

# **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.**

## Note to Broadcasters

### Targeted monitoring exercise – religious programming

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Recent sanctions and investigations by Ofcom into religious programming have highlighted concerns around the compliance of religious content with the Broadcasting Code<sup>1</sup>.

Ofcom therefore formally notifies broadcasters that **we are conducting a targeted monitoring exercise of television services which broadcast religious programmes.**

**Broadcasters are put on notice that any serious or repeated failings in this area will result in Ofcom taking further regulatory action, for example, the consideration of the imposition of statutory sanctions.**

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<sup>1</sup> Ofcom's content sanctions Decisions can be found at:  
<http://stakeholders.ofcom.org.uk/enforcement/content-sanctions-adjudications/>.

## Standards cases

### In Breach

#### **Sponsorship of Tobuo Jibon**

*NTV, 21 December 2013, 20:30*

#### **Accountancy with Mahbub Murshed**

*NTV, 5 January 2014, 15:00*

#### **Aine O Adhikar**

*NTV, 14 December 2013, 12:30*

#### **Education Consultancy with Kazi**

*NTV, 7 January 2014, 20:00*

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### Introduction

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

A viewer complained about various programmes broadcast on this service on the dates and at the times set out above. Firstly, the complainant noted that the web address of Lycamobile – a sponsor of the drama *Tobuo Jibon* – was included in a sponsorship credit for the programme. The complainant considered the credit contained a call to action.

On reviewing the programme, we noted that the sponsorship credits for *Tobou Jibon* included the following:

On-screen text: “*Sponsored by Lycamobile Call the world for less.  
Visit [sponsor’s website].*”

We considered the sponsorship credit 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.”

In addition, the complainant also alerted Ofcom to three programmes – *Accountancy with Mahbub Murshed*, *Aine O Adhikar* and *Education Consultancy with Kazi* – which the complainant considered breached the Code rules in relation to product placement.

On reviewing these programmes, we noted that:

- *Accountancy with Mahbub Murshed* was hosted by Mahbub Murshed, the Director of Mahbub and Co Accountants, which also sponsored the programme. We noted that the programme consisted of a panel, including Mr Murshed, providing advice on accountancy matters to a live studio audience;
- *Aine O Adhikar* featured Mohammed Quamrul Hassan, the Principal Solicitor at MQ Hassan Solicitors, which also sponsored the programme. We noted that the programme consisted of a panel, including Mr Hassan, providing advice to callers on legal matters, including immigration; and
- *Education Consultancy with Kazi* was hosted by Kazi Nazrul Islam, the Managing Director of FBA (UK) Limited, which also sponsored the programme. We noted that the programme consisted of a panel, including Mr Islam, providing advice to callers about academic study in the UK by non-UK citizens.

Section Nine of the Code states that any reference to a sponsor that appears in a sponsored programme (with the exception of the sponsorship credits themselves) as a result of a commercial arrangement with the broadcaster, the programme maker or a connected person will be treated as product placement<sup>1</sup>.

Ofcom considered that *Accountancy with Mahbub Murshed*, *Aine O Adhikar* and *Education Consultancy with Kazi* raised issues warranting investigation under the following Code rule:

Rule 9.12: "Product placement is not permitted in the following:...

b) Consumer advice programmes..."

Ofcom therefore requested comments from the Licensee about how the programme material complied with Rules 9.12(b) and 9.22(a).

## Response

The Licensee did not provide specific comments under either rule.

The Licensee said that, since meeting with Ofcom, it now understood the requirements of Rules 9.12(b) and 9.22(a) and accompanying guidance and had introduced new internal guidelines. ITCE added that it has also engaged the services of an external advisor to assist with compliance.

## Decision

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

One of those objectives is that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with". These obligations include ensuring compliance with the Audiovisual Media Services ("AVMS") Directive.

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<sup>1</sup> Product placement is defined as the inclusion in a programme of, or of a reference to, a product, service or trade mark where the inclusion is for a commercial purpose, and is in return for payment or other valuable consideration to the programme maker, the broadcaster or any person connected with either.



The AVMS 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, which among other things requires that sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action, reflects this requirement.

A further objective is that “the product placement requirements...are met in relation to programmes included in a television service (other than advertisements)”. The Act prohibits the inclusion of product placement in consumer affairs programmes. This is reflected in Rule 9.12(b) of the Code which prohibits product placement in consumer advice programmes made under UK jurisdiction<sup>2</sup>.

#### Lycamobile sponsorship credit around *Tobuo Jibon*

As noted above, Rule 9.22(a) of the Code 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. Instead, 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.

Ofcom’s published Guidance<sup>3</sup> on Rule 9.22(a) states that “[I]t is possible for some sponsors’ slogans and straplines to be used within a credit, for the purpose of helping to identify the sponsor and/or the sponsorship arrangement, provided they do not encourage the purchase or rental of the sponsor’s products/services (e.g. by featuring claims)”.

In this instance, Ofcom considered the sponsorship credit for Lycamobile around *Tobuo Jibon* contained:

- an on-screen advertising message – i.e. the comparative claim, “*call the world for less*”; and
- an on-screen call to action – i.e. “*visit [sponsor’s website]*”.

Because the sponsorship credit contained an advertising claim and a call to action, we concluded it was in breach of Rule 9.22(a) of the Code.

Ofcom has published a number of Findings in relation to sponsorship credits in recent years, and has made clear the need for licensees, including ITCE, to exercise care to ensure that credits do not contain advertising messages. In particular, we

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<sup>2</sup> Details of what constitutes a programme made under UK jurisdiction can be found in Section Nine of the Code at <http://stakeholders.ofcom.org.uk>.

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

noted that in a Finding published on 5 August 2013,<sup>4</sup> the Licensee was found in breach for the broadcast of a sponsorship credit which contained a call to action and a comparative claim about services provided by Lycamobile. At that time, ITCE was put on notice that we would consider whether to take further regulatory action in the event of future breaches of Rule 9.22(a).

We are particularly concerned that the Licensee failed subsequently to put appropriate measures in place to ensure compliance with the rules about sponsorship credits in the Code.

Product Placement in *Accountancy with Mahbub Murshed*, *Aine O Adhikar* and *Education Consultancy with Kazi*

As noted above, Section Nine of the Code states that any reference to a sponsor that appears in a sponsored programme (with the exception of the sponsorship credits themselves) as a result of a commercial arrangement with the broadcaster, the programme maker or a connected person will be treated as product placement. Rule 9.12(b) of the Code explicitly prohibits product placement in consumer advice programmes made under UK jurisdiction.

Ofcom therefore assessed the compliance of each of *Accountancy with Mahbub Murshed*, *Aine O Adhikar* and *Education Consultancy with Kazi* with Rule 9.12(b) of the Code.

*Accountancy with Mahbub Murshed*

Firstly, Ofcom considered whether the appearance of Mahbub Murshed in this programme amounted to product placement. We noted that Mr Murshed is the Director of Mahbub and Co Accountants, the company which sponsored the programme. We considered that his inclusion throughout the programme was a reference to the sponsor and therefore amounted to product placement.

We then considered whether *Accountancy with Mahbub Murshed* was a consumer advice programme<sup>5</sup>. Because the format of the show consisted of a panel including Mr Murshed providing advice on accountancy matters to viewers, we concluded that *Accountancy with Mahbub Murshed* was a consumer advice programme. This programme was therefore in breach of Rule 9.12(b).

*Aine O Adhikar*

With regard to this broadcast, Ofcom again went on to consider if the appearance of Mohammed Quamrul Hassan amounted to product placement. We noted that Mr Hassan is the Principal Solicitor at MQ Hassan Solicitors, the company which sponsored the programme. We considered that his inclusion throughout the programme was a reference to the sponsor and therefore amounted to product placement.

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<sup>4</sup> See Ofcom Broadcast Bulletin, Issue 235, at:  
<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb235/>

<sup>5</sup> Our Guidance to Section Nine of the Code states that consumer advice programmes are shows “offering advice, or including reviews, on products or services”. See paragraph 1.109 of our Guidance at  
<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>.

We then considered whether *Aine O Adhikar* was a consumer advice programme. Because the format of the show consisted of a panel including Mr Hassan providing advice to callers on legal matters, such as immigration, we concluded that *Aine O Adhikar* was a consumer advice programme. The programme was therefore in breach of Rule 9.12(b).

#### *Education Consultancy with Kazi*

Ofcom went on to consider this broadcast and whether the appearance of Kazi Nazrul Islam in *Education Consultancy with Kazi* amounted to product placement. We noted that Mr Islam is the Managing Director of FBA (UK) Limited, the company which sponsored the programme. We considered that his inclusion throughout the programme was a reference to the sponsor and therefore amounted to product placement.

We then considered whether *Education Consultancy with Kazi* was a consumer advice programme. Because the format of the programme consisted of a panel including Mr Islam answering questions submitted by viewers in relation to academic study by non-UK citizens, we concluded that *Education Consultancy with Kazi* was a consumer advice programme. The programme was therefore in breach of Rule 9.12(b).

#### Conclusion

We noted the steps taken by the Licensee following its meeting with Ofcom; however the breaches in this Finding evidence repeated non-compliance by the Licensee over a number of broadcasts between 21 December 2013 and 7 January 2014. The seriousness of these breaches is compounded by the fact that Ofcom has published a number of Findings concerning Rules 9.12(b) and 9.22(a) which should have alerted the Licensee to possible compliance issues in its programming. The fact that some of those Findings related to breaches of the Code on the Licensee's own service is of particular concern to Ofcom.

Further to a Finding published on 9 September 2013<sup>6</sup> in which the Licensee was found in breach for the broadcast of a previous episode of *Accountancy with Mahbub Murshed*, Ofcom required ITCE to attend a meeting to discuss its compliance procedures. At that meeting, which took place on 20 January 2014, ITCE assured Ofcom that it understood the requirements of Section Nine of the Code, in particular Rules 9.12(b) and 9.22(a).

