Rule 1.3.

#### Response

The Licensee said that the footage was part of the trailer for a forthcoming cinema release, *As I Lay Dying*, based on the 1930 book of the same name by William Faulkner. At the time of broadcast, neither the film, nor the trailer, had received a rating from the British Board of Film Classification.

Channel 5 said that nothing in the description of the book/film had given the production team concerns that material inappropriate for children would be included in the trailer. It confirmed that the content had been viewed and edited prior to broadcast, but that unfortunately nobody from the team had at that stage spotted the brief excerpt about which Ofcom had received a complaint.

The Licensee said the footage in question had been identified by the series producer on 16 May 2013 when reviewing material intended for the extended weekly edition of *Inside Hollywood*, who immediately took steps to ensure the sequence was removed. Channel 5 confirmed that the only time this sequence aired was at 18:55 on 15 May 2013.

The Licensee said that, having reviewed the material, it accepted the sequence should not have been broadcast at that time. It advised that as a result of this

incident, staff had been reminded of the need to scrutinise all material and to ensure that material broadcast pre-watershed is suitable for children. It said procedures had also been amended to include additional compliance viewing prior to broadcast.

Channel 5 regretted the incident, but was confident that these steps would minimise the possibility of any future similar occurrence.

## **Decision**

Under the Communications Act 2003, Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that “persons under the age of eighteen are protected”. These objectives are 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. This rule is not prescriptive and it does not stipulate material or themes that require appropriate scheduling to protect children. Instead it requires that 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.

When applying the requirement to protect people under the age of eighteen, Ofcom must take into account the broadcaster’s and audience’s right to freedom of expression. This is set out in Article 10 of the European Convention on Human Rights. Article 10 provides for the right of freedom of expression, which encompasses the right to hold opinions and to receive and impart information and ideas without unnecessary interference by public authority. However, the broadcaster’s right to freedom of expression is not absolute. In carrying out its duties, Ofcom must balance the right to freedom of expression on one hand, with the requirement in the Code to protect under-eighteens.

In this case Ofcom first considered whether the material was unsuitable for children. We noted that the montage included a woman being held down by a man, seemingly having sex, possibly against the woman’s will. This sexual scene, albeit brief, was clearly of an adult nature and was not suitable for children.

Ofcom therefore considered whether this material was appropriately scheduled. Although this sequence did not appear in or around programmes aimed at or likely to appeal to children, we considered the realistic depiction of sex would exceed audience expectations, and especially those of parents, in a programme shown on this channel in the early evening. We also took into account that the material appeared out of context in a trailer for the film. We therefore considered that the material was not appropriately scheduled.

For these reasons, Ofcom concluded that children had not been protected from unsuitable material and that consequently this content breached Rule 1.3 of the Code.

Ofcom noted the Licensee’s recognition that the sequence should not have been included in an early evening programme, that it was subsequently identified and removed after one broadcast, and that steps had been taken to avoid any future similar occurrence. However, we were concerned that, despite having viewed and

edited the film trailer prior to broadcast, the Licensee had failed to identify material that was clearly unsuitable to be shown at this time.

**Breach of Rule 1.3**

## In Breach

### Fight Night Live

*Sky Sports 1, 8 February 2013, 20:00*

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#### Introduction

A complainant alerted Ofcom to the broadcast of flashing images in the opening six minutes of this boxing programme on Sky Sports 1. The licence for the service Sky Sports 1 is held by British Sky Broadcasting Limited (“Sky” or “the Licensee”).

Ofcom noted that the first six minutes contained footage of contestants’ weigh in sessions and featured repetitive flash photography. As a weigh in session is conducted well in advance of each match, this segment had been recorded before the matches took place and inserted in the programme for broadcast. When introducing the programme, the continuity announcer gave no warning that the programme would contain flashing images.

Certain types of flickering or intermittent images can trigger seizures in viewers who are susceptible to photosensitive epilepsy (“PSE”). Ofcom therefore carried out a technical assessment of the content against Ofcom’s guidance to broadcasters on flashing images (“the PSE Guidance”)<sup>1</sup>. The assessment identified 11 sequences which contained rapid variations in brightness exceeding the maximum limits stipulated in the PSE Guidance. In total approximately 18 seconds of the material exceeded these limits.

Ofcom considered the material raised issues warranting investigation under Rule 2.12 of the Code, which states:

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

Ofcom therefore requested comments from the Licensee on how the programme material complied with this rule.

#### Response

Sky said that it takes the issue of flashing images in its programmes very seriously and unreservedly apologised to the viewer for any suffering caused by the broadcast.

The Licensee explained that *Fight Night Live* regularly covers live boxing events from venues around the UK and the world. It added that because of the live nature of the broadcasts, it does not have control over the lighting effects at the arenas and therefore the programme may contain flashing images during live sections. The Licensee said because this is anticipated, it requires a standard flashing images warning to be broadcast at the start of all *Fight Night Live* programming to ensure

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<sup>1</sup>See page 14 of Guidance Notes on Section Two: Harm and Offence  
<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section2.pdf>

that viewers with PSE are aware that the content may affect them. Sky said that unfortunately on this occasion the warning was not scheduled due to human error.

Sky said that it has set procedures with regard to material containing flashing imagery. It explained that if a sequence appears visually problematic, it is then marked for technical assessment. If the material fails the assessment, Sky takes a view as to whether the sequence is editorially justified and if so, a warning is placed before the sequence is broadcast in addition to the one at the start of the programme.

Sky acknowledged that the flashing images being investigated by Ofcom in this case were included in pre-recorded content. It explained that when preparing the sequence for broadcast, the production team were under the impression that the content would be acceptable given that there would be a clear warning about flashing images at the beginning of the programme and therefore, no technical assessment was made. However, as stated, no such warning was broadcast.

The Licensee said that, since this incident, it has implemented a further process for boxing programming and content on Sky Sports News so that an on-screen caption forewarns viewers that the forthcoming sequence contains flash photography. Sky added that the individual producer in this case has been reminded of the broadcaster's compliance process and that the Director of Sky Sports Production has reiterated to all producers that technical checks must be completed if footage contains flashing images.

## **Decision**

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that "generally accepted standards are applied to the content of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and / or offensive material".

Broadcasters are required under Rule 2.12 of the Code to ensure that adequate precautions are taken to maintain a low level of risk to viewers who have PSE. Given the significant potential harm that can result to viewers with PSE who are exposed to flashing images, Rule 2.12 makes clear that Ofcom expects broadcasters to maintain a low level of risk in this regard. Further, the PSE Guidance in this area (which is based partly on scientific research) is intended to limit the incidence of seizures.

Ofcom's technical assessment found that 18 seconds of material were broadcast which did not comply with the PSE Guidance. As the problematic content was pre-recorded, Sky had the opportunity to identify before broadcast the extent to which material in this section of the programme breached the PSE Guidance, and to highlight the issue through an appropriate warning at the beginning of this specific episode. But this did not happen.

Ofcom was concerned that, in circumstances where there was the potential to cause serious harm, assumptions had been made by Sky's production team about the steps that would be taken to protect viewers, without ensuring that those steps were taken. Although we welcome the measures undertaken by the Licensee to avoid a recurrence of this problem, we consider this to be a significant breach of Rule 2.12 of the Code.

## **Breach of Rule 2.12**

## In Breach

### Man About Town

*Movie Mix, 19 March 2013, 17:00*

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#### Introduction

Movie Mix is a general entertainment service which broadcasts films and acquired drama series, mainly from America, and is owned and operated by Square 1 Management Ltd (“Square 1” or “the Licensee”).

*Man About Town* is a satire about the film industry and centres on a Hollywood movie agent, Jack, who finds out that his wife has been having an affair with one of his clients and that a personal journal has been stolen from his house. The British Board of Film Classification certified this film with a ‘15’ rating.

A complainant alerted Ofcom to the use of the phrase “*fucked up*” by one of the characters in the film.

Ofcom also noted there was a violent sequence where Jack attacked an aspiring writer, Jimmy, in his home. Jack’s attack on Jimmy was in revenge for Jimmy previously having broken into Jack’s house, attacked him and stolen Jack’s personal journal.

In the violent scene, which took place at night, Jack was shown first walking towards Jimmy’s house carrying a baseball bat. After noting that Jimmy was occupied watching television, Jack entered the house unobserved and approached Jimmy from behind, readying himself to strike with the bat. Jimmy, realising someone was behind him, stood up to face Jack, who then hit Jimmy very hard across the upper arm with the bat, causing Jimmy to fall to the floor.

Jack then ran over to Jimmy (who had curled himself up to protect himself), and landed six powerful blows with the bat across Jimmy’s ribs and torso. Jack paused and shouted “*Where’s my journal?*” before hitting Jimmy on his torso. Jimmy replied “*What’s the deal with your teeth?*” (Jack had large front teeth implanted after his own had been knocked out when Jimmy had earlier attacked Jack). Jack then hit Jimmy twice again with the baseball bat across his torso with considerable force before Jack collapsed on the floor, exhausted. This sequence lasted for approximately 40 seconds, and in total during this time Jack hit Jimmy ten times on the body with the baseball bat.

The scene ended with Jimmy – in pain but still able to speak – telling Jack that he would never get his journal back. Jack then threatened to shoot Jimmy to make his attack appear like a robbery, but did not follow through with this threat and left Jimmy’s house.

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

Rule 1.11: “Violence, its after-effects and descriptions of violence, whether verbal or physical, must be appropriately limited in programmes broadcast before the watershed (in the case of television)... and must also be justified by the context”; and

Rule 1.14: “The most offensive language must not be broadcast before the watershed (in the case of television)...”.

## Response

The Licensee said the film throughout was “light-hearted” and the attack with the baseball bat was a “fight scene [which] was generally comedic in nature.” Square 1 said “there was no visible impact between assailant and victim” and that the attack was “deliberately cut to comedic effect to the TV soundtrack in the background; the victim whilst hurt is still able to make fun of his attacker”. The Licensee said despite the victim’s injuries, he “retains the upper hand in the confrontation” and that overall it did not “believe the level or portrayal of violence was inappropriate for the timeslot.”

On the use of the term “fucked up”, Square 1 said “care had been taken to edit out instances of offensive language”, but that regrettably one edit was missed during post-production because of “human error”. The Licensee said “action has been taken to tighten these procedures internally with a double compliance check against [an] edit list now taking place.”

## 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 1.11

Rule 1.11 requires that violence included in television programmes before the watershed must be appropriately limited and must be justified by the context.

In this case the violence shown on screen described in detail above was shown at about 18:10.

Ofcom first assessed whether the violence shown was appropriately limited. We noted that there were no injuries or blood shown as a result of the attack, and that the impact of some of the blows was lessened by a sofa partly obscuring Jimmy lying on the floor and through a number of the images focussing on Jack rather than Jimmy during the attack. However, Ofcom noted that the moment of impact of three of the ten violent blows landing on Jimmy’s torso was shown, and considered that the fact that Jimmy was defenceless and unable to fight back increased the very aggressive nature of the beating. Ofcom disagreed with the Licensee’s suggestion that Jimmy retained “the upper hand in the confrontation”. Ofcom also disagreed with the Licensee’s assertion that “there was no visible impact between assailant and victim”. Three of the blows were clearly seen to land on the victim’s body, although they occurred quickly. The violence included in this scene was, therefore, in Ofcom’s opinion not appropriately limited.

Ofcom next considered whether the violence was justified by the context.

Movie Mix is a channel that features a mixture of mainly American dramas and films. While the channel is not targeted at children, in Ofcom’s view the audience, and parents in particular, would expect any scenes of this nature unsuitable for children to be removed from a film broadcast in the early evening on a week day, after children would have arrived home from school.



We noted Square 1's assertion this was a "comedic" attack, including the moment where Jimmy poked fun at Jack's new teeth (which had been a running visual joke earlier in the film for about ten minutes). The soundtrack for this sequence also included some sentimental music and snippets of dialogue from the well-known American comedy *The Munsters* (which Jimmy was watching on his television at the moment of Jack's attack). However, in Ofcom's view, the comic elements within the scene failed to lessen adequately the impact of the violence.

Ofcom also noted that no warning was given about the violent nature of this scene either before or during the broadcast of this film.

This sequence showed in quite a prolonged way an aggressive beating of an unarmed man with a baseball bat. For these reasons, Ofcom concluded that the violence depicted in this scene was not appropriately limited and justified by the context, and was therefore in breach of Rule 1.11.

#### Rule 1.14

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

In this case the use of the phrase "fucked up" was clearly audible at 17:07 in this film. Ofcom noted the additional compliance checks introduced by Square 1 after it became aware of the use of the most offensive language in this broadcast. However, Rule 1.14 of the Code states unequivocally that "the most offensive language must not be broadcast before the watershed...". There was therefore also a breach of Rule 1.14.

#### **Breaches of Rules 1.11 and 1.14**

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

## In Breach

### News

CHSTV, 1 March 2013, 22:00

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#### Introduction

CHSTV is a free-to-air satellite general entertainment channel aimed at the Bangladeshi community in the UK and Europe. The licence for CHSTV is held by CHS.TV Limited (“CHSTV” or “the Licensee”).

A complainant alerted Ofcom to a news report about the protests which took place in the spring of 2013 in Bangladesh concerning the International Crimes Tribunal (“ICT”)<sup>1</sup>. The complainant considered the report was biased.

Ofcom reviewed the news item in question, which was broadcast in Bangla. Ofcom therefore commissioned an independent translation of the output. We noted that the report relating to events concerning the ICT in Bangladesh lasted approximately 13 minutes. It included coverage of the following:

- the disturbances taking place in Bangladesh following the sentencing to death by the ICT of the politician Delwar Hossain Sayeedi<sup>2</sup>, on 28 February 2013<sup>3</sup>;
- a press conference held by Begum Khaleda Zia, the leader of the main opposition party in Bangladesh, the Bangladesh Nationalist Party, criticising the Bangladeshi Government’s actions during those disturbances; and
- a seminar at which representatives of the ruling Government coalition<sup>4</sup> in Bangladesh criticised the Jamaat Party.

We noted that during the news item, there were the following references to the Jamaat Party (taken from Ofcom’s translation):

Newsreader: *“The guests present [at the seminar] urged everybody to be stricter about Jamaat”.*

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Reporter: *“The protest started with a drama staged by ‘Sammilita Sangskritik Jote’<sup>5</sup> depicting Jamaat as an extremist party. The speaker at the seminar*

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<sup>1</sup> The ICT was set up by the current Bangladeshi Government in 2010 to investigate allegations of war crimes during the 1971 war in which Bangladesh obtained its independence from Pakistan.

<sup>2</sup> Delwar Hossain Sayeedi is a leader of the main Islamist party in Bangladesh, Jamaat-e-Islami, also known as the Jamaat Party.

<sup>3</sup> To date the ICT has indicted 10 politicians of war crimes: eight members of the Jamaat Party; and two members of the Bangladesh Nationalist Party (which is the largest opposition party in Bangladesh and is the main party in an opposition alliance, which includes the Jamaat Party).

<sup>4</sup> The coalition which makes up the government in Bangladesh is led by the Awami League.