**Because the programmes in this Finding were broadcast before we met ITCE, we do not propose to take further action at this time. However, we will monitor the Licensee's compliance with these rules. Any further breaches of the Code in this area will lead to Ofcom considering the imposition of a statutory sanction.**

**Sponsorship of *Tobuo Jibon*, 21 December 2013, 20:30, Breach of Rule 9.22(a)  
*Accountancy with Mahbub Murshed*, 5 January 2014, 15:00, Breach of Rule 9.12(b)**

***Aine O Adhikar*, 14 December 2013, 12:30, Breach of Rule 9.12(b)**

***Education Consultancy with Kazi*, 7 January 2014, 20:00, Breach of Rule 9.12(b)**

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<sup>6</sup> See Ofcom Broadcast Bulletin, Issue 237, 9 September 2013, at: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb237/>.

## In Breach

### Law and Talk

ATN Bangla, 2 November 2013, 14:30

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#### Introduction

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

*Law and Talk* was a consumer advice programme during which the presenter and a guest solicitor provided advice on legal matters to callers.

We received a complaint from a member of the public stating that the programme appeared to be sponsored by MQ Hassan Solicitors and UK Immigration Consultants, and that representatives from both companies appeared in the programme.

On reviewing the material we noted that the programme was hosted by Mr Mohammed Salim of UK Immigration Consultants and featured Mr Mohammad Quamrul Hassan from MQ Hassan Solicitors. We also noted that the programme was sponsored by MQ Hassan Solicitors and UK Immigration Consultants.

As noted in Section Nine of the Code, any reference to a sponsor that appears in a sponsored programme (with the exception of the sponsorship credits themselves) as a result of a commercial arrangement with the broadcaster, the programme maker or a connected person will be treated as product placement<sup>1</sup>.

Ofcom therefore considered that the programme raised issues warranting investigation under the following rule of the Code:

Rule 9.12: “Product placement is not permitted in the following:...

b) Consumer advice programmes...”

We asked the Licensee for its comments as to how, given that representatives from the two sponsors appeared in the programme, it complied with this rule.

#### Response

The Licensee responded that in its view the programme did not feature product placement and that therefore it was in compliance with Rule 9.12(b).

#### Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure a number of standards objectives. These include that “the product placement requirements...are

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<sup>1</sup> Product placement is defined as the inclusion in a programme of, or of a reference to, a product, service or trade mark where the inclusion is for a commercial purpose, and is in return for payment or other valuable consideration to the programme maker, the broadcaster or any person connected with either.

met in relation to programmes included in a television service (other than advertisements)". The Act prohibits the inclusion of product placement in consumer affairs programmes. This is reflected in Rule 9.12(b) of the Code which prohibits product placement in consumer advice programmes made under UK jurisdiction<sup>2</sup>.

First, Ofcom considered whether the appearance of Mr M Quamrul Hassan and Mr Mohammad Salim in *Law and Talk* amounted to product placement. Although the Licensee denied that the programme featured product placement, we noted that Mr Salim and Mr Hassan are employees of the programme sponsors, UK Immigration Consultants and MQ Hassan Solicitors respectively. We also noted that both Mr Salim and Mr Hassan appeared in advertisements for the sponsoring companies which were shown around and during *Law and Talk*. We considered therefore, that their inclusion throughout the programme was a reference to the sponsors and therefore amounted to product placement.

Second, we considered whether *Law and Talk* was a consumer advice programme<sup>3</sup>. Because the format of the show consisted of the presenter and the guest providing advice to callers on legal matters including immigration, we concluded that *Law and Talk* was a consumer advice programme. The programme was therefore in breach of Rule 9.12(b).

#### **Breach of Rule 9.12(b)**

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<sup>2</sup> Details of what constitutes a programme made under UK jurisdiction can be found in Section Nine of the Code at <http://stakeholders.ofcom.org.uk>.

<sup>3</sup> Our Guidance to Section Nine of the Code states that consumer advice programmes are shows "offering advice, or including reviews, on products or services". See paragraph 1.109 of our Guidance at <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>.

## In Breach

### Legal Platform

*ATN Bangla, 7 January 2014, 19:30*

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#### Introduction

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

Legal Platform was a consumer advice programme during which a guest solicitor provided advice on legal matters to callers.

We received a complaint from a member of the public stating that the programme appeared to be sponsored by Citygate Solicitors and that an employee of Citygate Solicitors, Mr Shafiqur Rahman, appeared in the programme.

On reviewing the material we noted that Mr Rahman, who was introduced by the presenter as a solicitor at Citygate Solicitors, appeared throughout the programme. We also noted that the programme was sponsored by Citygate Solicitors.

As noted in Section Nine of the Code, any reference to a sponsor that appears in a sponsored programme (with the exception of the sponsorship credits themselves) as a result of a commercial arrangement with the broadcaster, the programme maker or a connected person will be treated as product placement<sup>1</sup>.

Ofcom therefore considered that the programme raised issues warranting investigation under Rule 9.12(b) of the Code:

Rule 9.12: “Product placement is not permitted in the following:...

b) Consumer advice programmes...”

We asked the Licensee for its comments as to how, given that a representative from the sponsor appeared in the programme, it complied with this rule.

#### Response

The Licensee did not comment.

#### Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure a number of standards objectives. These include that “the product placement requirements...are met in relation to programmes included in a television service (other than advertisements)”. The Act prohibits the inclusion of product placement in consumer

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<sup>1</sup> Product placement is defined as the inclusion in a programme of, or of a reference to, a product, service or trade mark where the inclusion is for a commercial purpose, and is in return for payment or other valuable consideration to the programme maker, the broadcaster or any person connected with either.

affairs programmes. This is reflected in Rule 9.12(b) of the Code which prohibits product placement in consumer advice programmes made under UK jurisdiction<sup>2</sup>.

First, Ofcom considered whether the appearance of Mr Rahman in *Legal Platform* amounted to product placement. We noted that Mr Rahman was the Managing Director of the company (Citygate Solicitors) which sponsored the programme. We considered that his inclusion throughout the programme as an expert guest was a reference to the sponsor and therefore amounted to product placement.

Second, we considered whether *Legal Platform* was a consumer advice programme<sup>3</sup>. Because the format of the show consisted of the presenter and guest providing advice on legal matters, we concluded that *Legal Platform* was a consumer advice programme. The programme was therefore in breach of Rule 9.12(b).

### **Breach of Rule 9.12(b)**

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<sup>2</sup> Details of what constitutes a programme made under UK jurisdiction can be found in Section Nine of the Code at <http://stakeholders.ofcom.org.uk>.

<sup>3</sup> Our Guidance to Section Nine of the Code states that consumer advice programmes are shows “offering advice, or including reviews, on products or services”. See paragraph 1.109 of our Guidance at <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>.

## In Breach

### Your Life in the UK

*Channel i, 23 January 2014, 20:00*

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#### Introduction

Channel i is a news and general entertainment channel aimed at the Bangladeshi community in the UK and Europe. The licence for Channel i is held by Prime Bangla Limited (“Prime Bangla” or “the Licensee”).

A complainant alerted Ofcom to *Your Life in the UK*, a consumer advice programme during which a panel provided advice on the tests – such as ‘Life in the UK’ – which applicants for UK citizenship are required to complete.

On reviewing the material we noted that the programme was co-hosted by Habib Mirza of BSGS College and Shamsul Alam Liton of the London College of Media and Technology.

Section Nine of the Code states that any reference to a sponsor that appears in a sponsored programme (with the exception of the sponsorship credits themselves) as a result of a commercial arrangement with the broadcaster, the programme maker or a connected person will be treated as product placement<sup>1</sup>.

Ofcom therefore considered that *Your Life in the UK* raised issues warranting investigation under Rule 9.12(b) of the Code:

Rule 9.12: “Product placement is not permitted in the following:...

b) Consumer advice programmes...”

We therefore sought the Licensees comments under Rule 9.12(b).

#### Response

The Licensee apologised for the incident which it said was an “editorial misjudgement”. Prime Bangla said that it understood why the broadcast was problematic and that it has taken the necessary steps to ensure similar material is not broadcast in future.

#### Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure a number of standards objectives. One of those objectives is that “the product placement requirements...are met in relation to programmes included in a television service (other than advertisements)”. The Act prohibits the inclusion of product placement in consumer affairs programmes. This is reflected in Rule 9.12(b) of the Code which

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<sup>1</sup> Product placement is defined as the inclusion in a programme of, or of a reference to, a product, service or trade mark where the inclusion is for a commercial purpose, and is in return for payment or other valuable consideration to the programme maker, the broadcaster or any person connected with either.



prohibits product placement in consumer advice programmes made under UK jurisdiction<sup>2</sup>.

First, Ofcom considered whether the appearance of Habib Mirza and Shamsul Alam Liton in *Your Life in the UK* amounted to product placement. We noted that Mr Mirza is the Principal of BSGS College and that Mr Liton is the Registrar and CEO of the London College of Media and Technology, both of which sponsored the programme. We considered that their inclusion throughout the programme was a reference to the sponsors and therefore amounted to product placement.

Second, we considered whether *Your Life in the UK* was a consumer advice programme<sup>3</sup>. Because the format of the show consisted of a panel including Mr Mirza and Mr Liton providing advice to callers on obtaining UK citizenship and studying in the UK, we concluded that *Your Life in the UK* was a consumer advice programme.

We noted the Licensee's assurance that it has put "all necessary procedures" in place to ensure similar issues do not recur. However because *Your Life in the UK* was a consumer advice programme made under UK jurisdiction which included product placement, it breached Rule 9.12(b).

### **Breach of Rule 9.12(b)**

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<sup>2</sup> Details of what constitutes a programme made under UK jurisdiction can be found in Section Nine of the Code at <http://stakeholders.ofcom.org.uk>.

<sup>3</sup> Our Guidance to Section Nine of the Code states that consumer advice programmes are shows "offering advice, or including reviews, on products or services". See paragraph 1.109 of our Guidance at <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>.

## In Breach

### Law with N Rahman

Channel Nine UK, 7 September 2013, 12:30

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#### Introduction

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

*Law with N Rahman* was a consumer advice programme during which a panel answered questions from telephone callers on legal issues relating to immigration. The programme was presented by a solicitor, Nashit Rahman, alongside a guest contributor, Taj Uddin Shah.

A complainant alerted Ofcom to the fact the programme appeared to be sponsored by Taj Solicitors, a law firm owned by Mr Shah and for which Mr Rahman works. As a result, the viewer felt the programme was being used to promote Taj Solicitors.

As noted in Section Nine of the Code, any reference to a sponsor that appears in a sponsored programme (with the exception of the sponsorship credits themselves) as a result of a commercial arrangement with the broadcaster, the programme maker or a connected person will be treated as product placement<sup>1</sup>.

Ofcom therefore considered that the programme raised issues warranting investigation under Rule 9.12(b) of the Code:

Rule 9.12: “Product placement is not permitted in the following:...

b) Consumer advice programmes...”.

We asked the Licensee for its comments as to how, given that the programme was sponsored by Taj Solicitors, the appearance of Mr Rahman and Mr Shah in the programme complied with this rule.

#### Response

Runners TV apologised for the “oversight” in this instance. The Licensee said, as of 28 December 2013, it has stopped broadcasting this programme. It added that, as a small channel, it is “committed to fully complying” with the Code and was due to meet Ofcom to discuss its compliance procedures.

#### Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure a number of standards objectives. These include that “the product placement requirements...are met in relation to programmes included in a television service (other than

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<sup>1</sup> Product placement is defined as the inclusion in a programme of, or of a reference to, a product, service or trade mark where the inclusion is for a commercial purpose, and is in return for payment or other valuable consideration to the programme maker, the broadcaster or any person connected with either.

advertisements)". The Act prohibits the inclusion of product placement in consumer affairs programmes.

This is reflected in Rule 9.12(b) of the Code which prohibits product placement in consumer advice programmes made under UK jurisdiction<sup>2</sup>.

First, Ofcom considered whether the appearance of Mr Shah and Mr Rahman in *Law with N Rahman* amounted to product placement. We noted that Mr Shah was the founder of Taj Solicitors, one of the sponsors of the programme. We noted also that both Mr Shah and Mr Rahman featured prominently on the Taj Solicitors website, which refers to the firm's specialism in immigration and asylum issues – the subject of the programme. We considered that their inclusion throughout the programme as the presenter and guest contributor was a reference to the sponsor. Because this was a result of the sponsorship arrangement, it therefore amounted to product placement.

Second, we considered whether *Law with N Rahman* was a consumer advice programme<sup>3</sup> made under UK jurisdiction. The Licensee confirmed that it had produced the programme and it was therefore made under UK jurisdiction. Further, because the format of the show consisted of Mr Shah and Mr Rahman providing advice on immigration matters, we concluded that *Law with N Rahman* was a consumer advice programme. As consumer advice programmes made under UK jurisdiction are not permitted to include product placement, the programme was in breach of Rule 9.12(b).

### **Breach of Rule 9.12(b)**

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<sup>2</sup> Details of what constitutes a programme made under UK jurisdiction can be found in Section Nine of the Code at <http://stakeholders.ofcom.org.uk>.

<sup>3</sup> Our Guidance to Section Nine of the Code states that consumer advice programmes are shows "offering advice, or including reviews, on products or services". See paragraph 1.109 of our Guidance at <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>.

## In Breach

### Criminal Justice

Channel Nine UK, 25 January 2014, 12:45

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#### Introduction

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

*Criminal Justice* was a consumer advice programme during which a panel answered questions from viewers on legal issues including immigration. The programme was presented by a solicitor, Mazedur Chowdhury, alongside two guest contributors, Shafiul Azam, a criminal defence solicitor, and Oliver Doherty, a barrister.

A complainant alerted Ofcom to the fact the programme appeared to be sponsored by Azam & Co Solicitors, a law firm owned by Mr Azam. As a result, the viewer felt the programme was being used to promote Azam & Co Solicitors.

As noted in Section Nine of the Code, any reference to a sponsor that appears in a sponsored programme (with the exception of the sponsorship credits themselves) as a result of a commercial arrangement with the broadcaster, the programme maker or a connected person will be treated as product placement<sup>1</sup>.

Ofcom therefore considered that the programme raised issues warranting investigation under Rule 9.12(b) of the Code:

Rule 9.12: “Product placement is not permitted in the following:...

b) Consumer advice programmes...”.

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

#### Response

Runners TV said the “sponsorship went out on the very first show and upon receiving notice from Ofcom all subsequent shows [...] have been carefully monitored to comply with [Ofcom’s] guidelines. The Licensee added that since Ofcom alerted it to the issue, it has reviewed all its programme content “and made the necessary changes”.

#### Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure a number of standards objectives. These include that: “the product placement requirements...are

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<sup>1</sup> Product placement is defined as the inclusion in a programme of, or of a reference to, a product, service or trade mark where the inclusion is for a commercial purpose, and is in return for payment or other valuable consideration to the programme maker, the broadcaster or any person connected with either.

met in relation to programmes included in a television service (other than advertisements)". The Act prohibits the inclusion of product placement in consumer affairs programmes.

This is reflected in Rule 9.12(b) of the Code which prohibits product placement in consumer advice programmes made under UK jurisdiction<sup>2</sup>.

First, Ofcom considered whether the appearance of Mr Azam in *Criminal Justice* amounted to product placement. We noted that Mr Azam is the Principal Solicitor of the company which bears his name, i.e. Azam & Co Solicitors, and which sponsored the programme. We considered that his inclusion throughout the programme as a guest contributor was a reference to the sponsor. Because this was a result of the sponsorship arrangement, it therefore amounted to product placement.

Second, we considered whether *Criminal Justice* was a consumer advice programme<sup>3</sup>. Because the format of the show consisted of Mr Chowdhury, Mr Azam and Mr Doherty providing advice on a range of issues including immigration matters, we concluded that *Criminal Justice* was a consumer advice programme. This was therefore in breach of the Code. We noted the steps taken by the Licensee once it was alerted to the problematic content, however as consumer advice programmes made under UK jurisdiction are not permitted to include product placement, the programme was in breach of Rule 9.12(b).

### **Breach of Rule 9.12(b)**

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<sup>2</sup> Details of what constitutes a programme made under UK jurisdiction can be found in Section Nine of the Code at <http://stakeholders.ofcom.org.uk>.

<sup>3</sup> Our Guidance to Section Nine of the Code states that consumer advice programmes are shows "offering advice, or including reviews, on products or services". See paragraph 1.109 of our Guidance at <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>.

## Note to Broadcasters

### Targeted monitoring exercise: consumer advice programmes

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Recent assessments and investigations by Ofcom into complaints about consumer advice programmes have highlighted a clear problem around the compliance of such content.

Broadcasters are reminded that with the exception of sponsorship credits, any reference to a sponsor that appears in a sponsored programme as a result of a commercial arrangement with the broadcaster, the programme maker or a connected person will be treated as product placement. Such references include but are not limited to the sponsor's products, services, trade marks, interests or employees.

In addition broadcasters should note that the Code explicitly prohibits product placement in consumer advice programmes which are produced under UK jurisdiction.

Ofcom therefore formally notifies broadcasters that as a result of our continuing concerns about the compliance of consumer advice programmes with the Code requirements, **we are commencing a targeted monitoring exercise.**

**Broadcasters are put on notice that any serious or repeated failings in this area are likely to result in Ofcom taking further regulatory action, for example, the consideration of the imposition of statutory sanctions.**

For further details on the application of Section Nine of the Code, broadcasters should refer to our Guidance, which is available here:  
<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>.

## In Breach

### Joystick Warriors

RT, 3 and 4 March 2014 at various times pre-watershed

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#### Introduction

RT is a global news and current affairs channel produced in Russia. In the UK, the channel broadcasts on satellite and terrestrial platforms. The licence for RT is held by Autonomous Non-profit Organisation TV Novosti (“TV Novosti” or “the Licensee”).

The two-part documentary *Joystick Warriors* examined the potential links between video game and real-life violence. Ofcom was alerted by a complainant to footage of video game violence included in one of these documentaries broadcast before the watershed, which the complainant found “shocking” and inappropriate to be broadcast during the day.

Each programme was 30 minutes long and contained a significant number of clips and sequences from violent video games including *Manhunt*, *Far Cry 3*, *Mortal Kombat* and *Tomb Raider*. All are rated as only suitable for those 18 years and older by Pan European Game Information (“PEGI”<sup>1</sup>) or the British Board of Film Classification (“BBFC”). In particular, we noted the following:

#### Episode One – 3 March 2014, 12:30 and 4 March 2014, 07:30, 15:30 and 20:30

- an opening montage of footage from video games including: a man being hit in the neck by a machete; a woman being impaled through the throat by a large metal rod; a female fighter being ripped in two; and, a close-up shot of a man being impaled through the eyeball;
- a clip from the game *Mortal Kombat* showing a fighter chopping their opponent’s head in two with their hand, causing blood to spray out from the injury;
- another clip from *Mortal Kombat* depicting a man being stabbed in the back with a large blade. The blade was then lifted up through the man’s body, splitting his torso and head in two;
- a montage of violent footage from the television series *Dexter*, *The Following* and *Hannibal*. This included: a woman driving an ice pick into her own eye; a bloodied corpse impaled on a pile of medical equipment; and, Hannibal putting a human heart into a meat grinder;
- footage from *Splinter Cell: Blacklist* which showed a character being tortured by having his face pressed onto the red hot element of an electric hob. The character was then thrown to the floor and punched in the head.

#### Episode Two – Broadcast at 07:30 on 3 March 2014 and 14:30 on 4 March 2014

- a montage of footage from various games depicting scenes of torture. This included a clip from *Call of Duty: Black Ops* which showed a shard of glass being forced into a prisoner’s mouth before he was punched in the face;

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<sup>1</sup> The self-regulatory European video game content rating system.

- a clip from the game *Fallout 3*, which showed a man being decapitated by a gunshot. His head was then seen rolling down a slope; and
- footage from *Splinter Cell: Blacklist* in which a man was knocked to the floor in front of a fridge. The open fridge door was then kicked into the man's head (with the latter being shown trapped between the door and the main body of the fridge) and blood splattered up onto the fridge.

Ofcom also noted a sequence later in the second programme which described the internet hate campaign launched against a woman journalist who was investigating the portrayal of women in video games. Examples of social media messages attacking her were shown on-screen. One of the most prominent messages, displayed briefly in the centre of the screen, read: *"Tits or get the fuck out"*.