*demanded the tribunal [i.e. the ICT] to give the verdicts quickly. They also demanded Jamaat to be banned”.*

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Shabriar Kabir (Journalist and activist): *“Banning Jamaat is an official decision needed. There is no need for anything else. We need to look for any law or regulations”.*

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Speaker at seminar: *“In the future, they [i.e. the Jamaat Party] will give you more proof of cruelty. We will stop these animals. This party has no right to exist as a democratic political party”.*

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Reporter: *“In the light of the analysis of International [Crimes] Tribunal, Jamaat is associated with war-crimes, yet Government is not banning them. That is why the speakers criticize the government. To answer them, Awami League general secretary Mahbubul Alam Hanif has said that, we are not united enough to ban Jamaat”.*

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Reporter: *“People of all walks of life come to show their solidarity on Friday. The demand of the present crowd was just one, ‘Ban the war-criminals and Jamaat Shibir”<sup>6</sup>.*

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Reporter: *“There is only one demand from all in the meeting that is to ban the politics of war-criminals and Jamaat Shibir”.*

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Reporter: *“After Sayeedi received the death penalty on Thursday, Jamaat attacked a police station and killed three police officers in Gaibandha. On Friday, Jamaat and the Awami League clashed and one died. At Shibganj of Chapainababgonj, Jamaat and the Awami League clashed and one died. Five people were injured including a news reporter. In Noakhali, 15 people were injured including news reporter and police officers in a clash with Jamaat Shibir. At that time, Jamaat followers fired shots at the law enforcement officers. They also rioted in other places. At Binodpur, Rajshahi, Shibir organised a procession after Friday prayer. When police tried to resist them, a clash erupted. In Chittagong, after Friday Juma prayer, Jamaat Shibir activists threw bricks at shops and police officers. Five police officers were critically injured by thrown bombs. At Ranibadar, Dinajpur, Jamaat organised protests ignoring Rule 144. At 3.00 pm RAB, police and BGB came out in the streets and two parties clashed. At Gobindapur in Joypurhat, 12 police officers, including the Pachbibi executive*

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<sup>5</sup> Ofcom understands Sammilita Sangskritik Jote to be a Bangladeshi cultural organisation.

<sup>6</sup> Jamaat Shibir is the student wing of the Jamaat Party.

*officer, were attacked by Jamaat followers and injured. Jamaat Shibir also attacked a number of Hindu houses”.*

Ofcom considered the material raised issues warranting investigation under Rule 5.1 of the Code, which states:

Rule 5.1: “News, in whatever form, must be reported with due accuracy and presented with due impartiality”.

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

## **Response**

The Licensee stated its view that the news report was compliant with Rule 5.1 of the Code. By way of background, it said that because it is based in the UK its: “ability is very limited (sometimes impossible) to obtain comments from different political parties based on Bangladesh”. CHSTV said that it had obtained the news content in this case from “Independent News Television” in Bangladesh. However, the Licensee added that: “Unfortunately, in Bangladesh there is no OFCOM equivalent hence no code 5.1”; and “This particular news [was taken] from Independent News Television, over which we had no influence”. CHSTV added that in this case “it was not our own reporter reporting the news. This news report clearly just ‘mirrored’ the events taking place, i.e. the reports merely took footages and sound bites of what was being delivered at these events. There were no one-to-one interviews. As [the] Jamaat Party was not participating at the event, naturally there were no footages or sound bites from them”.

In maintaining due impartiality in this case, the Licensee pointed to other content within the news bulletin. In summary, the bulletin included references to:

- Hussain Muhammed Ershad, Chairman of the Jatiya Party, who according to CHSTV had “clearly articulate[d]” the viewpoint of the Jamaat Party when he said that “Jatiya Party also wants the war criminals to be tried, but the trial is needed to be transparent, unbiased and influence-free. He also said that the ‘filth’ that has been written about the Quran and about the Prophet Muhammad by the bloggers and on face-book were ‘intolerable and cannot be forgiven’”;
- twelve Islamic parties “(allies of Jamaat Party) holding a protest rally in Sylhet on Friday against the ‘disgraceful comments about Islam and the Prophet Muhammad’, which CHSTV said “clearly reflected the viewpoint of the Jamaat Party”; and
- the fact that there had been a protest held by the human rights organization, Global Foundation for Human Rights “against the death sentence of [Delwar Hossain] Sayeedi pronounced by the ICT”. The Licensee said that: “The speakers at the Rally called for the cancellation of the death sentence and immediate freedom for Delwar Hossain Sayeedi and other (Jamaat) leaders without delay”.

With regard to these references made on air, CHSTV referred to the definition of “due impartiality” in Section Five of the Code as not requiring broadcasters to reflect the “comments from...specific leaders”. Therefore, the Licensee said that: “Given the nature of a violent situation where a number of people died in clashes, police and journalists were injured and more importantly bearing in mind that it was impossible

for any journalist to approach Jamaat leaders, we believe in this situation their supporters comments...[as outlined above] were sufficient to express Jamaat party's view point".

CHSTV provided recordings to Ofcom of three current affairs programmes (broadcast on 1 March 2013, 4 March 2013 and 27 March 2013) which, in the Licensee's view, ensured that it achieved due impartiality in this case. This was because the Jamaat Party had taken part in the programmes and "expressed their opinions". CHSTV added that due to the fact, as mentioned above, that it had "no influence" over the news programme in this case, which originated from a news broadcaster in Bangladesh, it broadcasts "regular current affairs programmes... which contains the detailed analysis of current issues in Bangladesh including the news items". It added that such programmes: "reflect the news in depth and in much more detail...to achieve due impartiality, if any [is] lacking in the first place". The Licensee stated with regard to these additional current affairs programmes that: "Our viewers are completely aware that these programmes are part of our news. In addition we run various promos to make clear to our viewers and we also invite them to take part and give their opinion".

In its comments, CHSTV also provided Ofcom with what it termed to an email from the official spokesperson in the UK for the Jamaat Party stating that, in his opinion, the Licensee has "maintained full impartiality and assured fair representation of our interests in various programmes".

In conclusion, CHSTV said that it does cover events, rallies and meetings "[w]hensoever Jamaat Party or other organizations that are related or sympathetic towards them have an event either in Bangladesh or in the UK". It added that it gave "65-70% of the coverage to Jamaat party or their affiliates and allies overall" because the Jamaat Party and their supporters "tend to organize far more events in the UK and certainly considerably more than any other of the affiliates of the main Bangladeshi political parties". However, the Licensee commented that: "It is interesting to note that we do not seem to get any complaints from the viewers sympathetic to the other parties even though this is happening".

## **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 news on television and radio services is presented with due impartiality. This objective is reflected in Section Five of the Code.

When applying the requirement to preserve due impartiality, Ofcom must take into account the broadcaster's and audience's right to freedom of expression. This is set out in Article 10 of the European Convention on Human Rights. The right of freedom of expression encompasses the right to hold opinions and to receive and impart information and ideas without interference by public authority. The broadcaster's right to freedom of expression is not absolute. In carrying out its duties, Ofcom must balance the right to freedom of expression on one hand, with the requirement in the Code to preserve "due impartiality" on matters relating to political or industrial controversy or matters relating to current public policy.

Ofcom recognises that Section Five of the Code, which sets out how due impartiality must be preserved, acts to limit to some extent freedom of expression. This is because its application necessarily requires broadcasters to ensure, for example, that neither side of a debate relating to matters of political or industrial controversy

and matters relating to current public policy is unduly favoured. Therefore, while any Ofcom licensee should have the freedom to discuss any controversial subject or include particular points of view in its programming, in doing so broadcasters must always comply with the Code.

In reaching decisions concerning due impartiality, Ofcom underlines that the broadcasting of comments either criticising or supporting the policies and actions of any government, state or political organisation is not, in itself, a breach of due impartiality. Any broadcaster may do this provided it complies with the Code. However, depending on the specific circumstances of any particular case, it may be necessary to reflect alternative viewpoints in an appropriate way in order to ensure that Section Five is complied with.

Rule 5.1 of the Code states that: “News, in whatever form, must be reported with due accuracy and presented with due impartiality”.

The obligation in Rule 5.1 to present news with due impartiality applies potentially to any issue covered in a news programme, and not just to matters of political or industrial controversy and matters relating to current public policy. In judging whether due impartiality has been preserved in any particular case, the Code makes clear that the term “due” means adequate or appropriate to the subject matter. Therefore “due impartiality” does not mean an equal division of time has to be given to every view, or that every argument and every facet of the argument has to be represented. Due impartiality may be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures due impartiality is maintained.

In assessing whether any particular news item has been reported with due impartiality, we take into account all relevant facts in the case, including: the substance of the story in question; the nature of the coverage; and whether there are varying viewpoints on a news story, and if so, how a particular viewpoint or viewpoints on a news item could be or are reflected within news programming.

In this case, Ofcom noted that in the news bulletin in question there was a lengthy (around 13 minutes) report split into two segments on serious disturbances in Bangladesh which had been sparked by the decision of the ICT to impose a death sentence on a Jamaat Party leader, Delwar Hossain Sayeedi. In particular, the news report referred to a seminar at which various speakers from the ruling governing coalition in Bangladesh criticised the Jamaat Party.

We recognise that this item of news dealt with a story and issue of interest to the UK Bangladeshi community in particular. The news item related to the on-going demonstrations and political disturbances in Bangladesh arising from the activities of the ICT. It is important that broadcasters – taking account of their and the audience’s right to freedom of expression – are able to report such stories to their viewers or listeners. This is particularly the case when news stories concern subjects of interest to their target audience. The Code does not in any way prohibit news programmes from including views that are critical of particular organisations, such as political parties – however that news must be reported with due accuracy and presented with due impartiality.

There were a number of statements which could reasonably be characterised as being critical of the Jamaat Party in this news item. For example, we noted that the news item included references to various calls to ban the Jamaat Party, and allegations of violence undertaken by members of the Jamaat Party during demonstrations in Bangladesh. For example, in the report, the Jamaat Party was

variously described as: “*an extremist party*”, “*animals*”, and as having “*no right to exist as a democratic political party*”.

We noted that at no point did the report reflect the Jamaat Party’s viewpoint on the statements being made against it, nor did it even suggest that the Jamaat Party had at any point been asked to comment. Given the critical and serious nature of the statements made about this party, we considered it was incumbent on the Licensee to ensure that the Jamaat Party’s viewpoint was presented in the news item to at least some extent to counter the universally critical or adverse statements made about it in the report.

In assessing this issue we considered the examples of viewpoints included within the news bulletin which CHSTV argued did reflect the position of the Jamaat Party.

Firstly, the Licensee said that the news bulletin had reported on a speech by Hussain Muhammed Ershad, Chairman of the Jatiya Party in Bangladesh. In CHSTV’s view, this “clearly articulate[d]” the viewpoint of the Jamaat Party because Hussain Muhammed Ershad said that the: “Jatiya Party also wants the war criminals to be tried, but the trial is needed to be transparent, unbiased and influence-free”.

We noted that during the news bulletin, the newsreader made the following statement:

*“Chairman of the Jatiya Party, Hussein Muhammad Ershad said, ‘The country is heading towards domestic war because of the war-crime-tribunal’. He also said that the relationship between justice system and the Shahbag<sup>7</sup> movement has made the situation violent. He made these comments on Friday after the violence spread all over the country due to the verdict given to Jamaat leader Delwar Hossain Sayeedi. He also said that Jatiya Party also wants the war criminals to be tried, but the trial is needed to be transparent, unbiased and influence-free. Criticising the vulgar comment made about Prophet (peace be upon him) and Qu’ran on Facebook and blogs, he said that any activities against Allah and the Prophet will not be tolerated.*

We considered that this statement could not reasonably be described as reflecting the viewpoint of the Jamaat Party. This was because it could not be reasonably interpreted as either directly defending the Jamaat Party in relation to the criticisms being made against the party elsewhere in the report, or otherwise articulating the viewpoint of the Jamaat Party. Further we noted that the Jatiya Party, headed by Hussain Muhammed Ershad, is part of the governing coalition, opposed by the alliance that includes the Jamaat Party.

Second, CHSTV pointed to 12 Islamic parties (“allies of Jamaat Party”) having being reported as holding a protest rally against the “disgraceful comments about Islam and the Prophet Muhammad”. We noted that at one point during the news bulletin, the newsreader made the following statement:

*“Twelve Islamic parties in Sylhet, have organised a protest against insulting comments made online about Islam and the Prophet (peace be upon him). They gathered at court point after Friday prayer. They led a procession at Zindabazar; however were stopped by the police”.*

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<sup>7</sup> The Shahbag movement or protests were so-called because they were associated with the Shahbag district of Bangladesh’s capital, Dhaka.

We noted that the Jamaat Party is the leading Islamist party in Bangladesh, and the above statement refers to a protest organised by other Islamist parties in relation to Islam. However, as before, we considered that this statement could not be reasonably described as reflecting the viewpoint of the Jamaat Party, as argued by the Licensee, because it could not be interpreted as either directly defending the Jamaat Party against criticisms being made against the party elsewhere in the report (for example, in relation to the statements calling for the banning of the Jamaat Party), or otherwise articulating the viewpoint of the Jamaat Party.

Third, the Licensee said that the programme had: referred to a protest held by the human rights organization, Global Foundation for Human Rights “against the death sentence of [Delwar Hossain] Sayeedi pronounced by the ICT”; and said that: “The speakers at the Rally called for the cancellation of the death sentence and immediate freedom for Delwar Hossain Sayeedi and other (Jamaat) leaders without delay”. We noted that at one point during the news bulletin, the newsreader made the following statement:

*“[The] Human rights organization, the Global Foundation for Human Rights has organised a seminar protesting the death penalty. [Name of the guests were read out]. The speakers demanded the cancellation of the verdict and freedom of [Delwar Hossain] Sayeedi”.*

This statement referred to an event at which individuals were protesting against the ICT verdict against Delwar Hossain Sayeedi, a Jamaat Party leader. However, this statement could not be reasonably interpreted as directly and sufficiently countering the serious criticisms being made about the Jamaat Party elsewhere in the programme.

With regard to the statements within the news bulletin, we took account of CHSTV’s representations that the definition of “due impartiality”<sup>8</sup> in Section Five of the Code does not require broadcasters to reflect the “comments from...specific leaders”. It also said that: “Given the nature of a violent situation where a number of people died in clashes, police and journalists were injured and more importantly bearing in mind that it was impossible for any journalist to approach Jamaat leaders” and that the above statements “were sufficient to express Jamaat party’s view point”. On a related point, the Licensee said that because it is based in the UK its: “ability is very limited (sometimes impossible) to obtain comments from different political parties based on Bangladesh”.

In response to these points, Ofcom’s published Guidance<sup>9</sup> to Section Five of the Code recognises that it will sometimes and understandably be impossible to obtain statements from, or interviews with, particular organisations. In such circumstances, the Guidance<sup>10</sup> suggests a range of editorial techniques for maintaining due

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<sup>8</sup> The Code defines “due impartiality” as follows: “‘Due’ is an important qualification to the concept of impartiality. Impartiality itself means not favouring one side over another. ‘Due’ means adequate or appropriate to the subject and nature of the programme. So ‘due impartiality’ does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented. The approach to due impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content, and the extent to which the content and approach is signalled to the audience. Context, as defined in Section Two: Harm and Offence of the Code, is important”.

<sup>9</sup> See: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section5.pdf>



impartiality. For example, if alternative viewpoints cannot be obtained from particular organisations such as political parties, broadcasters can refer to public statements by such organisations or these viewpoints can be expressed, for example, through presenters' questions to interviewees, or presenters summarising alternative viewpoints with due objectivity and in context, within a programme.

We have also taken into account the Licensee's other representations in this case.