Having assessed the programme, Ofcom considered that the programme raised issues 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) or when children are particularly likely to be listening (in the case of radio) and must also be justified by the context".
- Rule 1.14: "The most offensive language must not be broadcast before the watershed (in the case of television) or when children are particularly likely to be listening (in the case of radio)".
- Rule 2.3: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context (see meaning of "context" below). Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender, race, religion, beliefs and sexual orientation). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence".

We therefore asked TV Novosti how the material complied with these rules.

## Response

The Licensee did not seek to defend the broadcasts and sincerely apologised.

TV Novosti explained that *Joystick Warriors* was not intended for broadcast in the UK at any time and that it had been shown as a result of human error. The Licensee said that RT's central technical production/distribution centre handles the English language programme feeds for several distinct markets. The programme originally intended for broadcast on the UK RT feed had been accidentally deleted and staff only became aware of this shortly before transmission. This led to the programme being "hurriedly replaced" with *Joystick Warriors* (which was only intended for transmission on RT in the United States).

The Licensee said that this was a "serious failure in process" and two members of staff had been strongly disciplined as a result. In addition, it said that new training had been implemented, and new working instructions have been issued to technical operations staff which require them to be aware of, and alert to, compliance issues.



## 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, including that “persons under the age of eighteen are protected” and “generally accepted standards” are applied so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material.

These duties are reflected in Sections One and Two of the Code respectively. Broadcasters are required to comply with the rules in Section One of the Code to ensure that children are protected. Broadcasters are also required under Rule 2.3 of the Code to ensure that material which may cause offence is justified by the context.

In reaching a decision in this case, Ofcom has taken into account the fact that broadcasters have a right to freedom of expression which gives them a right to transmit and the audience a right to receive creative material, information and ideas without interference from a public body, but subject to restrictions prescribed by law and necessary in a democratic society. This is set out in Article 10 of the European Convention on Human Rights. However, although broadcasters and viewers have this right, it is the responsibility of the broadcasters to ensure that the material they transmit is in accordance with the general law and the Code.

### Rule 1.11

Rule 1.11 states that violence, its after-effects and descriptions of violence, whether verbal or physical, must be appropriately limited in programmes broadcast before the watershed, and must also be justified by context.

Ofcom noted that both parts of the documentary included a significant quantity of footage from violent video games with the material specifically selected to demonstrate the most graphic and violent material included within the medium. This material, which was predominantly taken from video games rated as only being suitable for those aged 18 years and over, included images of decapitation, mutilation and torture.

The majority of the violent content included within the programmes was taken from video game footage, and was therefore clearly computer-generated. Ofcom considered that this factor may potentially have limited to some extent the impact of the images on any children watching. However, we concluded that any potentially limiting effect created by the computer-generated nature of these images was manifestly outweighed by the extreme, gruesome and repeated nature of many of the violent images in these two programmes. We therefore concluded that the violence was not appropriately limited.

Ofcom also considered whether the broadcast of this violent material was justified by the context.

Ofcom noted that both programmes were preceded by a warning, shown on screen, which read:

*“This documentary contains some explicit scenes that are of a violent and disturbing nature.”*

The provision of such information – while it may be useful as a guide to viewers in some circumstances – is not, in itself, sufficient to justify the broadcast of very violent

material well before the watershed. In our opinion the images of extreme violence, as detailed in the Introduction, had significant potential to cause distress to any younger viewers.

There is clearly an editorial justification for a news and current affairs channel in particular to examine the issue of the possible effects of violence in video games, and to broadcast documentaries assessing this issue. However, when reporting on the issue in pre-watershed programming the broadcaster's editorial approach must be appropriate. This was clearly not the case here – as was admitted by the Licensee. A number of the clips and sequences shown were extracted from video games rated as suitable only for those aged 18 and over, and the violent sequences featured were frequent, graphic and bloody.

In Ofcom's view, the audience would not have expected this very violent content to be shown before the watershed on this channel. Therefore the material was not justified by the context and breached 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>2</sup> notes that the word "fuck" and similar words are considered by audiences to be among the most offensive language.

In this case, the word "fuck" was clearly and prominently visible on-screen in a collage showing examples of abusive Twitter messages. The programme was therefore in breach of Rule 1.14.

#### Rule 2.3

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

Ofcom first considered whether the programme was potentially offensive. As considered above, the violent images contained in the programme were numerous, graphic and often extreme. They clearly had the potential to offend viewers.

We then considered whether the material was justified by the context. The same factors referred to above under Rule 1.11 as regards context also applied here. In addition, Ofcom noted that the two programmes were serious documentaries, discussing the issue of video game violence. We also took account of the fact that RT is a 24-hour rolling news channel with an audience that is likely to be small, self-selecting and largely adult and that there was a warning broadcast at the start of each programme. However, numerous examples of video game violence included in these programmes were taken from games rated as suitable only for gamers aged 18 and over. Further we noted that RT admitted that the Licensee never intended to broadcast these programmes on its Ofcom-licensed RT service and they were broadcast in error. We therefore concluded that to broadcast these two programmes

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<sup>2</sup> Audience attitudes towards offensive language on television and radio, August 2010 (<http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>)

at various times before the watershed was inconsistent with the expectations of adults who were in the audience. For all these reasons Rule 2.3 was also breached.

Ofcom was concerned that the Licensee's compliance arrangements allowed for these programmes (which were never intended for broadcast on TV Novosti's Ofcom-licensed RT service in the United Kingdom) to be shown seven times before the watershed. We were also concerned that this error appeared to have gone unnoticed until the Licensee was contacted by Ofcom. Broadcasters must have sufficient resources and appropriate procedures in place to monitor output as it is broadcast to ensure that if – as here – a compliance mistake is made, the licensee has a reasonable opportunity to detect the error and correct it immediately to prevent further potential breaches of the Code.

Ofcom noted that TV Novosti took disciplinary action against the two members of staff involved with this incident and is taking steps to ensure technical staff are aware of the Licensee's compliance responsibilities. Nonetheless we put the Licensee on notice that if similar compliance issues occur again Ofcom will consider further regulatory action.

### **Breaches of Rules 1.11, 1.14 and 2.3**

## In Breach

### Celebrity Big Brother

Channel 5, 19 January 2014, 11:30

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#### Introduction

*Celebrity Big Brother* is a well-known reality show based on the established *Big Brother* format broadcast by Channel 5 (or “the Licensee”). Over the course of 27 days, 12 celebrity contestants (“Housemates”) live together in the Big Brother House (“the House”) where they compete to win a cash prize for a charity of their choice. In entering the House contestants agree to live in a controlled environment, isolated from the outside world. All the conversations and actions of the Housemates are recorded and edited into a one hour programme shown on Channel 5 every night during the series and repeated in a pre-watershed version the next day.

Ofcom received five complaints about the programme broadcast on Sunday 19 January 2014 at 11:30. The complainants alerted Ofcom to various sexual references and discussions of a sexual nature in the programme which they did not consider appropriate for this time of transmission.

Ofcom noted that this particular episode of *Celebrity Big Brother* was a repeat of the programme originally broadcast at 21:45 the previous day. The episode, around 55 minutes in duration, provided highlights of “Day 15” in the House. The episode included Housemates’ attempts to cheer up and encourage Housemate Dappy to remain in the House, following his threat to leave in a previous episode, and the eviction of fellow Housemate Lionel Blair.

Ofcom noted in particular the following sequences in the programme:

#### Sequence One

This was broadcast at approximately 11:40 and featured Housemates Ollie Locke, Luisa Zissman and Lee Ryan in the kitchen. Ollie was very briefly shown rolling small dough balls between his fingers as he held them in front of his nipples. This was accompanied by a voiceover stating: “*Luisa, Lee and Ollie are making rude food*”. Ollie and Luisa were shown shaping dough on a kitchen worktop as Lee watched. Ollie said to Luisa: “*You need to get Lee to blow it. Then it will all rise*”. A close up of Lee’s face was then shown giggling to himself in response to Ollie’s comment. The sequence concluded with Luisa flirtatiously asking Ollie whether he liked milk, as Ollie’s face approached Luisa’s breasts before pulling back while whistling.

#### Sequence Two

A sequence broadcast at about 11:46 showed a tray of bread rolls made in the shape of breasts before cutting to Lee and Dappy in the bedroom. This was accompanied by the voice over stating: “*12:44pm. Ollie and Luisa are trying to cheer up Dappy*”. Luisa and Ollie walked into the bedroom as Luisa said: “*We made your penis out of bread. Please come see it. It’s gonna make you happy*”.

Luisa, Ollie and Dappy were shown walking through the bedroom door into the kitchen. As Dappy walked in, Luisa (unseen) could be heard saying: “*guess which penis is yours Dappy*”. The next shot showed Lee, Dappy, Luisa and Ollie standing

around a kitchen worktop before cutting to a close up a bread roll made in the shape of a penis, held by Dappy, in front of his groin. The camera then panned up Dappy's body from his groin to his face to show him grinning before returning to a close up shot of the bread roll in front of his groin. This was accompanied by Dappy saying: *"I reckon that's about right"*.

The next shot showed Sam Faiers and Casey Batchelor sitting on a sofa, looking in the direction of Dappy, and laughing before a close up of the penis-shaped bread roll in front of Dappy's groin was featured again, accompanied by Luisa's voice saying: *"That's Dappy's one..."*. Luisa and Lee were then shown standing behind the kitchen counter as Lee held up a smaller penis-shaped bread roll declaring it to be his. The sequence concluded with a close up of Lee holding the smaller penis-shaped bread roll while the Housemates laughed in response to Ollie's following remark: *"He's hung like a squirrel"*.

### Sequence Three

This was broadcast at about 12:12. It featured Housemates Liz Jones, Jim Davidson, Linda Nolan, Luisa, Ollie, Sam and Dappy sitting on a sofa, drinking wine, in the lounge area of the House.

Liz: *"My husband never saw me without my T-shirt on."*

Luisa: *"Stop it!"*

Liz: *"Never, not once. I didn't have sex until I was 32 [Luisa gasps] because I thought I was too hideous."*

Jim: *"[said at the same time as Linda] How was it?"*

Linda: *"Was it worth waiting for?"*

Luisa: *"But what were you doing till then? I don't understand."*

Liz: *"[said at the same time as Linda] Starving myself, working."*

Linda: *"[said at the same time as Luisa] She just thought she was too hideous."*

Luisa: *"And when you did have sex what was it like?"*

Liz: *"Awful, I kept my top on but my husband never saw me without my clothes off."*

Luisa: *"...because you just didn't like yourself so much... [Liz interrupts]"*

Liz: *"...I kinda think that I'm going to be able to have sex when I'm 7st 12, when I've had an airbrush tan, when I have my lawn re-turfed, when I wash my wheelie bin... [Luisa laughs and Linda interrupts]."*

Linda: *"Oh yeah I would do that."*

Ollie: *"Oh! You actually meant your lawn re-turfed."*

Luisa: *"I thought you meant your lady garden... [Ollie could be heard laughing]"*

Ollie: *"I thought you meant having a wax... [A shot of Ollie was shown making a hand gesture of pulling a wax strip as Luisa interrupts the conversation while Linda interrupts laughing]."*

Linda: *"No! [said laughing]."*

Luisa: *"...Yeah so did I and I thought when you, when you washed your wheelie bin out... [Linda interrupts]"*

Linda: *"You thought she meant her woo-woo."*

At this point in the conversation Liz talked about how she thought she had to be a perfect wife, as Housemate Casey was shown to join the group. Following this the Housemates continued to talk about sex:

Luisa: *"Shall I make you feel better...Casey's first orgasm was at 22 and she's never orgasmed from a man..."*

Liz: *"never, since?"*

Luisa: *"...she's never had an orgasm from a man... that should make you feel better."*

Linda: *"Excuse me...my first sex, [Luisa talks over Linda] my first sex was at [Luisa talks over Linda], my first orgasm [Jim Davidson says goodnight and leaves the room] mine was 20 and it was with my husband."*

Sam: *"Orgasm or sex?"*

Linda: *"Huh"*

Sam: *"Orgasm or sex?"*

Linda: *"My first sex was at 20 and it was with my husband."*

Luisa: *"Women should be sexually confident; women should enjoy sex but..."*

Linda: *"I did enjoy sex. I had loads of sex with other men but my husband was always there."*

Luisa: *"Oh Linda."*

Linda: *"I didn't say I only had sex with my husband but he was always there."*

Sam: *"Ahh Linda! He was always there [Laughing]."*

Linda: *"...he was always there! Then believe me Casey then you orgasm. What? I'm a Nolan<sup>1</sup> not a nun. [Casey and Sam laugh]."*

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

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<sup>1</sup> Linda Nolan was a member of a pop group, formed with her sisters in 1974, and known as The Nolan Sisters.

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

We therefore sought comments from Channel 5 as to how the material complied with rule.

## Response

Channel 5 said that at the time this particular episode of the programme was broadcast on 19 January 2013 the programme “had been running for 15 days” and viewers therefore understood the nature of *Celebrity Big Brother*. It added that “cheeky conversation, rude language and mildly sexually suggestive innuendos” would be expected in pre-watershed broadcasts.

The Licensee explained that a senior member of its compliance team reviewed every sequence for pre-watershed broadcast to determine whether it can be shown during the daytime repeat. This particular episode was reviewed and content that was deemed unsuitable was “excised or bleeped”.

Channel 5 said the material in the “Rude Food” sequence (detailed in Sequence One and Sequence Two of the Introduction) was no more than “mildly risqué”. It added that the use of the innuendos was not explicit, was humorous and showed the: “comic inventiveness of the Housemates”.

The Licensee said that although the conversation in the “Not a Nun” sequence (detailed in Sequence Three of the Introduction) featured “stark statements about sex”, these were not “highly charged or erotic” and “the explicit reference to orgasm was not aggressive or suggestive”. It added that the nature of these discussions had been frequent in the series and: “there was nothing surprising in its inclusion”.

Channel 5 pointed out that the Code does not prohibit discussions on sexual matters before the watershed. It argued that the use of sexual innuendos and the sexual discussion in this case were not explicit, sexually charged or erotic.

The Licensee said that it did not consider that there was a breach of Rule 1.3 in relation to the broadcast of the daytime edition of the programme. However, the Licensee accepted that in hindsight it may have been: “prudent to have ensured that an appropriate flagging aired prior to the daytime repeat...and into the part where the “Not a Nun” sequence occurred”.

## Decision

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

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

We first assessed whether the programme included material unsuitable for children.

This particular episode of *Celebrity Big Brother* contained a number of adult themes and sexual references. In particular, this included in Sequence Three a fairly extended and frank discussion between adults in an adult way of the Housemates' sex lives and their first sexual experiences. We noted for example the repeated use of the words "orgasm" and "sex" throughout this discussion, and the various comments made by Housemates such as Luisa saying "*Casey's first orgasm was at 22 and she's never orgasmed for a man*" and Linda commenting "*my first orgasm...mine was [at] 20 and it was with my husband*", and "*I had loads of sex with other men.*" The adult tone and nature of the sequences detailed above was further underlined by the cumulative effect created by Sequences One and Two set out in the Introduction with their frank and sometimes ribald references to and discussion of sexual topics.

As pointed out by Channel 5, the Code does not prohibit sexual discussions pre-watershed. Although we noted the programme included flirtatious sexual references and humorous innuendoes which were not sexually explicit when considered individually and unlikely to be understood by many children. However, in Ofcom's view the cumulative effect of the humorous references to a "penis" and the use of sexual innuendos (as detailed in sequence one and two) together with the frank, discussions on the topic of sexual experiences resulted in an inappropriate and prominent sexual theme and adult tone. We therefore considered the material was unsuitable for children.

We went on to assess whether the content was appropriately scheduled.

Ofcom noted that this programme was broadcast on a Sunday morning on a public service general entertainment channel. Both these factors, in Ofcom's opinion, made it likely that children – some of them unaccompanied – would view this material. BARB<sup>2</sup> viewing data indicated that in fact of a total audience of 290,000 who watched this episode of *Celebrity Big Brother*, 33,500 viewers were aged 16 or under (12% of the viewing audience), and of these 8,800 were aged four to nine years old. It is clear therefore that the programme was not only likely to, but did in fact, attract a broad audience.

Each decision about appropriate scheduling under Rule 1.3 depends on the individual circumstances and whether any measures taken to ensure appropriate scheduling were sufficient to justify the broadcast of material unsuitable for children. We noted that this content was originally scheduled for post-watershed broadcast but subsequently repeated (after review and editing) in a pre-watershed slot the next day. Ofcom's guidance on 'Protecting the Under-Eighteens'<sup>3</sup> states that particular care is required when post-watershed content is edited for pre-watershed scheduling and broadcasters should take care to "ensure adult themes of a more sexualised nature are suitable for broadcast pre-watershed". We took account of the fact that the material was not explicit, and also that it was humorous in intent. In this case however Ofcom considered that the nature of the content featuring a continued sexual theme and tone, and sexual references and banter, required more careful editing before broadcasting at 11:30 on a Sunday morning than occurred on this occasion.

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<sup>2</sup> Broadcasters' Audience Research Board (BARB) is the official source of television viewing figures in the UK.

<sup>3</sup> <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/protecting-under-18s/>.



The Licensee did not provide any information or warning about the content to viewers before or during this pre-watershed programme. We noted that Channel 5 said in its representations that in hindsight “appropriate flagging” may have been suitable prior to the broadcast of this episode. Ofcom agreed. In Ofcom’s opinion the absence of any warning meant that viewers (and especially parents or carers) were not provided with helpful information about the content included in this particular episode to help ensure the protection of children from unsuitable material.

We considered that these factors resulted in this material being inconsistent with audience expectations for the content broadcast on this public service channel at 11:30 at a weekend.

We therefore concluded the material was not appropriately scheduled and the broadcast was in breach of Rule 1.3.

### **Breach of Rule 1.3**

## In Breach

### Occupy the Airwaves

*Phonic FM, 25 January 2014, 14:00*

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#### Introduction

Phonic FM is a community radio station based in Exeter, playing a broad range of music and speech. The licence for this service is held by Exeter Community Radio Limited (“the Licensee”).

A complainant alerted Ofcom to the use of offensive language in a music track broadcast at approximately 14:00 on a Saturday.

On assessing the material Ofcom noted that before this programme, the following continuity announcement was broadcast:

*“The views expressed in this programme are those of its presenters and guests, and not of Phonic FM or the Occupy movement as a whole. Listeners are welcome to phone in or e-mail the studio to join in with discussions and debates”.*

During the programme, the presenter played a track, but made no reference to the title of the track before playing it, and simply introduced it as a listener request. Ofcom subsequently identified the track as *I Might Be a Cunt, But I’m Not a Fucking Cunt* by the band TISM. Ofcom noted the appearance of the word “fuck” in the following opening lyric of the track:

*“I might be a rockstar, but I’ll never be a critic. I might like porno, but Baywatch is fucking sick. I might have screwed your sister, but I’ll never screw your -”.*

The presenter then stopped the track, saying the following:

*“Hold on, that’s not the version I was expecting. My extreme apologies go out to everybody listening for that massive faux pas – that’s the non-radio edit version which isn’t suitable for broadcast. Sorry, sorry”.*

Ofcom considered the material raised issues warranting investigation under Rules 1.14 and 2.3 of the Code:

Rule 1.14: “The most offensive language must not be broadcast...when children are particularly likely to be listening (in the case of radio)”.

Rule 2.3: “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...”.

Ofcom therefore requested comments from the Licensee about how the programme material complied with these rules.

#### Response

The Licensee apologised “unreservedly” for the incident and said that all presenters are provided with training: “to educate them about acceptable standards [in]

programme content, whether spoken word or music". The broadcast of this version of the track was an unfortunate error by the presenter, to which he quickly reacted to and for which he quickly apologised.

The Licensee said that this monthly show is preceded by a warning about the likely content and nature of the show, as laid out in the Introduction above. It added that the programme fulfils one of Phonic FM's key commitments, which is to: "target listeners who are keen to hear alternative arts and local interest programming...with specialist programmes of interest to those who feel excluded from mainstream broadcasting, such as the local BME<sup>1</sup> population and young people". The Licensee also said that, notwithstanding the time of broadcast, it would have expected the programme "to appeal to those interested and/or involved in local political issues and issues of concern to an engaged audience" and not to appeal to "casual listeners". Therefore, the Licensee said: "It is deeply regrettable that the incident should have occurred when the show was being listened to by someone outside that particular part of the intended target audience".