Firstly, the Licensee said that it had obtained the news content in this case from "Independent News Television" in Bangladesh, and "it was not our own reporter reporting the news". CHSTV said that: "Unfortunately, in Bangladesh there is no OFCOM equivalent hence no code 5.1"; and "This particular news [was taken] from Independent News Television, over which we had no influence". In Ofcom's view just because CHSTV obtained its news content in this case from a Bangladeshi news channel (which was not subject to the Code and over which the Licensee had "no influence) and/or there was no reporter from the Licensee involved in this programme, this did not obviate the need for the Licensee to reflect the view of the Jamaat Party to at least some extent in response to, for example, the various calls in the news bulletin calling for it to be banned in Bangladesh.

Second, CHSTV stated its view that the news report "clearly just 'mirrored' the events taking place, i.e. the reports merely took footages and sound bites of what was being delivered at these events". The Licensee added: "There were no one-to-one interviews. As [the] Jamaat Party was not participating at the event, naturally there were no footages or sound bites from them". We disagreed with CHSTV's arguments in this regard. Just because representatives of political parties are not interviewed, or are not otherwise directly featured, in a news bulletin does not mean that views of those parties need not be represented. This news bulletin included a range of viewpoints on the demonstrations and political disturbances taking place in Bangladesh related to the ICT. We noted that the news bulletin reported the views of various individuals who criticised the main opposition party in Bangladesh, the Bangladesh Nationalist Party, and a party with whom it is in alliance, the Jamaat Party. However, whilst there was prominent coverage of a press conference held by Begum Khaleda Zia, the leader of the Bangladesh Nationalist Party, the news report did not reflect the viewpoint of the Jamaat Party at all in the 13 minutes of content. The Jamaat Party is an established opposition party (with elected members of the Bangladeshi Parliament) which is in an opposition alliance with the Bangladesh Nationalist Party; and was being heavily criticised within the news item. We therefore considered that CHSTV needed to reflect the views of the Jamaat Party in the news bulletin to at least some extent; or at least indicate to viewers that the broadcaster had sought a comment from the Jamaat Party.

Third, the Licensee said that it gives "65-70%" of its coverage to the Jamaat Party or "other organizations that are related or sympathetic towards" the Jamaat Party across its programming. We noted that CHSTV said it broadcasts current affairs programmes "which contain the detailed analysis of current issues in Bangladesh including...news items". The Licensee provided us with recordings of three current affairs programmes (broadcast on 1 March 2013, 4 March 2013 and 27 March 2013) which, in the Licensee's view, ensured that it achieved due impartiality in this case. Whether a broadcaster can preserve due impartiality in news programming through reflecting alternative viewpoints in linked programming will depend on the particular circumstances in each case.

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<sup>10</sup> Ibid, paragraphs 1.17 and 1.37.

Ofcom considered that the Licensee did not provide any convincing evidence as to how it reflected the viewpoint of the Jamaat Party in linked programming, in relation to the various criticisms being made of this party within the news bulletin in this case. We reached this view for the following reasons:

- CHSTV said that: its viewers are “completely aware” that its current affairs programming, including the three programmes it had cited in this case were “part of our news”; and it “run[s] various promos to make clear to our viewers” that these programmes are part of their news output. However, in our view, the Licensee did not provide any evidence of signalling to the audience that the viewpoint of the Jamaat Party would be reflected in linked programming. In our view, therefore, the three programmes could not reasonably be considered to be editorially linked with the news programme in this case;
- one of the three programmes offered by the Licensee as evidence for the reflection of alternative viewpoints (an edition of *Bangladesh Today* broadcast on 27 March 2013) could not be reasonably characterised as being editorially linked for the additional reason that it was broadcast nearly four weeks after the news programme in this case; and
- we obtained and assessed translations of the two other programmes offered by the Licensee as evidence for the reflection of alternative viewpoints (editions of *Obhimoth*<sup>11</sup> broadcast on 1 March 2013 at 23:30 and 4 March 2013 at 23:30). Although both these programmes included viewpoints that could be characterised as supportive of the Jamaat Party to some degree, these programmes were principally dealing with the sentencing to death by the ICT of the politician Delwar Hossain Sayeedi<sup>12</sup> and not the criticisms made about the Jamaat Party in the news programme in this case, which had been broadcast on 1 March 2013 at 22:00.

We noted that CHSTV also provided Ofcom with a copy of an email it described as being from the official spokesperson in the UK for the Jamaat Party stating that, in his opinion, the Licensee had “maintained full impartiality and assured fair representation of our interests in various programmes”. However, we disagreed with this view. This was because the audience was not made aware of the opinion of this representative of the Jamaat Party. In any event, the judgement of whether or not due impartiality has been preserved is a matter for Ofcom rather than for any third party.

Ofcom emphasises that there is no requirement for broadcasters to provide an alternative viewpoint on all news stories or issues in the news, or to do so in all individual news programmes. It is also legitimate for a programme to be, for example, supportive of certain nation-states or political parties. However, all news stories must be presented with due impartiality: that is with impartiality adequate or appropriate to the subject and nature of the programme. Presenting news stories with due impartiality in news programmes very much depends on editorial discretion being exercised appropriately in all the circumstances.

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<sup>11</sup> *Obhimoth* means “Views”.

<sup>12</sup> See footnote 2.

Given the above, we concluded that, on balance and on the specific facts of this case, the news bulletin was not presented with due impartiality. The news item was therefore in breach of Rule 5.1 of the Code.

**Breach of Rule 5.1**

## In Breach

### Sponsorship of Metro Life

NTV, 20 April 2013, 21:00

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#### Introduction

NTV is a news and general entertainment channel that is broadcast in Bengali and serves the Bangladeshi community in the UK and Europe. The licence for NTV is held by International Television Channel Europe Limited (“ITCE” or “the Licensee”).

The channel broadcasts a delayed feed of content originally shown on NTV in Bangladesh.

A viewer complained that the web address of Lycamobile – a sponsor of *Metro Life* – was included in a sponsorship credit for the programme. The complainant considered this was a call to action and noted that NTV had previously been found in breach of the Code for the inclusion of such material in sponsorship credits<sup>1</sup>.

The sponsorship credit, which also featured another sponsor (Pran Toast), ended with the following:

On-screen: “Sponsored by Lycamobile Call the world for less Visit [www.lycamobile.co.uk](http://www.lycamobile.co.uk)” [where “Lycamobile Call the world for less” featured as a company logo]

Voiceover: “...and [also sponsored by] Lycamobile – call the world for less.”

Ofcom noted that the sponsorship credit featured not only “visit [www.lycamobile.co.uk](http://www.lycamobile.co.uk)” but also the claim, “call the world for less.” We therefore considered the material raised issues warranting investigation under the following Code rule:

Rule 9.22: “Sponsorship credits must be distinct from advertising. In particular:

- (a) Sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action. Credits must not encourage the purchase or rental of the products or services of the sponsor or a third party. The focus of the credit must be the sponsorship arrangement itself. Such credits may include explicit reference to the sponsor’s products, services or trade marks for the sole purpose of helping to identify the sponsor and/or the sponsorship arrangement.”

We asked the Licensee for its comments as to how the content complied with Rule 9.22(a).

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<sup>1</sup> See ‘Sponsorship credits’, in Ofcom Broadcast Bulletin, Issue 227, 8 April 2013, at: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb227/>

## Response

ITCE apologised for having breached the Code, adding that it had “dealt with the matter and stopped the voice over and web address from the sponsor card.”

The Licensee assured Ofcom that it would endeavour to avoid recurrence.

## 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 “the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”. The rules in Section Nine of the Code, among others, reflect this objective.

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

Rule 9.22(a) of the Code therefore requires that sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action, or encourage the purchase or rental of the products or services of the sponsor or a third party. The focus of the credit must be the sponsorship arrangement itself and references to the sponsor’s products, services or trade marks should be for the sole purpose of helping identify the sponsor and/or the sponsorship arrangement.

In particular, Ofcom’s published guidance on Rule 9.22(a) includes the following:

- “claims about the sponsor’s products/services (in particular those that are capable of objective substantiation) are likely to be considered as advertising messages and therefore should not be included in sponsorship credits...”; and
- “credits that contain direct invitations to the audience to contact the sponsor are likely to breach the Code.”

In this instance, Ofcom considered the sponsorship credit for *Metro Life* contained:

- an advertising message – i.e. the comparative claim, “*call the world for less*”; and
- a call to action – i.e. “*visit www.lycamobile.co.uk*”.

The sponsorship credit was therefore in breach of Rule 9.22 of the Code.

Ofcom noted ITCE’s apology. However, we were concerned the Licensee had not appreciated the full extent of the breach in this instance. In saying it had “stopped the voice over and web address from the sponsor card”, ITCE appeared not to have noticed that the comparative claim, “*call the world for less*” was not only broadcast orally, but also featured on-screen, as part of Lycamobile’s logo.

In our earlier finding, we made clear that we expected NTV to take the necessary steps to ensure the compliance of its sponsorship credits and that we would continue to monitor this. We therefore put ITCE on notice that we will consider whether to take further regulatory action in the event of future breaches of Rule 9.22(a).

**Breach of Rule 9.22(a)**

## In Breach

### Priyo Shilpi Priyo Gaan<sup>1</sup>

Channel Nine UK, 17 April 2013, 22:30

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#### Introduction

Channel Nine UK (“Channel Nine” or the Licensee”) is a Bangladeshi culture and entertainment satellite broadcaster which broadcasts in Bangla and English.

A complainant alerted us to a sponsorship credit for a musical instrument company named Guru Soundz which appeared during *Priyo Shilpi Priyo Gaan*, a programme featuring music performances. The complainant was concerned that the sponsorship credit contained advertising messages.

Ofcom noted that the Guru Soundz sponsorship credit appeared six times during the 90 minute duration of the programme, around the advertising breaks. The credit featured a five second video clip of a man playing a percussion instrument, with the heading “Guru Sounds” accompanied by a logo depicting the letter “G”. Text below the video clip gave the showroom address, the telephone and fax numbers and the following message: “*Order online on gurusoundz.com*”.

Ofcom considered that the programme raised issues warranting investigation under Rule 9.22(a) of the Code:

Rule 9.22(a) “Sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action. Credits must not encourage the purchase or rental of the products or services of the sponsor or a third party. The focus of the credit must be the sponsorship arrangement itself. Such credits may include explicit reference to the sponsor’s products, services or trade marks for the sole purpose of helping to identify the sponsor and/or the sponsorship arrangement”.

We asked the Licensee for its comments on how the sponsorship credits for this programme complied with Rule 9.22(a) of the Code.

#### Response

The Licensee stated that the sponsorship credits may have inadvertently contained information that encouraged viewers to purchase the service or product. Channel Nine said that this was not an intentional objective of the credit and that amendments had now been made to remove the calls to action. Finally, the Licensee explained that it had taken measures to ensure that all sponsor credits will be checked thoroughly before going on air.

The Licensee apologised for its “unintentional mistakes” and again stated that it would not allow this to happen in future.

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<sup>1</sup> This issue of the Broadcast Bulletin was amended after its original publication to include this decision. It was not published at the time due to an administrative error.

## Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to ensure the standards objectives, one of which is “that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”. The rules in Section Nine of the Code, among others, reflect this objective.

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

Rule 9.22 of the Code therefore requires that sponsorship credits must be distinct from advertising. Sponsorship credits must therefore not contain advertising messages or calls to action, or any other information about the sponsor or its products.

As made clear in the guidance to Rule 9.22(a), “any direct appeals to the viewer to buy or try the sponsor’s goods or services or to contact the sponsor for more information are likely to breach Rule 9.22”. In this case, we noted the phrase “*Order online on gurusoundz.com*”. This was a clear call to action, in breach of Rule 9.22(a).

We noted that Channel 9 had accepted that they had “inadvertently” allowed a credit to be broadcast which encouraged viewers to purchase the product of service and that the Licensee has taken additional measures to ensure such material is included within a sponsorship credit in future.

Nevertheless, because the sponsorship credit contained a clear call to action, we have recorded a breach of Rule 9.22(a).

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



## Advertising Scheduling cases

### Note to Broadcasters

## Ofcom's monitoring of compliance with the Code on the Scheduling of Television Advertising (COSTA)

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### Introduction to COSTA Findings

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

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

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

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

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

Ofcom undertakes routine monitoring of broadcasters' compliance with COSTA. There are two key purposes of this monitoring: firstly, to ensure that Ofcom implements effectively the relevant requirements of the AVMS Directive. Secondly, limitations under COSTA on the amount and scheduling of advertising involve inherent controls on broadcasters' commercial revenue. A broadcaster that exceeds these requirements is therefore potentially at an unfair commercial advantage compared to those which comply with COSTA.

Due to the large number of channels we regulate, we may monitor specific channels which have given us cause for concern, or we may target a monitoring exercise at a specific sector of channels. On this occasion, we selected the International section of the EPG and the following Findings result from this monitoring exercise.

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

Any broadcaster which has a query relating to COSTA or its application should contact Steven Turner in Ofcom's Standards team ([steven.turner@ofcom.org.uk](mailto:steven.turner@ofcom.org.uk)).

## In Breach

### Advertising minutage

*ATN Bangla, 14 February 2013, various times*

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#### Introduction

ATN Bangla is a general entertainment channel aimed at Bangladeshi viewers in the UK and Europe. The licence for ATN Bangla is held by ATN Bangla UK Limited (“the Licensee”).

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

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

During its routine monitoring of COSTA compliance, Ofcom identified five clock hours on ATN Bangla on 14 February 2013 which contained more than the permitted 12 minutes of advertising. Clock hours 18:00, 19:00, 20:00, 21:00 and 22:00 exceeded the permitted advertising allowance by 50 seconds; three minutes and 35 seconds; two minutes and 35 seconds; three minutes and 25 seconds; and 30 seconds respectively.

Ofcom considered the matter raised issues warranting investigation in respect of Rule 4 of COSTA. We therefore asked the Licensee for its comments under this rule.

#### Response

The Licensee did not respond to Ofcom’s request for comments.

#### Decision

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

Articles 20 and 23 of the EU Audiovisual Media Services (AVMS) Directive set out strict limits on the amount and scheduling of television advertising. Ofcom has transposed these requirements by means of key rules in COSTA.

Ofcom noted that the Licensee exceeded the permitted 12 minutes of advertising per clock hour on five occasions and therefore breached Rule 4 of COSTA in each case. Ofcom noted that three of these breaches in particular were significant. We are therefore putting the Licensee on notice that we will consider further regulatory action in the event of a recurrence.

Ofcom will continue to monitor the Licensee’s compliance with COSTA.

#### Breaches of Rule 4 of COSTA

## In Breach

### Advertising minutage

*Channel i, 14 February 2013, various times*

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#### 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”).

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

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

During its routine monitoring of COSTA compliance, Ofcom identified five clock hours on Channel i on 14 February 2013 which contained more than the permitted 12 minutes of advertising. Clock hours 18:00, 19:00, 20:00, 21:00 and 22:00 exceeded the permitted advertising allowance by 12 minutes and 35 seconds; six minutes and 17 seconds; four minutes and 45 seconds; two minutes and 45 seconds; and 12 minutes and 40 seconds respectively.

Ofcom considered the matter raised issues warranting investigation in respect of Rule 4 of COSTA. We therefore asked the Licensee for its comments under this rule.

#### Response

The Licensee acknowledged that the clock hours identified exceeded the permitted allowance of advertising.

Prime Bangla explained that this was due to a member of the transmission staff failing to follow assigned procedures. It apologised and said that the member of staff concerned had been disciplined. The Licensee said that, to ensure compliance, it had also appointed a two-member team to supervise all transmission activity.