## 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", and that "generally accepted standards" are applied so as to provide "adequate protection for members of the public" from the inclusion of offensive and harmful material. These objectives are reflected in Sections One and Two of the Code.

### Rule 1.14

Rule 1.14 states that the most offensive language must not be broadcast on radio when children are particularly likely to be listening. Ofcom research<sup>2</sup> on offensive language clearly notes that the word "fuck" and its derivatives are considered by audiences to be among the most offensive language.

The Code states that the phrase "when children<sup>3</sup> are particularly likely to be listening" particularly refers to: "the school run and breakfast time, but might include other times". Ofcom's guidance<sup>4</sup> on offensive language in radio notes that:

"For the purpose of determining when children are particularly likely to be listening, Ofcom will take account of all relevant information available to it. However, based on Ofcom's analysis of audience listening data, and previous Ofcom decisions, radio broadcasters should have particular regard to broadcasting content at the following times:...

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<sup>1</sup> BME stands for Black and Minority Ethnic.

<sup>2</sup> Audience attitudes towards offensive language on television and radio, August 2010 (<http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>)

<sup>3</sup> The Code defines "children" as being: "people under the age of fifteen years".

<sup>4</sup> Ofcom Guidance, Offensive language on radio, December 2011 (<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/offensive-language.pdf>)

- between 06:00 and 19:00 at weekends all year around, and in addition, during the same times from Monday to Fridays during school holidays....”.

In considering whether children would have particularly likely to have been listening in this case, we noted that one of Phonic FM’s key commitments is to: “target listeners who are keen to hear alternative arts and local interest programming...such as...young people”. We therefore considered it materially likely that children (i.e. people under the age of fifteen years) would have been in the audience.

The inclusion of the word “*fucking*” in a music track was an example of the most offensive language, and to broadcast this on a Saturday afternoon was therefore a clear breach of Rule 1.14 of the Code.

### Rule 2.3

Rule 2.3 requires broadcasters to ensure that the broadcast of potentially offensive material must be justified by the context. Ofcom therefore considered first whether the language in this song was potentially offensive; and, if so, whether the offence was justified by the context. Context includes for example: the editorial content of the programme; the service on which it is broadcast; the time of broadcast; and, the likely size and composition of the potential audience and the likely expectation of the audience.

As stated above, Ofcom’s research on offensive language indicates that the word “fuck” and its derivatives are considered by audiences to be among the most offensive language. Therefore, Ofcom considered that the use of “*fucking*” broadcast at 14:00 on a Saturday afternoon clearly had the potential to cause offence to the audience. The words that followed (“*I might have screwed your sister, but I’ll never screw your -*”) were also, in Ofcom’s view, clearly capable of causing offence.

Ofcom went on to assess the context. Our guidance on offensive language in radio states (regarding Rule 2.3) that:

“Ofcom’s 2010 audience research found that in general, listeners do not expect to hear strong language during the day on radio...In reaching any decision about compliance with the Code, Ofcom will take into account the likely audience expectations of a particular radio station at the time of broadcast”.

Ofcom noted the Licensee’s comments about the specialist appeal of this monthly programme to a self-selecting audience “interested and/or involved in local political issues and issues of concern to an engaged audience”, and the limited appeal to “casual listeners”. However, in our opinion the majority of listeners to a community radio station playing a broad range of music and speech at this time of day do not expect programmes to contain the most offensive language, or offensive language of the type broadcast on this occasion. Therefore, despite the swift intervention of the presenter to stop the track and his apology to listeners immediately afterwards, we considered that the broadcast of this language was not justified by the context and was in breach of Rule 2.3 of the Code.

We noted two previous cases published in October and December 2012<sup>5</sup> when the Licensee breached the Code as a result of the broadcast of the most offensive

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<sup>5</sup> See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb216/obb216.pdf%20> (22 October 2012); and

language. In the second of these decisions, published on 3 December 2012, we stated that we expect: “the Licensee to take particular care with future broadcasts. If similar compliance issues arise, Ofcom may consider further regulatory action”. In this regard, we understand that the music track broadcast in this case (*I Might Be a Cunt, But I’m Not a Fucking Cunt*) courted controversy and limited airplay at the time of its original release in 1998 due to its lyrics. Ofcom considered that the presenter of this programme, even if unaware of the historical notoriety of this track, should at least have been alerted to the likelihood of offensive language through the title of the track alone. We are therefore putting the Licensee on notice that should similar compliance issues arise in future, Ofcom will take further regulatory action.

### **Breaches of Rules 1.14 and 2.3**

## In Breach

### FA Cup Football

*BT Sport 1, 16 February 2014, 18:25*

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#### Introduction

BT Sport 1 is owned and operated by British Telecommunications Plc (“BT” or “the Licensee”). On Sunday 16 February, from 15:15, BT Sport 1 broadcast live coverage of the FA Cup football match between Arsenal and Liverpool.

A complainant alerted Ofcom to the broadcast of offensive language during a post-match discussion broadcast at approximately 18:25.

Ofcom noted that the broadcast discussion lasted approximately 25 minutes and took place with a presenter, Jake Humphrey, and two expert analysts, shown standing on a platform located immediately outside the stadium, while a crowd of spectators could be seen in the background standing behind the platform. During the interview ambient noise from the stadium, as well as chants from the crowd standing behind the platform, could be heard as background to the discussion.

At approximately 18:25, Ofcom noted that the crowd standing behind the platform could be heard chanting, during which eight clearly audible instances of the word “*fucking*” could be heard.

We noted that Jake Humphrey apologised at this point, as follows “...*Apologies for some of the words being used there by the Arsenal fans. What they’re chanting now is an awful lot better...*”.

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

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

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

#### Response

The Licensee apologised for the strong language which had been broadcast, and said that Jake Humphrey apologised “at the first opportunity”.

BT said it undertakes: “a full risk assessment...This included filming in and around spectators”. It explained that in providing live coverage of this football match, it had limited options to cut away from the crowd outside the ground to minimise the broadcast of offensive language: no additional advertising breaks could be utilised, no further VT packages were available to broadcast, and no pitch-side reporter or commentators were available in the stadium. This left highlights of the match and post-match interviews which were both utilised to some extent to cut away from the crowd and lessen any offence. BT said that, while broadcasting the highlights are under its control with respect to timings, it is not able to forecast when post-match interviews will take place due to the other commitments of players and managers.

BT said that in light of this incident it had reviewed and updated its procedures. It would in future not broadcast post-match analysis and interviews taking place on a platform outside a football ground. Such presentations would only take place for pre-match coverage. BT considered the risk of unacceptable language was “significantly reduced” for pre-match coverage because:

- pre-match presentation items are a much shorter duration than post-match interviews (typically between 10 and 12 minutes), and are always subject to risk assessment. As a result they are, therefore, ‘game-dependent’ and might not take place if the risk was deemed too great; and
- spectators’ tensions and emotions are more likely to surface post-match (when the result and the consequences of a poor/good outcome for the respective teams are known).

BT said it believed that stopping platform presentations for post-match coverage would enable it to meet its obligations to comply with the Code while enabling it to offer viewers “an engaging and fresh approach to sports broadcasting”.

## 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 1.14 of the Code 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 other variations of this word are considered by audiences to be among the most offensive language.

We noted that the presenter apologised immediately after the broadcast of the offensive language in this case. However, we considered that the broadcast of eight instances of the word “*fuck*ing” in this programme at approximately 18:25 was a clear example of the most offensive language being broadcast before the watershed. This content therefore breached Rule 1.14.

Ofcom acknowledges the challenges presented by broadcasting live from sporting occasions. We considered that choosing to broadcast live an extended discussion from a platform adjacent to a crowd of football fans following the match would have presented significant challenges to the Licensee in ensuring it complied with the Code. This is because of the strong likelihood that offensive language, in the form of chants, for example, might be used by groups of fans.

Ofcom noted that BT intended in future to show live platform discussions in pre-match coverage only, as the Licensee considered this would minimise the likelihood of inappropriate language being broadcast. Although Ofcom noted the steps taken by BT, we consider that any live discussion or interview conducted in a crowd environment has the potential to present compliance issues, and we remind all licensees of their responsibility to have measures in place to ensure that their output complies with the Code.

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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>)

We noted that this programme followed a recent case<sup>2</sup> involving the broadcast of the most offensive language by BT Sport 1 before the watershed. We were concerned that a similar instance of offensive language before the watershed should arise so soon after the previous compliance failure. We are therefore requesting that BT attends a meeting to discuss its compliance arrangements.

### **Breach of Rule 1.14**

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<sup>2</sup> See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb240/obb240.pdf> dated 23 October 2013.



## In Breach

### Two and a Half Men

Comedy Central, 3 December 2013, 18:30

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#### Introduction

*Two and a Half Men* is a situation comedy about two best friends and housemates, the characters Walden Schmidt and Alan Harper, and Alan's son, Jake Harper. The series focuses on their adjustment to life in their newly formed surrogate family unit. The sitcom is broadcast on Comedy Central. The licence for Comedy Central is held by Paramount UK Partnership ("Paramount UK" or "The Licensee").

A complainant alerted Ofcom to the inclusion of strong sexual themes throughout this programme which focused on the topic of 'threesomes'. The complainant considered it to be unsuitable for children and inappropriately broadcast before the 21:00 watershed.

This particular episode of *Two and a Half Men* entitled "*Four Balls, Two Bats and One Mitt*" was around 22 minutes in duration, and was about Alan and his partner Lyndsey Mackelroy attempting to add excitement to their relationship by fulfilling their fantasies of a threesome. During the episode Lyndsey promised to have a threesome with Alan and another woman of his choice, on condition that in exchange he agreed to fulfil her fantasy threesome, which would include Alan's flatmate, Walden.

Ofcom noted in particular the following four sequences in the programme.

#### Sequence One

A sequence broadcast at approximately 18:32 featured a wide angled shot of Alan and Lyndsey, filmed from the front, sitting on a sofa together and watching television. The couple had the following conversation:

Alan: *"Are you happy?...No, I'm serious. I mean do you think are relationship has become a little bit... predictable?"*

Lyndsey: *Predictable? [said in unison with Alan]. Yes. Why do you ask?"*

Alan: *Well, I was thinking maybe we could spice things up a little.*

Lyndsey: *What do you have in mind?"*

Alan: *Well, erm... I have been reading Fifty Shades of Grey...and I have silk scarves and, err, some duct tape.*

Lyndsey: *Do you see this taking place in the bedroom or the back of a panel van?"*

Alan: *I don't know. I'm only half way through the book.*

Lyndsey: *Forget the book. What about you? Do you have any fantasies?"*

Alan: *Err... of course I do...*

Lyndsey: *Tell me one.*

Alan: *Well, I guess I always wanted to take some naughty pictures of you.*

Lyndsey: *We can do that.*

Alan: *Really?*

Lyndsey: *Yeah, why not? There's already a lot available on-line. What else?*

Alan: *Oh, well, I guess it's a cliché for a guy, but, erm...I've always wanted to have a, err, a threesome...*

Lyndsey: *Ok.*

Alan: *Anyway I know it's silly, I know...[Lyndsey interrupts]*

Lyndsey: *No, I mean ok, we can do it.*

Alan: *If you are messing with me there is no way I will ever forgive you!*

Lyndsey: *I'm not messing with you.*

Alan: *Seriously, we can have a threesome?*

Lyndsey: *You'd do the same for me.*

Alan: *Of course I would.*

Lyndsey: *Good, 'cos I have a fantasy of my own.*

Alan: *Oh, hmm, lay it on me baby.*

Lyndsey: *I want to have a threesome also...*

Alan: *See. See. This is why communication is so important in a relationship. Two minutes ago I didn't care if you lived or died. Now I love you more than any man has loved a woman...so what's your pleasure treasure? Blonde, brunette, someone with a little junk in the trunk?*

Lyndsey: *No, No. In my threesome there is you, me and another guy.*

Alan: *Another guy? Boy, I don't know? I mean, I've never thought about it, you know, that way [nervous chuckle].*

Lyndsey: *Could be fun.*

Alan: *Yeah, yeah but who would the other guy even be? [Cuts to a shot of Walden as he walked through the room before returning to a close up shot of Alan's face] Oh crap."*

At this point the sequence cut to the theme song of the programme before returning to Alan and Lyndsey sitting on the sofa. The couple continued their conversation:

Alan: *"So, you want to have a threesome with me and Walden?"*

Lyndsey: *You have your fantasy, I have mine.*

Alan: *Yeah, but mine's a traditional wholesome three-way. Walden is a friend. Plus, we see him all the time...It will be awkward....*

Lyndsey: *Do we have a deal?*

Alan: *Alright, after we have mine we will approach Walden.*

Lyndsey: *No, No, No, No, I go first... speaking from experience, once you get yours, I never get mine.*

Alan: *I am offended...if you can't believe in me we have bigger problems in our relationship than whose dirty nasty hump fest we have first.*

Lyndsey: *Take it or leave it.*

Alan: *Take it".*

### Sequence Two

A sequence broadcast at approximately 18:39 featured Alan, Lyndsey and Walden in the kitchen, sitting at the dining table, eating dinner and sipping champagne. Walden said to Alan: *"If you have any desire to stick your tongue in my mouth, just stick your tongue in her mouth and she'll stick her tongue in my mouth and we'll consider the circle complete"*. The sequence concluded with a close up shot of Walden making a toast to their friendship and ended with a shot of Lyndsey, who was sitting at the dining table, shown from the stomach up and drumming her hands against the table as she said: *"So, what do you say? Let's get these balls rolling"*.

### Sequence Three

This sequence started at about 18:40, lasted approximately 10 minutes and was set in a bedroom. It showed first Walden, wearing only a pair of black boxer shorts, and Alan, wearing only a pair of white pants, sitting on the double bed with their backs to the headboard, side by side on top of a duvet discussing whether the planned threesome with Lyndsey was acceptable.

Lyndsey appeared, stepping into the doorway of the bedroom. She was shown from the knees up, dressed in a black laced and purple satin corset top and black satin knickers, and said: *"What do you think boys?"* Alan and Walden looked in the direction of Lyndsey and jumped under the duvet in anticipation. Alan reached his arm out in the direction of Lyndsey and said: *"You do look beautiful my darling"*.

The sequence cut to Lyndsey walking towards the bed ignoring Alan's compliments, and climbing over him to get into bed next to Walden, focussing all her attention on him. Lyndsey kissed Walden passionately while Alan looked on confused as he realised that the threesome had started. Alan rather feebly attempted to join in by stroking Lyndsey's shoulder and back. Walden then pulled away from Lyndsey to explain that he was thinking of a former girlfriend, Zoey.

Lyndsey sympathised with Walden, and they started kissing again. Alan made a further attempt to join in by repeatedly licking Lyndsey's shoulder. Walden then started to cry over Zoey, moved away from Lyndsey and pulled the duvet completely

over himself as he rolled to the side with his back towards Lyndsey and Alan. An advertisement break followed.

After the break the sequence continued with a shot of Alan and Lyndsey sitting up in bed waiting for Walden to return to the bedroom from the en-suite bathroom and Lyndsey shouting: "*Walden, you doing ok in there?*".

Walden returned to the bed. He and Lyndsey kissed again, with Walden closing his eyes and imagining Lyndsey to be Zoey so that he could concentrate. Lying beside them, Alan licked Lyndsey's shoulder before Lyndsey pushed him away with her elbow as she focussed on Walden, kissing him warmly. Walden called out Zoey's name before remembering that he was in fact in bed with Lyndsey. He pulled away again and ran into the en-suite bathroom weeping.

The sequence concluded with Lyndsey resigned to the fact that her threesome was over.

Alan: *"Let's make sure we don't get a cry baby for my threesome."*

Lyndsey: *Your threesome? We haven't even had mine yet.*

Alan: *I beg to differ. I held up my part of the bargain. If I serve pie and nobody is hungry it still counts as dessert.*

Lyndsey: *I suppose. Now what?*

Alan: *Not that you care, but I did take a lethal dose of boner pills before we started...I'm either going to have sex or a stroke..."*

#### Sequence Four

A fourth sequence commenced at about 18:53 and featured Lyndsey and Alan in a bar, searching for a woman to join Alan's threesome.

Lyndsey: *"I know you're excited but the first step is selecting the right girl....How about the red head?"*

Alan: *... redheads! They do dirty things [giggles]*

Lyndsey: *So, should we approach her?*

Alan: *No, No. Hang on, Hang on. She has a tramp stamp...It's a little skanky isn't it?*

Lyndsey: *We are trying to invite her to a threesome. Skanky is good"*

At the end of this episode, Lyndsey and Alan were shown bringing a woman back to the house for a threesome. However, Alan's fantasy was not fulfilled because, on the way to the bathroom to prepare herself, the woman met Walden and lost all interest in the threesome with Alan. In the final shot of this episode Alan and Lyndsey were shown lying side by side in bed together talking while in the background the sound of Walden and the women was heard shouting and screaming together with pleasure.

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

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

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

### **Response**

Paramount UK said it did not “seek to defend the scheduling at 6:30pm” and apologised for this episode being broadcast at this time.

The Licensee explained that the programme had been reviewed by its compliance department which had rated the episode as “Not Near Kids”, which meant that “the episode should not be transmitted between the hours of 4pm and 7pm on any week day”. Paramount UK said this rating was “overlooked” when the programme was uploaded on to its play-out system.

The Licensee acknowledged that the sexual themes and language were not appropriate for children. However, it pointed out that the sequences, as detailed in the Introduction, had been cleared for “Not Near Kids viewing” because of “the humorous and lighted hearted way the lines were delivered”, the audience expectations of this particular series, the “viewing profile” of Comedy Central viewers and the “minimal (and humorous) level” of the sexual words and actions.

The Licensee said that as a result of this incident it had reviewed its internal compliance processes to ensure that programmes with a “Not Near Kids” rating would automatically not be transmitted between the hours of 4pm and 7pm on any week day. The Licensee added that it was “confident” that the steps it had taken to improve its processes would “avoid a repetition” of the compliance error in this case.

### **Decision**

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

Rule 1.3 states 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 time of broadcast; and, likely audience expectations.

We first assessed whether the programme included material unsuitable for children.

Ofcom considered that the programme had a strong sexual theme throughout which consisted of sexual references to, sexual innuendos about, and a number of conversations between characters centring on, the subject of threesomes. It also included a sequence of Alan, Walden and Lyndsey in bed depicting the failed preliminary stages of a threesome, as detailed above. Although a number of the sexual innuendos may not have been easily understood by children, the episode cumulatively contained material with a sexual theme and tone that was unsuitable for children.

We went on to assess whether the content was appropriately scheduled.

We noted that Comedy Central's target audience is 18 to 34 year olds and that the channel's programming is not therefore aimed at children. BARB<sup>1</sup> viewing data indicated that 5,000 out of the 59,000 viewers of this programme were between 10 and 15 years old, with none aged four to nine. Ofcom observed that another episode of *Two and a Half Men* preceded the programme investigated in this case. This had 81,000 viewers, of which 26,000 were children (10,000 of whom were aged four to nine). It is clear therefore that, although not aimed at children, the episode broadcast at 18:30 was likely when shown on this mainstream general entertainment channel to attract a broad audience including children.

Ofcom noted that the Licensee did not provide any information or warning before the programme started to viewers (and especially to parents or carers) of the content to help protect children from unsuitable material. We took account of the facts that the material was not sexually explicit and was "humorous and light hearted". We considered, however, that the overall tone and sexual theme throughout, together with the cumulative impact of the sexual references and innuendos and the sequence of the characters in bed together, resulted in the material being inconsistent with audience expectations of the type of material to be broadcast on this channel at 18:30 on a weekday. We therefore considered that the episode was not appropriately scheduled.