#### Decision

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

Articles 20 and 23 of the EU Audiovisual Media Services (AVMS) Directive set out strict limits on the amount and scheduling of television advertising. Ofcom has transposed these requirements by means of key rules in COSTA.

Ofcom noted the measures undertaken by the Licensee to improve compliance. Nonetheless, on all five occasions, the amount of advertising per clock hour significantly exceeded the permitted allowance and therefore breached Rule 4 of COSTA in each case.

Ofcom will continue to monitor the Licensee's compliance with COSTA and puts the Licensee on notice that we will consider further regulatory action in the event of a recurrence.

**Breaches of Rule 4 of COSTA**

## In Breach

### Advertising minutage

*Channel Nine UK, 14 February 2013, various times*

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#### Introduction

Channel Nine UK is a general entertainment channel aimed at Bangladeshi viewers in the UK and Europe. The licence for Channel Nine UK is held by Runners TV Limited (“Runners TV” or “the Licensee”).

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

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

During its routine monitoring of COSTA compliance, Ofcom identified three clock hours on Channel Nine UK on 14 February 2013 which contained more than the permitted 12 minutes of advertising. Clock hours 12:00, 13:00 and 14:00 exceeded the permitted advertising allowance by one minute and 32 seconds; 33 seconds; and 57 seconds respectively.

Ofcom considered the matter raised issues warranting investigation in respect of Rule 4 of COSTA. We therefore asked the Licensee for its comments under this rule.

#### Response

Runners TV apologised for what it described as unintentional breaches of Rule 4 of COSTA.

The Licensee explained that, during these hours, it was receiving a live feed from Bangladesh Premier League 2013 cricket matches and that this required the manual removal of all incoming advertising from the feed. It added that owing to the technical nature of this process, the transmission engineer was distracted from the playlist control and overlooked the timing of the commercials.

Runners TV said that, following the incident, it held a meeting to review all the applicable Ofcom rules. It added that for future live events, resources will be in place to ensure the playlist is handled carefully.

#### Decision

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

Articles 20 and 23 of the EU Audiovisual Media Services (AVMS) Directive set out strict limits on the amount and scheduling of television advertising. Ofcom has transposed these requirements by means of key rules in COSTA.

Ofcom noted the measures taken by the Licensee to improve compliance in this area. However, the Licensee exceeded the permitted 12 minutes of advertising per clock hour on three occasions and therefore breached Rule 4 of COSTA in each case.

We will continue to monitor the Licensee's compliance with COSTA.

#### **Breaches of Rule 4 of COSTA**

## In Breach

### Advertising minutage

*CHSTV, 14 February 2013, 19:00*

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#### Introduction

CHSTV is a general entertainment channel aimed at Bangladeshi viewers in the United Kingdom. The licence for CHSTV is held by CHS TV Limited (“CHSTV” or “the Licensee”).

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

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

During its routine monitoring of COSTA compliance, Ofcom identified that the 19:00 clock hour on CHSTV on 14 February 2013 exceeded the permitted allowance by two minutes and 30 seconds.

Ofcom considered the matter raised issues warranting investigation in respect of Rule 4 of COSTA. We therefore asked the Licensee for its comments under this rule.

#### Response

The Licensee explained that the incident was caused by “human error”.

CHSTV said that, at the time the playlist was made, the programme scheduled to be aired was not available due to a technical problem. The programme therefore had to be inserted by the transmission controller on the day of broadcast. CHSTV added that the transmission controller inserted the second segment of the programme in the incorrect slot and therefore some advertisements intended for the 18:00 clock hour were pushed into the 19:00 hour.

The Licensee said that it had retrained the member of staff in question to ensure the incident did not recur.

#### Decision

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

Articles 20 and 23 of the EU Audiovisual Media Services (AVMS) Directive set out strict limits on the amount and scheduling of television advertising. Ofcom has transposed these requirements by means of key rules in COSTA.

Ofcom noted the Licensee’s decision to retrain the member of staff involved. However, the 19:00 clock hour contained more than the permitted 12 minutes of advertising and therefore breached Rule 4 of COSTA.



Ofcom will continue to monitor the Licensee's compliance with COSTA.

**Breach of Rule 4 of COSTA**

## In Breach

### Advertising minutage

*DM Digital, 14 February 2013, various times*

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#### Introduction

DM Digital is a television channel aimed at an Asian audience in the UK and broadcasts in a number of languages including English, Punjabi, Urdu, Sindhi, Kashmiri and Hindi. The licence for this channel is held by DM Digital Television Limited (“DM Digital” or “the Licensee”).

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

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

During its routine monitoring of COSTA compliance, Ofcom identified two clock hours on DM Digital on 14 February 2013 which contained more than the permitted 12 minutes of advertising. Clock hours 19:00 and 21:00 exceeded the permitted advertising allowance by four minutes and 55 seconds and four minutes and 35 seconds respectively.

Ofcom considered the matter raised issues warranting investigation in respect of Rule 4 of COSTA. We therefore asked the Licensee for its comments under this rule.

#### Response

The Licensee did not respond to Ofcom’s request for comments.

#### Decision

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

Articles 20 and 23 of the EU Audiovisual Media Services (AVMS) Directive set out strict limits on the amount and scheduling of television advertising. Ofcom has transposed these requirements by means of key rules in COSTA.

Ofcom noted that the Licensee significantly exceeded the permitted 12 minutes of advertising per clock hour on two occasions and therefore breached Rule 4 of COSTA in each case. Ofcom will continue to monitor the Licensee’s compliance with COSTA and puts DM Digital on notice that it will consider further regulatory action in the event of a recurrence.

#### Breaches of Rule 4 of COSTA

## In Breach

### Advertising scheduling

*NTV, 14 February 2013, various times*

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#### Introduction

NTV is a news and general entertainment channel broadcast in Bengali and serving a Bangladeshi audience. The licence for NTV is held by International Television Channel Europe Ltd (“the Licensee”).

Rule 16(a) of the Code on the Scheduling of Television Advertising (“COSTA”) states that “news programmes may only include one advertising or teleshopping break for each scheduled period of at least 30 minutes”.

During its routine monitoring of COSTA compliance, Ofcom noted that two news programmes of 30 minutes and 45 minutes duration, broadcast on NTV, contained two advertising breaks each – one more than permitted by Rule 16(a) of COSTA.

Ofcom considered the matter raised issues warranting investigation in respect of Rule 16(a) of COSTA. We therefore asked the Licensee for its comments under this rule.

#### Response

The Licensee acknowledged that two advertising breaks were broadcast during each programme and said that it was “due to that very special day as it was a valentine day.” It assured Ofcom that this would not be repeated.

#### Decision

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

Articles 20 and 23 of the EU Audiovisual Media Services (AVMS) Directive set out strict limits on the amount and scheduling of television advertising. Ofcom has transposed these requirements by means of key rules in COSTA.

Both of these news programmes contained one more advertising break than permitted by Rule 16(a) of COSTA. While Ofcom noted the Licensee’s assurances that the error would not be repeated, it did not accept that the date of broadcast in any way justified the Licensee’s failure to comply with this rule. Ofcom was particularly concerned that the Licensee had decided to disapply the requirements of Rule 16(a) of COSTA because it considered the date to be “very special”.

Ofcom is therefore recording a breach of Rule 16(a) in respect of both cases and will continue to monitor the Licensee’s compliance with COSTA.

#### Breaches of Rule 16(a) of COSTA

## In Breach

### Advertising minutage

*Rishtey, 27 January 2013, 20:00*

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#### Introduction

Rishtey is a general entertainment channel broadcast in Hindi. The licence for Rishtey is held by Viacom 18 Media Private Limited (“the Licensee”).

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

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

During its routine monitoring of COSTA compliance, Ofcom identified that the 20:00 clock hour exceeded the permitted advertising allowance by eight minutes and 13 seconds.

Ofcom considered the matter raised issues warranting investigation in respect of Rule 4 of COSTA. We therefore asked the Licensee for its comments under this rule.

#### Response

The Licensee acknowledged that the 20:00 clock hour exceeded the permitted allowance of advertising.

The Licensee said that a pre-recorded version of the *Colors Screen Awards* was transmitted from 18:30 to 22:00 on this particular day. It explained that the first segment of this programme was 45 minutes longer than expected and therefore the first commercial break was pushed back by 43 minutes and went to air at 19:34. This caused the second break, intended for the 19:00 clock hour, to be transmitted in the 20:00 clock hour. Clock hour 20:00 contained a further two commercial breaks and consequently exceeded the permitted 12-minute allowance. The Licensee pointed out however that the 19:00 clock hour contained only 5 minutes and 55 seconds of advertising.

The Licensee explained that the channel had recently begun to use new system software to book and schedule advertisements which are then synched to its previous system for broadcast.

The Licensee said that, while the scheduling team noticed the error upon broadcast and took immediate steps to prevent further occurrences, they were unable to detect it beforehand as synching between the two systems “was a very new process” which they were being trained on at the time. It added that they have put in place more cross-checks to avoid such errors in future.

#### Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content which it considers are best calculated to secure a number of standards objectives. One of these objectives is that “the international obligations of

the United Kingdom with respect to advertising included in television and radio services are complied with”.

Articles 20 and 23 of the EU Audiovisual Media Services (AVMS) Directive set out strict limits on the amount and scheduling of television advertising. Ofcom has transposed these requirements by means of key rules in COSTA.

Ofcom noted the measures undertaken by the Licensee to improve compliance and that the incident was owing to a misplaced advertising break rather than the broadcast of additional minutage leading to further commercial gain. Nonetheless, the amount of advertising in this clock hour significantly exceeded the permitted allowance and therefore breached Rule 4 of COSTA.

Ofcom will continue to monitor the Licensee’s compliance with COSTA.

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

## Resolved

### Resolved findings table

*Code on the Scheduling of Television Advertising compliance reports*

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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  |
|---------|----------------------------|-----------------------------------|--|
| Sky 2   | 2 April 2013, 18:00        | COSTA<br>Rule 4                   | <p>Sky notified Ofcom that its service Sky 2 exceeded the permitted advertising allowance on this date by one minute and seven seconds.</p> <p>The error occurred due to late delivery of a programme and technical issues which meant this programme had to be rescheduled manually. The programme was longer than expected and pushed some commercials intended for the 17:00 clock hour into the 18:00 clock hour.</p> <p>Sky confirmed it had implemented new technical procedures to alert it to any similar issues in advance.</p> <p><b>Finding: Resolved</b></p> |

## Fairness and Privacy cases

### Not Upheld

#### **Complaint by Ms Charlotte Walker on her own behalf and on behalf of Walkers Distributions Limited and Ms Shireen Campbell**

*The Sheriffs Are Coming, BBC1, 17 January 2013*

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#### Summary

Ofcom has not upheld Ms Charlotte Walker's complaint of unjust or unfair treatment and unwarranted infringement of privacy.

The programme followed the work of High Court Enforcement Officers ("sheriffs") who recover money for clients who have successfully filed for a High Court writ against a defendant who owes them money. One case featured in the programme was that of Mr Paul Keane, who had successfully pursued Walkers Distributions, a company owned by Ms Charlotte Walker, for £3,572.80 which he was owed for work he had undertaken for the company. Ms Shireen Campbell worked for Walkers Distributions. The sheriffs were shown arriving at Walkers Distributions' business premises and explaining that they were there to recover the debt owed to Mr Keane. After speaking to Ms Walker on the telephone, the sheriffs formally seized the office goods and the commentary explained that, shortly after their visit, Ms Walker paid the money owed to Mr Keane in full.

Ofcom found 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 Ms Walker, because it had contacted Ms Walker in advance of the programme setting out the main claims it intended to make and inviting her to comment on matters of accuracy. Ms Walker did not substantively respond to the programme makers and therefore no unfairness resulted towards her.
- The broadcaster had given Ms Walker an appropriate and timely opportunity to respond to the significant allegations about her made in the programme, because it contacted her two months before the programme was transmitted and offered her a number of opportunities to reply. Ms Walker did not substantively respond to the programme makers and therefore no unfairness resulted towards her.
- Ms Walker did not have a legitimate expectation of privacy in relation to the broadcast of her name or the name of her business given that the circumstances of the case were a matter of public record and already in the public domain.
- Ms Campbell did not have a legitimate expectation of privacy in relation to the two short sentences which she was heard to say on camera given that there was nothing of a private or sensitive nature disclosed and the area in which the filming took place was a publicly facing area of the business.

## Introduction

On 17 January 2013, the BBC broadcast an edition of the programme *The Sheriffs Are Coming*, which follows the work of High Court Enforcement Officers as they try to recover money which is owed to claimants following successful court judgments.

One such claimant was Mr Paul Keane, who owned an internet marketing business, and who had been hired by Walkers Distributions, a company owned by the complainant, Ms Charlotte Walker, to raise its profile on the internet. Mr Keane explained that he had signed a 12 month contract with Walkers Distributions and that it was agreed that he would be paid on a monthly basis for his company's services. However, Mr Keane said that some months he was paid much less than had been agreed and other months he was paid nothing at all. Mr Keane said that he was told by Walkers Distributions that this was because there were cash flow problems at the company. Mr Keane said that, as a result of the work his company had undertaken, Walkers Distributions' internet profile had grown and that his work had generated a lot of business for the company. As Mr Keane spoke, filmed footage of the Walkers Distributions' website was shown. The programme said:

*"Despite clear signs of the benefits his hard work had brought the company, six months later he was still constantly chasing the money he was rightfully owed".*

The programme stated that the only option left open to Mr Keane was to take *"Walkers Distributions' boss Charlotte Walker to court"*. The court judgment found in Mr Keane's favour and Walkers Distributions were ordered to pay £3,572.80 to Mr Keane within 14 days. Despite the court judgment, Mr Keane said he still had not received the money and therefore had asked the sheriffs for help in enforcing the judgment.

The sheriffs were shown entering the business park where Walkers Distributions was located. The sheriffs, accompanied by the camera crew, entered Walkers Distributions' office premises and told a staff member (whose face was obscured, but whose voice was heard) that they wanted to speak with Ms Walker. The member of staff, Ms Shireen Campbell, was asked by one of the sheriffs, Mr Grix, whether it was possible to get hold of Ms Walker by telephone. Ms Campbell replied *"Erm, I don't know"* and shortly after this was heard asking the cameraman to wait outside the office.

Mr Grix was shown speaking to Ms Walker on the telephone. Mr Grix could be heard explaining that goods from the office premises could be seized and sold off at auction in order to recover the money owed to Mr Keane. During the course of the telephone conversation, Ms Walker's voice could not be heard. The programme explained that Ms Walker had told Mr Grix that she was not aware of the enforcement order. In addition, the commentary explained that Ms Walker had told Mr Grix that she no longer ran Walkers Distributions and had set up a new company called Walkers Distributions Limited and that any assets had been sold to this new company. Ms Walker had produced a receipt confirming this. The programme explained that Mr Grix had doubts about the receipt because it did not accurately list the goods in the office and, therefore, the goods were seized *"on paper"* and Ms Walker was given five days to produce satisfactory evidence that they were sold to the new company otherwise all the goods would be removed by the sheriffs. The programme said that after the sheriffs' visit, Ms Walker had a *"stark re-think"* and paid all the money owed to Mr Keane.



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

## **Summary of the complaint and the broadcaster's response**

### Unjust or unfair treatment

Ms Walker complained that she was treated unjustly or unfairly in the programme as broadcast in that:

- a) The content of the programme was not accurate and that the programme only broadcast select pieces from the filming, which suited the programme best but portrayed Ms Walker unfairly. Ms Walker added that she had made several attempts to arrange a meeting with the broadcaster to discuss the matters raised before the programme was broadcast. Ms Walker said that she did receive an email from the broadcaster, but that it was from a "dummy" email address.

By way of background, Ms Walker said that, as a result of the programme being broadcast, she has received verbal abuse and had felt unsafe.

In response, the BBC said that Ms Walker had complained that the programme was not accurate but had not specified any inaccuracies, nor had Ms Walker specified what filmed material had been omitted, resulting in her being unfairly represented. In the circumstances, the BBC said it was unable to "respond substantively" to this point of complaint other than to state that it believed the film did accurately reflect both the background narrative and the events on the day of filming.

The BBC said that this was a case where a court had reached a determination in respect of Ms Walker's liability for the debt and that decision was a matter of fact and public record and did not require any response or offer of response, any more than a report of a court conviction requires that the convicted person be afforded an accompanying right to reply. However, the BBC said that despite this the programme makers were keen to include any remarks that Ms Walker might have offered in explanation of her actions and a request was made in good time for a statement from her. The BBC said it believed that this was not only sufficient but went well beyond what was required in the circumstances given that the matter had been considered by a court and a determination reached. However, despite several requests, the BBC said that Ms Walker declined to provide any response for inclusion in the programme. The BBC stated that it did not know what Ms Walker meant by a "dummy" email address and said that the correspondence between her and the production company (which was provided to Ofcom) showed that the same email address was used throughout the programme making process and that it was clear from that correspondence that Ms Walker received a letter dated 12 November 2012 which set out the points to which she was being invited to respond. The BBC explained that Ms Walker had requested a meeting with the programme makers but stated that it did not believe that it was necessary to attend such a meeting with Ms Walker in order to ensure that she had sufficient opportunity to respond to the points made in the programme. The BBC said that at no point did Ms Walker indicate in correspondence with it that she had not received this letter or had experienced difficulty responding to it.

### Unwarranted infringement of privacy

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

- b) The programme invaded her privacy and that of her staff at their private office. Ms Walker said that:
- Her full name and the company's name were disclosed in the programme on many occasions.

In response to this aspect of the complaint, the BBC said that it did not believe that by identifying Ms Walker by name and identifying her company's name that the programme breached her privacy or that of her staff. It said that Ms Walker had been publicly identified in the court judgment and her liability, and that of her company, was a matter of public record. The BBC said that, in the circumstances, it did not believe that Ms Walker enjoyed any reasonable expectation of privacy in respect of her identity or that of Walkers Distributions. Further, given that the transition from Walkers Distributions to Walkers Distributions Limited may have had an impact on the ability of the sheriffs to execute the court's warrant, the BBC said that it did not believe that Ms Walker had a reasonable expectation of privacy in respect of the company name.

The BBC said that it did not accept that the small area of Walkers Distributions' Loughton premises where filming was briefly conducted was a wholly private area. The BBC noted that Ms Walker said of the address in question that: "We are not a retail shop we are a private office". However, the BBC said that Walkers Distributions' website listed the address as one of its two locations and described the premises as being concerned with "Sales and Enquiries"<sup>1</sup>. The BBC stated that the area in which filming took place was a reception area which was staffed by a receptionist, and the BBC said that there was plainly an expectation that members of the public may visit – possibly having taken their cue from the company website which provides a map and satellite imagery to assist prospective visitors. The BBC said that the camera crew had left the premises as soon as they were asked to.

The BBC argued that there was a public interest in this type of programming, which it said was concerned with the enforcement of the decisions of the courts in respect of debt. The BBC said that if there was any residual expectation of privacy involved in circumstances such as this, it believed that any breach was warranted in the public interest.

- A member of staff's voice (Ms Campbell) was also heard in the programme.

The BBC said that it accepted that the voice of an employee who appeared to act as a receptionist was briefly heard in the programme. It noted that she was heard saying "*I don't know*" and "*If you wait outside*" and that she was in vision fleetingly, for no more than a second, and that while in vision she was wholly obscured by blurring.

The BBC said that it did not believe that Ms Campbell would have been identifiable to anybody who did not already know her and the fact that she worked for Walkers Distributions. It said that even then, given the extremely brief remarks

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<sup>1</sup> The BBC provided a screen grab from Walkers Distributions' website to illustrate this point.

she made and the fact that she could not be seen, it did not believe that even someone who knew her could be certain that the voice heard was Ms Campbell's.

## 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 and the written correspondence between Ms Walker and the broadcaster prior to the transmission of the programme. Ofcom provided the parties with the opportunity to make representations on Ofcom's Preliminary View (which was not to uphold the complaint). Neither party made any representations on the Preliminary View.

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 organisations, as set out in Rule 7.1 of Ofcom's Broadcasting Code ("the Code"). Ofcom had regard to this Rule when reaching its Preliminary View on the complaint.

- a) Ofcom considered Ms Walker's complaint that she was treated unjustly or unfairly in the programme as broadcast in that the content of the programme was not accurate and that the programme only broadcast select pieces from the filming, which suited the programme best but portrayed Ms Walker unfairly. Ms Walker added that she had made several attempts to arrange a meeting with the broadcaster to discuss the matters raised before the programme was broadcast. Ms Walker said that she did receive an email from the broadcaster but it was from a "dummy" email address.

When assessing Ms Walker's complaint of unjust or unfair treatment and the particular elements of that complaint, Ofcom took into consideration Practices 7.9 and 7.11 of the Code. Practice 7.9 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. Practice 7.11 states that, if a programme alleges wrongdoing or incompetence or makes significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

Ofcom noted the following sections of the programme, in which the main allegations in relation to Ms Walker were made. The report into Walkers Distributions began with the commentary explaining that the sheriffs were:

*“Heading for an Essex show down with the owner of a leaflet distribution company who decided they’d rather not pay for the work they’d had done for them”.*

The commentary then explained that Mr Keane, a small business owner who specialised in “a high tech form of internet marketing” had previously signed a 12 month contract with Walkers Distributions to raise the internet profile of the business. The programme stated that the first monthly payment to Mr Keane was “hundreds of pounds below what had been agreed” and that the second monthly payment did not arrive. Mr Keane said that Walkers Distributions had explained to him that it had cash flow problems. However, the programme said that the company was “openly expanding” but were “still refusing to pay for the work as agreed”. Following further missed payments, Mr Keane said in the programme that he had received a “very abrupt email from Walkers Distributors saying, we will pay you when we pay you, that’s it, take it or leave it”.

The programme stated that Mr Keane had taken Walkers Distributions to court and that, although the claim was contested by Ms Walker, the court awarded Mr Keane £3,572.80 which was to be paid within 14 days. The programme then showed the sheriffs arriving at Walkers Distributions’ business premises where they asked to speak to Ms Walker. As Ms Walker was not at the premises, one of the sheriffs, Mr Grix, was shown having a telephone conversation with Ms Walker in which he explained that he was there to seize goods, which could be sold at auction to clear the debt. The commentary stated:

*“Charlotte Walker says she’s had no warning of the enforcement and has applied to the court to pay the money owed to Paul [Mr Keane] in monthly instalments”.*

Mr Grix was then shown on the phone responding to Ms Walker. He said:

*“With respect you can’t say you haven’t heard of it, if you’ve applied to the courts to make payments. You’ve obviously been to court at some stage and spoken to a Judge but you’re telling me you didn’t know anything about it.”*

The commentary then explained that Ms Walker had claimed that:

*“None of the goods in the office belong to her, as she’s no longer running the business as a sole trader. Instead, she’s formed a new company, Walkers Distributions Limited”.*

Mr Grix then asked Ms Walker to produce evidence to this effect, and the programme explained that a receipt was emailed to the sheriffs. However, Mr Grix expressed his doubts at the validity of the receipt, and it was explained in the commentary that he had:

*“Suspicious about the receipt, as it doesn’t accurately list the items in the office”.*

The programme then showed the sheriffs leaving Walkers Distributions and the accompanying commentary explained that Ms Walker had paid Mr Keane in full following the visit.

Ofcom considered the main allegations made in the programme and noted that some of the information contained in the report was a matter of public record in

that it was the subject of a court judgment. In particular, Ofcom noted that it was a matter of public record that Mr Keane had brought a successful action against Ms Walker after she had failed to pay him the sum of £3,572.80. In relation to this aspect of the programme, Ofcom considered that there was a sufficient evidential basis for these specific details which appeared in the programme and therefore concluded that no unfairness resulted to Ms Walker as a result of the reporting of these details.

However, Ofcom also considered that some of the detail contained in the programme was not a matter of public record and so it assessed whether the broadcaster had taken reasonable care to satisfy themselves that material facts had not been presented, disregarded or omitted in a way that is unfair to Ms Walker.

Ofcom noted that, prior to the broadcast of the programme on 12 November 2012, the programme makers had written to Ms Walker setting out the claims they intended to include in the programme and offering her an opportunity to comment on them. The letter specifically set out that Ms Walker was being approached to comment on these “in the interests of fairness and accuracy”. Ofcom noted that Ms Walker responded to the letter through a series of emails and a telephone call, in which she requested a meeting with the programme makers. The programme makers explained that they wished for Ms Walker to respond to the letter of 12 November 2012 so that “our film can fairly reflect your case” and that they did not believe that a meeting was necessary for that. Ofcom takes the view that it is not incumbent on programme makers and broadcasters to acquiesce to the requests of potential contributors to programmes such as this one made by Ms Walker. However, they do have an obligation to ensure that organisations and individuals are treated fairly in the programme as broadcast.

Ofcom noted that, in the programme, Mr Keane claimed that he had received an email from Walkers Distributions prior to the court action stating “*we will pay you when we pay you, that’s it, take it or leave it*”. Ofcom noted that in the letter of 12 November 2012 sent by the programme makers to Ms Walker they asked her to comment specifically on this claim, and it stated that they intended to feature the claim that Mr Keane:

“...was sent an email by Walkers Distributions saying he would be paid when Walkers Distributions chose to pay him and he was to accept this or not carry out the work”.

Ofcom noted that Ms Walker did not respond to this claim, either to deny it or add further context to it. Ofcom therefore considered that, in this regard, the programme makers had taken reasonable care to ensure that the material facts were presented in way that was fair to Ms Walker.

Ofcom next considered Ms Walker’s telephone conversation with one of the sheriffs, Mr Grix, and how this was reflected in the programme. Although Ms Walker’s voice could not be heard, the commentary explained that:

“*Charlotte Walker says she’s had no warning of the enforcement and has applied to the courts to pay the money owed to Paul [Mr Keane] in monthly instalments*”.

Mr Grix then expressed doubt over Ms Walker’s claim she had had no warning of the action. He stated to Ms Walker over the telephone:

*“You’ve obviously been to court at some stage and spoken to a Judge but you’re telling me you didn’t know anything about it”.*

The commentary explained that Mr Grix:

*“...is holding the highest card in the dispute. His High Court writ trumps any other ongoing application to do with the case”.*

Ofcom considered that, although Ms Walker did not respond to the programme makers’ letter of 12 November 2012 in any substantive way, the programme makers had made use of the information apparently gleaned from the telephone conversation between Mr Grix and Ms Walker in order to reflect her position in a way that was fair to her. In relation to this point, Ofcom noted that the commentary made clear that, during the telephone call, Ms Walker had said that she was not aware of the enforcement proceedings and that she had applied to the court to pay Mr Keane in monthly instalments. In this regard, Ofcom therefore considered that the broadcaster had taken reasonable care to ensure that the material facts were presented in way that was fair to Ms Walker.

Ofcom next considered the claims made in the programme regarding the transfer of assets from Walkers Distributions to Walkers Distributions Limited. Ofcom noted that the commentary explained that Ms Walker’s position in relation to the office goods was that:

*“None of the goods in the office belong to her, and that she’s no longer running the business as a sole trader. Instead, she’s formed a new company Walkers Distributions Limited”.*

The programme explained that Ms Walker had provided an invoice for £550 to the sheriffs showing the sale of the office goods from Walkers Distributions to Walkers Distributions Limited; however the commentary stated that Mr Grix had:

*“Suspicious about the receipt, as it doesn’t accurately list the items in the office”.*

The commentary then explained that the sheriffs seized the office goods *“on paper”* and had given Ms Walker five days in which to provide proof that the goods no longer belonged to her. The programme explained that, shortly after this incident, Ms Walker paid Mr Keane the outstanding debt in full.

Ofcom noted that, in the programme makers’ letter to Ms Walker dated 12 November 2012, the programme makers stated that they intended to claim:

*“When the High Court Enforcement Officers attended Walkers Distributions, they were told a new limited company, Walker Distributions Ltd had been established at the premises. They were then emailed a receipt seeming to show proof that everything in the office had been sold by the previous company to Walkers Distributions Ltd. They suspected the authenticity of this receipt as it didn’t accurately list the items in the office”.*

Ofcom considered that, by putting the concerns of the sheriff to Ms Walker in the letter, the programme makers had made an attempt to ascertain Ms Walker’s view on the issue. In these circumstances and given that Ms Walker had chosen not to respond directly to the programme makers’ letter, Ofcom considered that

the programme makers had taken reasonable care to ensure that the material facts were presented in the programme in a way that was fair to Ms Walker.

Ofcom next considered whether the broadcaster had given Ms Walker an appropriate and timely opportunity to respond to the significant allegations made in the programme.

Normally, where significant allegations are made about an individual or organisation in a programme, that individual or organisation should be given an appropriate and timely opportunity to respond to them. Ofcom takes the view that, when including material that has the potential to amount to a significant allegation, reasonable care must be taken by the broadcaster to ensure that the broadcast material is consistent with the requirements of the Code and that it does not mislead viewers or portray individuals or organisations in a way that is unfair.

Ofcom noted the BBC's submission that the original failure to pay Mr Keane was a matter of public record that was already in the public domain and that the reporting of these facts was analogous to court reporting. Ofcom considered that not complying with the directions of a court order is a serious matter, and therefore Ofcom considered that an allegation that an individual or organisation has not complied with a court order amounted to a significant allegation that did require the broadcaster to seek the response of Ms Walker.

As noted above, the programme makers' letter of 12 November 2012 stated that:

“Despite the award, you did not pay the money awarded by the court until the intervention of the High Court Enforcement Officers”.

Ofcom noted that the letter was sent to Ms Walker on 12 November 2012 and that the programme was broadcast on 17 January 2013, more than two months later. Ofcom also noted that the programme makers had emailed Ms Walker on 10, 11 and 13 December 2012 inviting her to comment on the allegations set out in their letter. As noted above, Ms Walker had asked to meet the programme makers which they declined to do. Ofcom took the view that it was not necessary for the programme makers to meet her in person in order to give Ms Walker an appropriate and timely opportunity to respond. The allegations they intended to make in the programme were clearly set out in the letter and Ms Walker had the opportunity to respond to them in writing, in order that her views could be fairly reflected in the programme as broadcast. The fact that Ms Walker did not take that opportunity was her choice.

Ofcom also considered that the programme makers had not provided Ms Walker with a “dummy” email address. It considered that the correspondence provided to it in connection with the complaint clearly showed that Ms Walker responded to the letter of 12 November 2012 by email to the programme makers and that they entered into an email exchange with her. Ofcom was satisfied that Ms Walker was able to contact the programme makers by email.

Taking all the factors into account and having regard to the programme as a whole, Ofcom's decision is that the programme makers had taken reasonable care to satisfy themselves that the material facts were not presented, disregarded or omitted in a way that was unfair to Ms Walker. Had Ms Walker disagreed with any of the facts of the case, or was in possession of any further facts whose meaning might have changed viewers' perceptions of her, she was given the

opportunity to respond to them. However, she had chosen not to. Ofcom's decision therefore is that, in the circumstance of this case, the broadcaster had given Ms Walker an appropriate and timely opportunity to respond to the significant allegations made about her in the programme. Ofcom's decision is that the complaint of unjust or unfair treatment in the programme as broadcast should not be upheld.

#### 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.

- b) Ofcom considered Ms Walker's complaint that the programme unwarrantably infringed her privacy in the programme as broadcast and that of her staff at their private office.

In relation to Ms Walker's complaint that her full name and the company's name were disclosed in the programme, Ofcom had regard to Practice 8.6 of the Code which states that, if the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

In considering whether or not Ms Walker's privacy was unwarrantably infringed in the programme as broadcast, Ofcom assessed the extent to which she had a legitimate expectation in relation to her name and the company's name being disclosed in the programme.

Ofcom first assessed the character of the information included in the programme and the context in which it was disclosed. In Ofcom's view, the name of an individual or a company (or its identity) is not, in itself, information that necessarily attracts an expectation of privacy, although the context in which an individual or a company is named or identified could create a legitimate expectation of privacy. Given this, Ofcom considered the context in which Ms Walker's name and the name of the company, Walkers Distributions, were mentioned in the programme. Ofcom noted that the programme reported that Mr Keane had taken Ms Walker (referred to in the programme by her full name "*Charlotte Walker*") to court for the money he was owed by Walkers Distributions and that Ms Walker had contested the claim but had lost and was ordered to pay Mr Keane the monies owed.

When the payment had not been made within the specified time frame, Mr Keane had commissioned the sheriffs to recover the debt. Ofcom also noted that Ms Walker's new company, Walkers Distributions Limited, was referred to in the programme. In relation to this company, the programme noted Ms Walker's position was that Walkers Distributions Limited had purchased the office goods which previously belonged to Walkers Distributions for £550.



Ofcom carefully considered the programme in detail (as set out in head a) above) and noted that it did not reveal any further details of Ms Walker's private or family life or any further details about Ms Walker or her company, Walkers Distributions, or the new company, Walkers Distributions Limited, that could be considered to be of a private or sensitive nature. Ms Walker did not appear in the programme and her voice was not heard. Ofcom noted that the company itself has a strong internet presence, and in fact had employed Mr Keane to maximise its public profile. Further, in Ofcom's view, information disclosed in open court during the course of legal proceedings (such as the name of a company which is the subject of a court judgment) does not normally attract a legitimate expectation of privacy. Court proceedings are a matter of public record and the public nature of the operation of the courts is an integral element of the principle of open justice (unless formal reporting restrictions are in place). For these reasons, Ofcom concluded that Ms Walker did not have a legitimate expectation of privacy in relation to the disclosure in the broadcasts of her name or that of her company.

Having found that Ms Walker did not have a legitimate expectation of privacy in relation to the disclosure of her name and the name of her company in the circumstances, it was not necessary for Ofcom to consider whether any intrusion into Ms Walker's privacy was warranted.

Ofcom next considered Ms Walker's complaint that the voice of a member of staff (i.e. Ms Campbell) was heard in the programme.

Again, Ofcom had regard to Practice 8.6 of the Code, the detail of which is set out above.

In considering whether or not Ms Campbell's privacy was unwarrantably infringed in the programme as broadcast, Ofcom assessed the extent to which she had a legitimate expectation of privacy in relation to the inclusion of her voice in the programme.

Ofcom considered the context in which Ms Campbell appeared in the programme. Ofcom noted that the sheriffs arrived at the business premises of Walkers Distributions and, accompanied by the camera crew, entered through what appeared to Ofcom to be the main front door of the office to an area which contained a desk behind which a member of staff was seated.

As the sheriffs entered Walkers Distributions' business premises, a member of staff could be seen for approximately one second, her face obscured by blurring (who, although not in any way identified, was Ms Campbell). The image of the member of staff was not seen again on camera, but Mr Grix asked the member of staff if she could contact Ms Walker by phone. Ms Campbell was then heard stating: "*Erm, I don't know.*" Shortly after this Ms Campbell stated "*if you could wait outside*" to the camera crew (which they did). Ms Campbell's voice was not disguised in any way.

Ofcom noted that in Ms Walker's complaint she had described the office as a "private working space" and that the office was "not a retail space". However, Ofcom also noted the page from Walkers Distributions' website (provided to it by the BBC) which gave the office address, described the offices as "Sales and Enquiries" and also gave a map reference, which Ofcom considered could be in order to enable members of the public to locate the office. Ofcom noted that the footage of the business premises shown in the programme appeared to depict the sheriffs and camera crew entering the premises through a door which was

unlocked and did not have an intercom system. This indicated to Ofcom that the office was accessible to the general public.

Ofcom also took account of the nature of the comments made by Ms Campbell. In Ofcom's view these were not of a private or sensitive nature. Ofcom did not consider then, given Ms Campbell's face was obscured and the words spoken by her were brief, it was at all likely that anyone outside Ms Campbell's immediate acquaintance could have identified her. And, as set out above, even if they had, Ms Campbell's comments did not amount to anything which she could have reasonably expected to have been private.

Taking into account the above, that Ms Campbell's comments were not of a private or sensitive nature, that her identify was obscured so that no one beyond her immediate acquaintances would have recognised her, and that she was filmed in an area which was accessible to the public, Ofcom considered that Ms Campbell did not have a legitimate expectation of privacy in relation to the broadcast of her comments.

Having found that Ms Campbell did not have a legitimate expectation of privacy in relation to the broadcast of her comments, it was not necessary for Ofcom to consider whether any intrusion into Ms Campbell's privacy was warranted.

**Accordingly, Ofcom has not upheld Ms Charlotte Walker's complaint of unfair treatment on her behalf, and the complaint of unwarranted infringement of privacy in the programme as broadcast on Ms Charlotte Walker's behalf and on behalf of Walkers Distributions Limited and Ms Shireen Campbell.**

## Not Upheld

### Complaint by Mr Neil Jordan

*Sky Sports News, 21 January 2013*

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#### Summary

Ofcom has not upheld this complaint of unwarranted infringement of privacy in the programmes as broadcast made by Mr Neil Jordan.

Several editions of *Sky Sports News* on 21 January 2013 featured a report about the conviction of Mr William Blything for racially abusing two Premier League football players during a football match. The report included footage of Mr Jordan as he left the court after he had appeared as a witness in the proceedings against Mr Blything.

Ofcom found that in the particular circumstances of this case Mr Jordan did not have a legitimate expectation of privacy with regard to the inclusion of the footage of him in the programmes as broadcast. His privacy was therefore not unwarrantably infringed in the programmes as broadcast in this respect.

#### Introduction

On 21 January 2013, Sky Sports broadcast a number of news bulletins which included a report about the conviction of Mr William Blything for racially abusing two Premier League footballers during a football match on 21 October 2012. The report included footage of Mr Neil Jordan walking from the court building after he had appeared as a witness in the proceedings against Mr Blything.

This footage was shown alongside the following commentary:

*"Fellow Everton fan, Neil Jordan, told the court he was so upset by Blything's abuse, which he said went on throughout the game, that he took this picture of him and showed it to stewards who later removed him [Mr Blything] from the grounds".*

Mr Jordan's voice was not heard in the report.

Following the broadcast of the programmes, Mr Jordan complained to Ofcom that his privacy was unwarrantably infringed in the programmes as broadcast.

#### Summary of the complaint and the broadcaster's response

Mr Jordan complained that his privacy was unwarrantably infringed in the programmes as broadcast because footage of him leaving court, having given evidence in a case, was included in the programmes despite having refused the request for an on-camera interview and having told the reporter that he did not wish to appear.

Mr Jordan said that when he finished talking to the reporter he had understood that the programme makers had agreed that they would not use the footage of him leaving the court building in the programmes. He added that, in his view, there was no public interest in including the footage of him in the programmes.

In response, British Sky Broadcasting Limited (“BSkyB”), the licensee for the Sky Sports News channel, said that the footage of Mr Jordan which was broadcast was filmed as he was leaving a court building after having acted as a witness in a public hearing. It stated that Mr Jordan did not have a legitimate expectation of privacy with regard to the broadcast of this material.

BSkyB said that the guidance to Section Eight of the Ofcom Broadcasting Code (“the Code”) sets out the meaning of “legitimate expectation of privacy” and provides various factors to consider in determining whether or not such an expectation exists in any case. Specifically, “the place and the nature of the information, activity or condition in question, the extent to which [the activity] is in the public domain...and whether the individual concerned is already in the public eye”. The licensee said that the activity here was Mr Jordan leaving court and the information at issue was images of the same activity. It added that leaving court via a public place is not a private activity and there was nothing in the relevant footage which was personal, sensitive, offensive, distressing or damaging to Mr Jordan. BSkyB argued that, on the contrary, Mr Jordan was portrayed in a positive light and only featured briefly in the report.

BSkyB said that, prior to the broadcast, Mr Jordan had already been named extensively in the press in relation to Mr Blything’s acts at the football match and the subsequent criminal proceedings. It argued that Mr Jordan was therefore already in the public eye and the fact that he was to be a witness in the proceedings was in the public domain. BSkyB also said that Mr Jordan had publicly posted an image of Mr Blything on the online social networking service, Twitter, which also contained pictures of himself. Therefore, anyone who read Mr Jordan’s Twitter messages would have been able to access Mr Jordan’s image.

In relation to Mr Jordan’s complaint that he claimed that he had “specifically requested not to be shown in the programmes” and that he “firmly” told the reporter he “did not want to be shown on TV”, BSkyB said that, as set out in his written statement (a copy of which was provided to Ofcom), the reporter recalled explaining to Mr Jordan that his image would be used. BSkyB acknowledged that, notwithstanding the reporter’s recollection of events, it appeared that a misunderstanding occurred in this case.

BSkyB argued that it was not possible for Mr Jordan to create a legitimate expectation of privacy simply by stating that he did not want his image to be used in the programme. It said that a person cannot create an expectation of privacy where no such underlying right exists. BSkyB said that if such an expectation could be created, it would allow individuals who were the subject of current affairs and in the public eye to create for themselves a right to privacy when performing public activities in public places, simply by stating that they did not want their image to be used. It added that this would significantly limit broadcasters’ freedom of expression and severely restrict the scope of footage which could be broadcast.

BSkyB concluded that in the absence of any legitimate expectation of privacy on the part of Mr Jordan, and therefore the absence of any infringement of such privacy by Sky Sports News, it was not necessary to consider whether or not the broadcasting of the footage of Mr Jordan leaving court was “warranted”. However, it added that, if Ofcom considered that Mr Jordan’s privacy was infringed (which it did not accept) the broadcaster’s right to freedom of expression and the public interest in broadcasting the footage would outweigh any right to privacy on his part. This was because any legitimate expectation of privacy in relation to his image on Mr Jordan’s part was negligible for all the reasons set out above and because there was a significant

public interest in broadcasting a full and detailed report of a criminal trial on an important and controversial issue. Specifically, BSkyB said that it was important for Sky Sports News to broadcast the footage in order to demonstrate the role of the judicial system, as well as witnesses, in combating criminal behaviour such as that of Mr Blything and that this was particularly the case given the topical nature of racial abuse and football-related crimes at the time the report was broadcast.

### **Representations on Ofcom's Preliminary View**

Ofcom prepared a Preliminary View on this case that Mr Jordan's complaint should not be upheld. Only the complainant commented on that Preliminary View. The main points made by Mr Jordan which are relevant to the complaint as entertained<sup>1</sup> were, in summary, as set out below.

Mr Jordan argued that, in contrast to Ofcom's position, as set out in the Preliminary View, he did have a legitimate expectation of privacy with regard to the broadcast of the relevant footage. In particular, Mr Jordan said that an innocent witness (as opposed to a person who has been convicted of a crime) has a right to expect not to be filmed outside a court. He also disputed the reporter's recollection of their discussion at the time the filming took place. Mr Jordan said that: the reporter promised him that the footage of him would not be shown; given that he had refused to give an on-camera interview it was patently clear that he had asked not to be shown; and the reporter's statement that he informed Mr Jordan that his image would be shown was "an outright lie".

Mr Jordan also disputed the broadcaster's arguments that the inclusion of footage of him leaving the court was in the public interest (saying that it added nothing to the report) and that upholding this complaint would have a chilling effect on freedom of speech.

As noted above, BSkyB chose not to respond to Ofcom's Preliminary View and the complainant's comments on it.

### **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 and supporting material. Ofcom also took careful account of the representations made by the complainant in response to

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<sup>1</sup> Ofcom observed that within his representations on the Preliminary View Mr Jordan raised the issue of compensation. It should be noted that Ofcom is not empowered to deal with this issue and it does not form part of the complaint currently being considered.

Ofcom's Preliminary View on this complaint. However, it concluded that the representations did not raise any substantive points which affected Ofcom's Preliminary View not to uphold the complaint.

Ofcom considered Mr Jordan's complaint that his privacy was unwarrantably infringed in the programmes as broadcast in that footage of him leaving the court building was included in the programmes without his consent.

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

This is reflected in how Ofcom applies Rule 8.1 of 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 Mr Jordan's privacy in the broadcast of the programmes, Ofcom first assessed the extent to which he had a legitimate expectation of privacy in respect of the broadcast of the relevant material. 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 observed that footage of Mr Jordan was shown within a news report about the conviction of Mr William Blything for racially abusing two Premier League footballers during a football match. The report featured in a number of editions of *Sky Sports News* on 21 January 2013. Specifically, Mr Jordan was shown leaving the court building after appearing as a witness in the proceedings against Mr Blything. This footage of Mr Jordan was shown alongside the following commentary:

*"Fellow Everton fan, Neil Jordan, told the court he was so upset by Blything's abuse, which he said went on throughout the game, that he took this picture of him and showed it to stewards who later removed him [Mr Blything] from the grounds".*

A photograph of Mr Blything was also shown.

Ofcom recognised that, as set out in the "Summary of the complaint and the broadcaster's response" above, Mr Jordan's recollection or understanding of what he was told by the reporter with regard to the inclusion of his image in the programmes, notwithstanding his decision not to give the programme an on-camera interview and his request not to appear on camera, differed from that of the reporter. It also recognised that this dispute was reflected within the complainant's representations on the Preliminary View. However, Ofcom observed that the footage of Mr Jordan included in the programmes was filmed while he was in a public place (i.e. outside a court building) and that he was not undertaking any action which could be considered to be private or personal to him. Ofcom also considered that the information about Mr Jordan which was included in the reports (namely, that he had acted as a witness for the prosecution at Mr Blything's trial, had told the court that he had been upset by Mr Blything's abuse, and had therefore taken a photograph of him and had shown it to the stewards) was already in the public domain prior to the broadcast of the report in

question. This was because the information that Mr Jordan would act as a witness against Mr Blything had already been reported in the press prior to his appearance in court and because immediately prior to these broadcasts, Mr Jordan had given evidence in open court. Those who appear as witnesses in trials do so in a public capacity and their appearance in court is normally therefore a matter of public record.

Ofcom recognises that television is a visual medium and in Ofcom's view it is important that the process of justice is as far as possible transparent and the legitimate subject of journalistic inquiry. In this respect it is very important that Ofcom takes due and appropriate account of the right to freedom of expression of the broadcaster and audience.

In addition, in Ofcom's view, no information of a personal or sensitive nature to Mr Jordan was included in the programmes as broadcast.

Therefore, taking all the factors above into account, Ofcom did not consider that Mr Jordan had a legitimate expectation of privacy in relation to the broadcast of the footage of him leaving the court along with a brief description of the evidence he gave in court. Given this conclusion, it was not necessary for Ofcom to consider whether any infringement to Mr Jordan's privacy was warranted.

**Accordingly, Ofcom found that Mr Jordan's complaint of unwarranted infringement of privacy in the programmes as broadcast should not be upheld.**

## Other Programmes Not in Breach

Up to 22 July 2013

| Programme                          | Broadcaster       | Transmission Date | Categories                          |
|------------------------------------|-------------------|-------------------|-------------------------------------|
| Advertisements                     | CNN International | 23/04/2013        | Advertising scheduling              |
| Advertisements                     | PTV Global        | 24/03/2013        | Advertising scheduling              |
| Channel 4 Racing                   | Channel 4         | 08/05/2013        | Promotion of products/services (tv) |
| Christian O'Connell Breakfast Show | Absolute Radio    | 17/04/2012        | Scheduling                          |
| Harry Enfield and Chums            | Gold              | 12/06/2013        | Scheduling                          |
| Jackpot247                         | ITV               | 31/03/2013        | Gambling                            |
| Programming                        | Geo TV            | 08/05/2013        | Other                               |
| The Village                        | BBC 1             | 17/07/2013        | Under 18s in programmes             |
| Utopia                             | Channel 4         | 29/01/2013        | Generally accepted standards        |



## Complaints Assessed, not Investigated

Between 2 and 22 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        | 07/06/2013        | Generally accepted standards              | 1                    |
| 118 118 sponsorship credits      | ITV2             | 14/07/2013        | Sponsorship                               | 1                    |
| 118 118 sponsorship credits      | Various          | n/a               | Disability discrimination/offence         | 1                    |
| 4Ramadan (trailer)               | More4            | 04/07/2013        | Generally accepted standards              | 1                    |
| 4thought.tv                      | Channel 4        | 26/06/2013        | Sexual orientation discrimination/offence | 2                    |
| 5 Live Breakfast                 | BBC Radio 5 Live | 03/07/2013        | Outside of remit / other                  | 1                    |
| A Very British Ramadan           | Channel 4        | 08/07/2013        | Outside of remit / other                  | 1                    |
| A Very British Ramadan           | Channel 4        | 11/07/2013        | Outside of remit / other                  | 1                    |
| Advertisement                    | CBS Reality      | n/a               | Hypnotic and other techniques             | 1                    |
| Advertisement                    | Smooth Radio     | 07/06/2013        | Commercial communications on radio        | 1                    |
| Advertisement                    | STV              | n/a               | Political advertising                     | 1                    |
| Aldi's sponsorship of Neighbours | Channel 5        | n/a               | Scheduling                                | 1                    |
| All Star Family Fortunes         | ITV              | 06/07/2013        | Outside of remit / other                  | 1                    |
| All Star Mr and Mrs              | ITV              | 14/07/2013        | Violence and dangerous behaviour          | 1                    |
| Andre Rieu                       | Sky Arts 2       | 16/06/2013        | Outside of remit / other                  | 1                    |
| Andy Bush                        | Absolute Radio   | 08/07/2013        | Generally accepted standards              | 1                    |
| Animal Heroes                    | ITV              | 11/06/2013        | Generally accepted standards              | 2                    |
| Anneka Rice                      | BBC Radio 2      | 06/07/2013        | Outside of remit / other                  | 1                    |
| Anthony Davis                    | LBC 97.3 FM      | 01/07/2013        | Generally accepted standards              | 1                    |
| Australia with Simon Reeve       | BBC 2            | 10/07/2013        | Outside of remit / other                  | 1                    |
| BBC News                         | BBC 1            | 31/05/2013        | Generally accepted standards              | 1                    |
| BBC News                         | BBC 1            | 07/07/2013        | Outside of remit / other                  | 1                    |
| BBC News                         | BBC 1            | 09/07/2013        | Outside of remit / other                  | 1                    |
| BBC News                         | BBC 1            | 12/07/2013        | Generally accepted standards              | 1                    |

|   |                         |            |                                   |   |
|---|-------------------------|------------|-----------------------------------|---|
| BBC News  | BBC 1                   | 12/07/2013 | Outside of remit / other          | 1 |
| BBC News  | BBC 1                   | 15/07/2013 | Outside of remit / other          | 1 |
| BBC News  | BBC 1                   | 17/07/2013 | Outside of remit / other          | 1 |
| BBC News 24   | BBC News                | 14/07/2013 | Outside of remit / other          | 1 |
| BBC News at One   | BBC 1                   | 28/06/2013 | Outside of remit / other          | 1 |
| BBC News at Six   | BBC 1                   | 09/07/2013 | Outside of remit / other          | 1 |
| BBC News at Ten   | BBC 1                   | 12/07/2013 | Outside of remit / other          | 1 |
| Bear Grylls: Born Survivor                                | Discovery               | 02/06/2013 | Animal welfare                    | 1 |
| Blowin' Up Fridays  | Channel AKA             | 12/07/2013 | Generally accepted standards      | 1 |
| Boulton and Co  | Sky News                | 28/06/2013 | Due accuracy                      | 1 |
| Brady and Hindley: Possession                             | ITV                     | 11/07/2013 | Generally accepted standards      | 6 |
| Breakfast   | BBC 1                   | 11/07/2013 | Outside of remit / other          | 1 |
| Breakfast   | BBC 1                   | 18/07/2013 | Generally accepted standards      | 1 |
| Breakfast   | BBC 1                   | 20/07/2013 | Outside of remit / other          | 1 |
| Breakfast with Matt and Michelle                          | Heart FM (Oxfordshire)  | 10/06/2013 | Generally accepted standards      | 1 |
| Britain and Ireland's Next Top Model                      | Sky Living              | 18/07/2013 | Animal welfare                    | 3 |
| Capital Breakfast   | Capital FM              | 24/06/2013 | Scheduling                        | 1 |
| Capital Breakfast   | Capital FM (Manchester) | 12/07/2013 | Race discrimination/offence       | 1 |
| Casualty  | BBC 1                   | 29/06/2013 | Disability discrimination/offence | 1 |
| Catherine Cookson's The Secret                            | Yesterday               | 23/06/2013 | Scheduling                        | 1 |
| Celebrity Juice   | ITV2                    | 10/07/2013 | Race discrimination/offence       | 1 |
| Channel 4 News  | Channel 4               | 30/05/2013 | Due impartiality/bias             | 1 |
| Channel 4 News  | Channel 4               | 09/07/2013 | Outside of remit / other          | 1 |
| Channel 4 News  | Channel 4               | 14/07/2013 | Due accuracy                      | 1 |
| Channel 4 News  | Channel 4               | 14/07/2013 | Scheduling                        | 1 |
| Channel 4 Weather   | Channel 4               | 11/07/2013 | Outside of remit / other          | 1 |
| Checkatrade.com's sponsorship of All Star Family Fortunes | ITV                     | 06/07/2013 | Sponsorship                       | 1 |
| Christian O'Connell                                       | Absolute Radio          | 08/07/2013 | Generally accepted standards      | 1 |
| Citroen Van's sponsorship of Documentaries on Quest       | Quest                   | 01/07/2013 | Sponsorship                       | 1 |
| Come Dine with Me   | Channel 4               | 06/07/2013 | Race discrimination/offence       | 1 |

|  |                |            |                                     |    |
|--|----------------|------------|-------------------------------------|----|
| Comedy Central Summer (trailer)                | Comedy Central | 07/07/2013 | Generally accepted standards        | 1  |
| Competition                                    | UKTV           | n/a        | Competitions                        | 1  |
| Coronation Street                              | ITV            | 01/07/2013 | Promotion of products/services      | 1  |
| Coronation Street                              | ITV            | 01/07/2013 | Outside of remit / other            | 1  |
| Coronation Street                              | ITV            | 01/07/2013 | Promotion of products/services      | 1  |
| Coronation Street                              | ITV            | 08/07/2013 | Generally accepted standards        | 1  |
| Coronation Street                              | ITV            | 10/07/2013 | Generally accepted standards        | 1  |
| Coronation Street                              | ITV            | 12/07/2013 | Gender discrimination/offence       | 1  |
| Coronation Street                              | ITV            | 12/07/2013 | Race discrimination/offence         | 18 |
| Coronation Street                              | ITV            | 15/07/2013 | Drugs, smoking, solvents or alcohol | 1  |
| Coronation Street                              | ITV            | 15/07/2013 | Generally accepted standards        | 10 |
| Coronation Street                              | ITV            | 17/07/2013 | Generally accepted standards        | 1  |
| Coronation Street                              | ITV            | n/a        | Drugs, smoking, solvents or alcohol | 1  |
| Coronation Street                              | ITV            | n/a        | Product placement                   | 1  |
| Cowboy Traders                                 | Channel 5      | 04/07/2013 | Materially misleading               | 1  |
| Cowboy Traders                                 | Channel 5      | 11/07/2013 | Generally accepted standards        | 2  |
| Cowboy Traders                                 | Channel 5      | 13/07/2013 | Generally accepted standards        | 2  |
| Daybreak                                       | ITV            | 22/07/2013 | Generally accepted standards        | 1  |
| Diaries of a Broken Mind                       | BBC 3          | 17/07/2013 | Generally accepted standards        | 1  |
| Dickinson's Real Deal                          | ITV            | 04/07/2013 | Generally accepted standards        | 1  |
| Dinner Date                                    | ITV            | 29/06/2013 | Generally accepted standards        | 1  |
| Dirty Money                                    | Challenge      | 09/07/2013 | Scheduling                          | 1  |
| Dispatches                                     | Channel 4      | 01/07/2013 | Fairness                            | 1  |
| Dispatches                                     | Channel 4      | 01/07/2013 | Generally accepted standards        | 1  |
| Drama  | Drama          | n/a        | Materially misleading               | 1  |
| Drive Time                                     | Talk Sport     | 01/07/2013 | Gender discrimination/offence       | 1  |
| EastEnders                                     | BBC 1          | 04/07/2013 | Violence and dangerous behaviour    | 1  |
| EastEnders                                     | BBC 1          | 11/07/2013 | Violence and dangerous behaviour    | 2  |
| EastEnders                                     | BBC1           | n/a        | Race discrimination/offence         | 1  |
| E-lights' sponsorship of Talksport Travel News | Talksport      | n/a        | Commercial communications on radio  | 4  |
| Embarrassing Bodies                            | Channel 4      | n/a        | Scheduling                          | 1  |

|  |                   |            |  |   |
|--|-------------------|------------|--|---|
| Emmerdale  | ITV               | 27/06/2013 | Generally accepted standards             | 1 |
| Emmerdale  | ITV               | 11/07/2013 | Generally accepted standards             | 1 |
| Emmerdale  | ITV               | 11/07/2013 | Religious/Beliefs discrimination/offence | 1 |
| Emmerdale  | ITV               | 16/07/2013 | Generally accepted standards             | 1 |
| Eurovision Song Contest Semi-Finals              | BBC3              | 16/05/2013 | Offensive language                       | 1 |
| Eye Spy  | Channel 4         | 27/06/2013 | Materially misleading                    | 2 |
| Eye Spy (trailer)                                | Channel 4         | 21/06/2013 | Materially misleading                    | 1 |
| Foxy Bingo's sponsorship of The Jeremy Kyle Show | ITV               | 03/07/2013 | Generally accepted standards             | 1 |
| Foxy Bingo's sponsorship of The Jeremy Kyle Show | ITV               | 05/07/2013 | Generally accepted standards             | 1 |
| Free Speech                                      | BBC 3             | 12/06/2013 | Outside of remit / other                 | 1 |
| Goalmouth  | Disney            | 21/06/2013 | Offensive language                       | 1 |
| Golf: The Open                                   | BBC 2             | 19/07/2013 | Nudity                                   | 2 |
| Great British Budget Menu                        | BBC 1             | 11/07/2013 | Generally accepted standards             | 1 |
| Greg James                                       | BBC Radio 1       | 25/06/2013 | Generally accepted standards             | 1 |
| Halfords' sponsorship of Happy Motoring on Dave  | Dave              | 06/07/2013 | Generally accepted standards             | 1 |
| Hannibal   | Sky Living        | 16/07/2013 | Outside of remit / other                 | 4 |
| Heart Breakfast                                  | Heart FM (Sussex) | 20/06/2013 | Generally accepted standards             | 1 |
| Hollyoaks  | Channel 4         | 10/07/2013 | Scheduling                               | 1 |
| Horrid Henry                                     | CITV              | 12/07/2013 | Scheduling                               | 1 |
| ITV News at Ten and Weather                      | ITV               | 04/06/2013 | Generally accepted standards             | 1 |
| ITV News at Ten and Weather                      | ITV               | 11/07/2013 | Generally accepted standards             | 1 |
| ITV News West Country                            | ITV West Country  | 13/07/2013 | Outside of remit / other                 | 1 |
| Jameela Jamil sits in for Sara Cox               | BBC Radio 1       | 28/06/2013 | Disability discrimination/offence        | 1 |
| James O'Brian                                    | LBC 97.3 FM       | 28/06/2013 | Due impartiality/bias                    | 1 |
| Jeremy Vine                                      | BBC Radio 2       | 10/07/2013 | Generally accepted standards             | 1 |
| Johnny English                                   | UTV               | 07/07/2013 | Religious/Beliefs discrimination/offence | 1 |
| Karate Kid III                                   | Watch             | 16/06/2013 | Offensive language                       | 1 |
| Kent Gardening Programme                         | Kent Radio        | 30/06/2013 | Outside of remit / other                 | 1 |
| Kill Zombie! (trailer)                           | Horror+           | 13/06/2013 | Generally accepted standards             | 1 |
| Kjelles Smakresa                                 | TV3               | 14/05/2013 | Due impartiality/bias                    | 1 |
| Law and Order: UK                                | ITV               | 14/07/2013 | Generally accepted standards             | 3 |
| Lee Nelson's Well Funny People                   | BBC 3             | 12/07/2013 | Race discrimination/offence              | 1 |

|   |                       |            |  |   |
|---|-----------------------|------------|--|---|
| Let's Do Lunch with Gino and Mel            | ITV                   | 08/07/2013 | Scheduling                               | 2 |
| Let's Do Lunch with Gino and Mel            | ITV                   | 11/07/2013 | Sexual material                          | 1 |
| Let's Do Lunch with Gino and Mel            | ITV                   | 19/07/2013 | Scheduling                               | 1 |
| Live and Let Die                            | Sky Movies 007        | 21/07/2013 | Race discrimination/offence              | 1 |
| Live Cricket England v New Zealand          | Sky Sports 1          | 25/06/2013 | Race discrimination/offence              | 1 |
| Lorraine                                    | ITV                   | 18/07/2013 | Generally accepted standards             | 1 |
| Love and Marriage                           | ITV                   | 26/06/2013 | Generally accepted standards             | 1 |
| Luther                                      | BBC 1                 | 02/07/2013 | Violence and dangerous behaviour         | 4 |
| Malcolm Leys Breakfast Show                 | TMCR 95.3 FM          | 29/06/2013 | Generally accepted standards             | 1 |
| Match of the Day Live                       | BBC 1                 | 30/06/2013 | Generally accepted standards             | 1 |
| Me and My Guide Dog                         | ITV                   | 03/07/2013 | Scheduling                               | 2 |
| Midlands Today                              | BBC 1                 | 11/07/2013 | Gender discrimination/offence            | 1 |
| Mock the Week                               | BBC 2                 | 13/06/2013 | Generally accepted standards             | 1 |
| Mock the Week                               | BBC 2                 | 13/06/2013 | Race discrimination/offence              | 1 |
| Monarch of the Glen                         | Drama                 | 10/07/2013 | Advertisements                           | 1 |
| Most Haunted                                | Pick TV               | 17/06/2013 | Scheduling                               | 1 |
| Mrs Brown's Boys                            | BBC 1                 | 21/06/2013 | Animal welfare                           | 1 |
| Muller Amore's sponsorship of First Dates   | Channel 4             | 04/07/2013 | Gender discrimination/offence            | 1 |
| News  | Radio Scilly 107.9 FM | 05/07/2013 | Fairness                                 | 1 |
| Newsbeat                                    | BBC Radio 1           | 02/07/2013 | Scheduling                               | 2 |
| Newsnight                                   | BBC 2                 | 10/07/2013 | Outside of remit / other                 | 1 |
| Newspaper Review                            | BBC News              | 28/06/2013 | Religious/Beliefs discrimination/offence | 1 |
| Nick and Margaret: We All Pay Your Benefits | BBC 1                 | 11/07/2013 | Materially misleading                    | 5 |
| Nick and Margaret: We All Pay Your Benefits | BBC 1                 | 11/07/2013 | Outside of remit / other                 | 1 |
| Nick and Margaret: We All Pay Your Benefits | BBC 1                 | 15/07/2013 | Materially misleading                    | 1 |
| Nick and Margaret: We All Pay Your Benefits | BBC 1                 | 18/07/2013 | Disability discrimination/offence        | 2 |
| Nick and Margaret: We All Pay Your Benefits | BBC 1                 | 18/07/2013 | Materially misleading                    | 1 |
| Nick and Margaret: We All Pay Your Benefits | BBC 1                 | 18/07/2013 | Outside of remit / other                 | 1 |
| Nina and the Neurons                        | CBeebies              | n/a        | Product placement                        | 1 |
| Only Fools and Horses                       | BBC 1                 | 11/07/2013 | Offensive language                       | 1 |
| Party People                                | ITV                   | 11/07/2013 | Generally accepted standards             | 1 |
| Paul Merton in India                        | Channel 5             | 05/07/2013 | Scheduling                               | 1 |

|  |                 |            |   |   |
|--|-----------------|------------|---|---|
| Perfection                             | BBC 1           | 16/07/2013 | Outside of remit / other                  | 1 |
| Playhouse Presents: Psychobitches      | Sky Arts 1      | 04/07/2013 | Generally accepted standards              | 1 |
| Press Preview                          | Sky News        | 18/07/2013 | Generally accepted standards              | 1 |
| Programming                            | Kismet Radio    | 29/06/2013 | Religious/Beliefs discrimination/offence  | 1 |
| Programming                            | Prime TV        | 12/05/2013 | Crime                                     | 1 |
| Programming                            | BBC             | n/a        | Promotion of products/services            | 1 |
| Programming                            | BBC Radio 4     | n/a        | Outside of remit / other                  | 1 |
| Programming                            | Various         | 01/01/2009 | Outside of remit / other                  | 1 |
| Programming                            | Various         | n/a        | Nudity                                    | 1 |
| Q and A                                | Iqra TV         | 22/05/2013 | Religious/Beliefs discrimination/offence  | 1 |
| QI                                     | Dave            | 30/06/2013 | Offensive language                        | 1 |
| Question Time                          | BBC 1           | 13/06/2013 | Outside of remit / other                  | 3 |
| Question Time                          | BBC 1           | 27/06/2013 | Generally accepted standards              | 1 |
| Raiders of the Lost Ark                | BBC 1           | 20/07/2013 | Offensive language                        | 1 |
| Ramadan                                | Showcase 2      | 05/07/2013 | Generally accepted standards              | 1 |
| Rat Bastards                           | Discovery       | 24/06/2013 | Animal welfare                            | 1 |
| Competition                            | Real Radio      | 26/06/2013 | Competitions                              | 1 |
| River Monsters                         | ITV             | 29/06/2013 | Animal welfare                            | 1 |
| Road Wars                              | Pick TV         | 02/07/2013 | Generally accepted standards              | 1 |
| Russell Howard's Good News             | BBC 3           | 28/06/2013 | Generally accepted standards              | 1 |
| Russell Howard's Good News             | BBC 3           | 20/07/2013 | Generally accepted standards              | 1 |
| Scandal                                | More4           | 04/07/2013 | Outside of remit / other                  | 1 |
| Scandal (trailer)                      | More4           | 24/06/2013 | Scheduling                                | 1 |
| Scandal (trailer)                      | More4           | 03/07/2013 | Sexual orientation discrimination/offence | 2 |
| Seven Seas' sponsorship of ITV Weather | ITV             | 26/06/2013 | Sexual material                           | 1 |
| Skins                                  | E4              | 01/07/2013 | Outside of remit / other                  | 1 |
| Sky News                               | Sky News        | 12/07/2013 | Generally accepted standards              | 1 |
| Sky News                               | Sky News        | 17/07/2013 | Generally accepted standards              | 1 |
| Sky News at Ten                        | Sky News        | 14/07/2013 | Outside of remit / other                  | 1 |
| Sky Sports News                        | Sky Sports News | 13/07/2013 | Scheduling                                | 1 |
| Sky Sports News                        | Sky Sports News | n/a        | Outside of remit / other                  | 1 |
| Some Vicars with Jokes                 | BBC 4           | 10/07/2013 | Generally accepted standards              | 1 |
| SpongeBob SquarePants                  | Nickelodeon     | 01/02/2013 | Offensive language                        | 1 |

|                               |                  |            |  |   |
|-------------------------------|------------------|------------|--|---|
| Station ident                 | 2BR              | 25/06/2013 | Scheduling                               | 1 |
| Subtitles                     | BBC              | n/a        | Television Access Services               | 2 |
| Subtitles                     | Channel 5        | n/a        | Television Access Services               | 1 |
| Subtitles                     | Movie Mix        | n/a        | Television Access Services               | 1 |
| Subtitles                     | Various          | n/a        | Television Access Services               | 2 |
| Subtitles                     | Viva             | n/a        | Television Access Services               | 1 |
| Sunday Brunch                 | Channel 4        | 16/06/2013 | Materially misleading                    | 1 |
| Sunday Politics               | BBC 1            | 16/06/2013 | Outside of remit / other                 | 4 |
| Sunday Politics               | BBC 1            | 07/07/2013 | Outside of remit / other                 | 1 |
| Sunrise                       | Sky News         | 21/07/2013 | Due impartiality/bias                    | 1 |
| Supersize v Superskinny       | Channel 4        | 11/07/2013 | Scheduling                               | 1 |
| Tay FM Breakfast with Webster | Radio Tay FM     | 15/07/2013 | Generally accepted standards             | 1 |
| Ted                           | Sky Comedy       | 06/07/2013 | Scheduling                               | 1 |
| The Apprentice                | BBC 1            | 03/07/2013 | Generally accepted standards             | 1 |
| The Apprentice                | BBC 1            | 10/07/2013 | Gender discrimination/offence            | 1 |
| The Big C (trailer)           | E4               | 06/07/2013 | Nudity                                   | 1 |
| The Breakfast Show            | BBC Radio London | 17/06/2013 | Scheduling                               | 1 |
| The Briefs                    | ITV              | 18/07/2013 | Generally accepted standards             | 1 |
| The Call Centre               | BBC 3            | 02/07/2013 | Race discrimination/offence              | 1 |
| The Chase                     | ITV              | 18/07/2013 | Fairness                                 | 1 |
| The Fall                      | BBC 2            | 10/06/2013 | Generally accepted standards             | 1 |
| The Gadget Show               | Channel 5        | n/a        | Advertising/editorial distinction        | 1 |
| The Hotel Inspector           | Channel 5        | 04/07/2013 | Offensive language                       | 2 |
| The Inbetweeners              | Channel 4        | 12/05/2013 | Generally accepted standards             | 1 |
| The Inbetweeners              | E4               | 13/07/2013 | Nudity                                   | 1 |
| The Jeremy Kyle Show          | ITV              | 21/06/2013 | Generally accepted standards             | 1 |
| The Jeremy Kyle Show          | ITV              | 18/07/2013 | Offensive language                       | 1 |
| The Million Pound Drop Live   | Channel 4        | 28/06/2013 | Generally accepted standards             | 4 |
| The Million Pound Drop Live   | Channel 4        | 06/07/2013 | Sexual material                          | 2 |
| The Million Pound Drop Live   | Channel 4        | 20/07/2013 | Generally accepted standards             | 1 |
| The Motorbike Show            | ITV4             | 10/07/2013 | Harm                                     | 2 |
| The Murder Trial              | Channel 4        | n/a        | Outside of remit / other                 | 1 |
| The Muslim Premier League     | BBC 1            | 07/07/2013 | Religious/Beliefs discrimination/offence | 1 |

|                                       |                        |            |                                    |    |
|---------------------------------------|------------------------|------------|------------------------------------|----|
| The National Lottery: In It to Win It | BBC 1                  | 13/07/2013 | Outside of remit / other           | 1  |
| The One Show                          | BBC 1                  | 02/07/2013 | Generally accepted standards       | 1  |
| The One Show                          | BBC 1                  | 10/07/2013 | Promotion of products/services     | 1  |
| The Sports Bar                        | Talksport              | 27/06/2013 | Race discrimination/offence        | 1  |
| The Three Legends                     | Star Radio             | 01/03/2013 | Generally accepted standards       | 1  |
| The Twelfth                           | BBC 1 Northern Ireland | 12/07/2013 | Outside of remit / other           | 1  |
| The Voice UK                          | BBC 1                  | 15/06/2013 | Generally accepted standards       | 1  |
| The Voice UK                          | BBC 1                  | 22/06/2013 | Nudity                             | 2  |
| The Wright Stuff                      | Channel 5              | 26/06/2013 | Generally accepted standards       | 1  |
| The Wright Stuff                      | Channel 5              | 08/07/2013 | Generally accepted standards       | 1  |
| This Morning                          | ITV                    | 03/07/2013 | Generally accepted standards       | 28 |
| This Morning                          | ITV                    | 04/07/2013 | Under 18s in programmes            | 1  |
| This Morning                          | ITV                    | 05/07/2013 | Offensive language                 | 1  |
| This Morning                          | ITV                    | 08/07/2013 | Generally accepted standards       | 1  |
| This Morning                          | ITV                    | 11/07/2013 | Generally accepted standards       | 1  |
| This Morning                          | ITV                    | 11/07/2013 | Scheduling                         | 3  |
| This Week With Abdulullah             | Betar Bangla           | 09/03/2013 | Due impartiality/bias              | 1  |
| Time 106.6 FM                         | Time 106.6 FM          | 01/07/2013 | Outside of remit / other           | 1  |
| Tipping Point                         | ITV                    | 08/07/2013 | Competitions                       | 1  |
| Tipping Point                         | ITV                    | 10/07/2013 | Competitions                       | 1  |
| Tipping Point                         | ITV                    | 14/07/2013 | Generally accepted standards       | 1  |
| Today                                 | BBC Radio 4            | 11/07/2013 | Generally accepted standards       | 1  |
| Tonight                               | ITV                    | 04/07/2013 | Materially misleading              | 1  |
| Top Gear                              | BBC 2                  | 07/07/2013 | Materially misleading              | 2  |
| Top Gear                              | BBC 2                  | 07/07/2013 | Sexual material                    | 1  |
| Total Drama Island                    | Kix!                   | 20/06/2013 | Sexual material                    | 1  |
| Tour De France 2013 Live              | ITV4                   | 02/07/2013 | Generally accepted standards       | 1  |
| Tour De France 2013 Live              | ITV4                   | 06/07/2013 | Advertisements                     | 2  |
| Traffic Cops                          | BBC 3                  | 18/06/2013 | Offensive language                 | 1  |
| TV Burp                               | ITV                    | n/a        | Violence and dangerous behaviour   | 1  |
| Violence against women                | Various                | n/a        | Violence and dangerous behaviour   | 1  |
| Waterloo Road                         | BBC 1                  | 16/05/2013 | Transgender discrimination/offence | 1  |
| Wild Shepherdess with Kate Humble     | BBC 2                  | 28/06/2013 | Animal welfare                     | 1  |



|                                   |       |            |                                  |   |
|-----------------------------------|-------|------------|----------------------------------|---|
| Wild Shepherdess with Kate Humble | BBC 2 | 05/07/2013 | Violence and dangerous behaviour | 1 |
| Wimbledon 2013                    | BBC 1 | 26/06/2013 | Race discrimination/offence      | 1 |
| Wimbledon 2013                    | BBC 1 | 03/07/2013 | Generally accepted standards     | 1 |
| Wimbledon 2013                    | BBC 1 | 03/07/2013 | Outside of remit / other         | 1 |
| Wimbledon 2013                    | BBC 1 | 05/07/2013 | Race discrimination/offence      | 1 |
| Wimbledon 2013                    | BBC 1 | 06/07/2013 | Outside of remit / other         | 1 |
| Wimbledon 2013                    | BBC 1 | 07/07/2013 | Outside of remit / other         | 2 |
| Wimbledon 2013                    | BBC 2 | 29/06/2013 | Age discrimination/offence       | 1 |
| Wimbledon 2013                    | BBC 2 | 29/06/2013 | Due impartiality/bias            | 1 |
| Wimbledon 2013                    | BBC 2 | 02/07/2013 | Generally accepted standards     | 1 |
| Wire in the Blood                 | ITV3  | 26/06/2013 | Violence and dangerous behaviour | 1 |
| Your Face Sounds Familiar         | ITV   | 29/06/2013 | Scheduling                       | 1 |
| Your Face Sounds Familiar         | ITV   | 06/07/2013 | Materially misleading            | 1 |
| Your Money, Their Tricks          | BBC 1 | 10/07/2013 | Outside of remit / other         | 1 |
| Your Money, Their Tricks          | BBC 1 | 17/07/2013 | Outside of remit / other         | 1 |

## Investigations List

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

Here is an alphabetical list of new investigations launched between 4 and 24 July 2013.

| <b>Programme</b>                                    | <b>Broadcaster</b> | <b>Transmission date</b> |
|---|--------------------|--------------------------|
| Advertising minutage                                | Aaj Tak            | 21/05/2013               |
| Advertising minutage                                | Movies 24          | 27/05/2013               |
| Advertising minutage                                | Rishtey            | Various                  |
| Advertising scheduling                              | ESPN Classic       | 04/05/2013               |
| Big Brother   | Channel 5          | 15/07/2013               |
| Big Brother's Bit on the Side                       | Channel 5          | 16/07/2013               |
| Blood+ (trailer)                                    | Animax             | 06/06/2013               |
| Britain's Got Talent                                | ITV                | Various                  |
| Chat Girl TV 2                                      | ExGirlfriends      | 04/06/2013               |
| Dispatches  | Channel 4          | 15/07/2013               |
| Emmerdale   | ITV                | 09/07/2013               |
| Finspreads' sponsorship of the Sky Financial Report | Sky News           | Various                  |
| Frances and Friends                                 | Sonlife            | 21/06/2013               |
| Playboy TV Chat                                     | Playboy TV Chat    | 28/05/2013               |

**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/>.