We noted that Paramount UK accepted that it was a mistake to broadcast this programme at 18:30, apologised and had taken measures to improve compliance. Nonetheless Ofcom concluded that, on balance, for the reasons set out above this broadcast breached Rule 1.3.

### **Breach of Rule 1.3**

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<sup>1</sup> Broadcasters' Audience Research Board (BARB) is the official source of television viewing figures in the UK.

## In Breach

### Jabbar Mega Mix

*Fever FM, 14 February 2014, 20:00*

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#### Introduction

Fever FM is a community radio station providing music, news and discussion for the Asian community in the Harehills and Chapeltown areas of Leeds. The Licence for Fever FM is held by Radio Asian Fever CIC (“Radio Asian Fever” or “the Licensee”).

A listener alerted Ofcom to the content of interviews in an edition of a music programme, which he considered promoted products and services in breach of the Code.

Ofcom reviewed *Jabbar Mega Mix*, broadcast on 14 February, which included interviews with representatives of the programme’s sponsor, Wheels Prestige and Private Hire. We noted that, during the programme, services offered by the sponsor were discussed, including, among other things, the types of car available, hire charges, special offers, job opportunities and commission rates.

Ofcom noted that no sponsorship credits were broadcast in or around the programme and neither the presenter nor the interviewees referred at any time to the programme being sponsored. However, the Licensee confirmed that the programme was sponsored by Wheels Prestige and Private Hire and provided Ofcom with a copy of the relevant agreement.

Ofcom considered the broadcast raised issues warranting investigation under the following Code rule:

Rule 10.1: “Programming that is subject to, or associated with, a commercial arrangement must be appropriately signalled, so as to ensure that the commercial arrangement is transparent to listeners.”

We therefore asked the Licensee for its comments as to how the content complied with Rule 10.1.

#### Response

Radio Asian Fever said Wheels Prestige and Private Hire had booked “4 hours of Sponsored shows” and had “decided to use the 2 hours from 8pm till 10pm on 14th February to promote their services”.

The Licensee said it had broadcast sponsored programmes for the last year, adding that, as with other such broadcasts, *Jabbar Mega Mix* “was advertised as a sponsored show...a week in advance” – in this instance, by Wheels Prestige & Private Hire. Radio Asian Fever considered that listeners understood programmes broadcast from 20:00 on Fridays were sponsored by local businesses. To illustrate this, the Licensee noted that, at the end of the recording it had provided of the programme broadcast on 14 February, “it was advertised that...[the presenter would] be *‘joined by’* Fastrack Solutions Ltd” (emphasis added) the following week. The Licensee said it promoted the next week’s sponsor in this way “so that the listeners [could] be prepared to ask any questions”, adding that Fever FM “[relies] on a good

relationship with all businesses...” and regularly discusses listeners’ texts during the programme.

Nevertheless, Radio Asian Fever apologised “for being absent-minded” and “for not abiding with rule 10.1 as [it] should have”, which it said was “a genuine mistake.” The Licensee added that it would “take steps to ensure that throughout any future sponsored show [Fever FM would] mention the sponsorship and be more clear.”

## 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 standards objectives, including “that generally accepted standards are applied to the contents of...radio services so as to provide adequate protection for members of the public from the inclusion in such services of...harmful material.”

This is reflected in, among other rules, Rule 10.1 of the Code, which requires that radio programming subject to, or associated with, a commercial arrangement is appropriately signalled, so as to ensure the commercial arrangement is transparent to listeners. Ofcom’s associated guidance to Rule 10.1<sup>1</sup>, clarifies how this should generally be achieved:

“Whenever any programming is subject to a commercial arrangement (whether it is a commercial reference in a programme/feature or the entire programme/feature itself) Ofcom considers that, to comply with Rule 10.1, appropriate transparency of the arrangement generally requires signalling *at the outset of each instance*...

“In particular, when commercial references...take place in related programming (e.g. paid-for sponsor references within a sponsored breakfast show or the promotion of a product within a feature that opens with non-promotional material), transparency of any commercial arrangement should take place at the earliest opportunity – i.e. at or near the start of the programming concerned”.

Products and services may be promoted in radio programming. However, Ofcom considers it essential that, to ensure adequate transparency, *all* listeners recognise when specific programming *is* subject to, or associated with, a commercial arrangement. In this instance, it was clear from Radio Asian Fever’s response and accompanying documentation that the relevant commercial arrangement (with Wheels Prestige and Private Hire) was a sponsorship agreement. Ofcom noted the Licensee’s argument that regular listeners would have been aware that the programme in question had been sponsored by a local business. However, we did not consider a single reference to a commercial arrangement that was made one week in advance of the programme’s broadcast was sufficient to ensure listeners were aware of the sponsorship arrangement in place.<sup>2</sup>

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<sup>1</sup> See ‘Positioning’, under ‘Appropriate signalling’, in Ofcom’s guidance notes to Section Ten, at:  
<http://stakeholders.ofcom.org.uk/broadcasting/guidance/programme-guidance/bguidance/>.

<sup>2</sup> Ofcom also noted that the reference to being “*joined by*” a third party would not necessarily have informed listeners that the broadcast was subject to a commercial arrangement with that third party. Third parties may take part in programming for a wide range of non-commercial reasons.



As no reference was made in and around *Jabbar Mega Mix* to the fact that it was sponsored by Wheels Prestige and Private Hire, Ofcom considered Radio Asian Fever had failed to signal appropriately to listeners that the broadcast of the programme was subject to a commercial arrangement or that the references to the sponsor (or its services) in the programme were associated with that commercial arrangement. The programme was therefore in breach of Rule 10.1 of the Code.

**Breach of Rule 10.1**

## Resolved

### Real Housewives of Beverly Hills

*Lifetime, 23 January 2014, 16:00*

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#### Introduction

*Real Housewives of Beverly Hills* is a reality TV programme in which the lives of a number of women (“the housewives”) and their families living in the Los Angeles suburb of Beverly Hills are documented.

The licensee of Lifetime, AETN UK (or “the Licensee”) alerted Ofcom less than an hour after the end of the programme that the post-watershed version of programme had mistakenly been broadcast at 16:00.

Ofcom viewed a recording of the content and noted the following examples of offensive language used by contributors in the programme:

- 16:02: One of the housewives was shown in the back of a limousine, facing away from the camera. She then lunged towards Kim Richards, a fellow passenger on the limousine, shouting: *“You’d better fucking [inaudible]!”*
- 16:23: Housewife Taylor Armstrong was shown shouting the following across a dinner table at another housewife, Kim Richards: *“You’re off your fucking rocker!”* A few seconds later she added: *“Do not fucking drag me into this!”*
- 16:43: One of the housewives, Kyle Richards said to another housewife, Camille Grammer: *“You’re such a fucking liar, Camille!”*

Towards the end of the programme, in a preview segment for the next episode, a clip was shown of Ken Todd, the partner of the housewife Lisa Vanderpump, saying the following about another programme participant:

*“How I kept my hands off him, when he said to me, ‘I fucking hate your wife, and I hate you, and I hate your fucking kids’ I was dumbstruck. I hate him, hate him, hate him”.*

Ofcom considered that this material raised issues warranting investigation under Rules 1.14 and 2.3 of the Code, which state:

Rule 1.14: “The most offensive language must not be broadcast before the watershed (in the case of television) or when children are particularly likely to be listening (in the case of radio)”.

Rule 2.3: “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...”.

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

## Response

The Licensee apologised for any offence which could have been caused to viewers by this error, which it said was unintentional. It explained that when the episode had originally been compiled for broadcast, two versions had been created. AETN UK said that the version intended for post-watershed transmission had been incorrectly labelled as being the pre-watershed version. Therefore, it had been this version, containing the most offensive language that had been broadcast at 16:00 in this case. The Licensee added that the employee who had made this error no longer worked in the compliance team.

AETN UK explained that it had recently made changes to its compliance procedures, which have been designed to prevent occurrences like the example in this case from happening. The Licensee said that this incident had led it to review its inventory of programmes, focusing on content which had been compiled for broadcast before the above changes to compliance procedures had been put in place. It added that the episode in this case was compiled by the team before those changes to the compliance procedures had been introduced.

In its response, AETN UK described the steps it had taken immediately after the broadcast of the programme in this case, including: removing the episode from the Lifetime +1 schedule (Lifetime's time-shifted channel); reviewing all episodes of *Real Housewives of Beverly Hills*; and broadcasting an apology to viewers before the following day's episode of *Real Housewives of Beverly Hills*.

In relation to Rule 1.14, the Licensee did not seek to defend the broadcast of the most offensive language before the watershed. However, by way of background, it stated that *Real Housewives of Beverly Hills* is a well-known series on a channel that is targeted at adult women. AETN UK added that audience viewing figures for the programme indicated that no children were watching at the time of the broadcast, and that there were 6,800 viewers in total at that time.

In relation to Rule 2.3, the Licensee said that it conceded that the word "*fucking*" would have been offensive to some members of the audience, and that no warning was shown to alert viewers to this potentially offensive content. However, it said that the target audience for Lifetime is adult women, and that regular viewers of this programme: "would be familiar with the sometimes aggressive and fiery exchanges between the characters". Therefore, AETN UK did not consider that the instances of offensive language "unacceptable though they were...would have greatly exceeded the expectations" of the audience to this series. However, the Licensee said that in order to apologise to regular viewers of the programme, it had broadcast an apology immediately before the broadcast of the following day's episode.

## Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that "persons under the age of eighteen are protected" and that "generally accepted standards" are applied so as to provide "adequate protection for members of the public" from the inclusion of offensive and harmful material. These objectives are reflected in Sections One and Two of the Code.

Rule 1.14 states that “the most offensive language must not be broadcast before the watershed”. Ofcom research on offensive language<sup>1</sup> notes that the word “fuck”, and variations of it, are considered by audiences to be amongst the most offensive language. The instances of the word “*fuck*ing” in this programme occurred between 16:00 and 17:00 and were therefore examples of the most offensive language broadcast before the watershed.

In addition, Rule 2.3 states that “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context”. Ofcom therefore considered first whether the language in this programme was potentially offensive; and, if so, whether the offence was justified by the context. Context includes for example: the editorial content of the programme, the service on which it is broadcast, the time of broadcast and the likely size and composition of the potential audience and the likely expectation of the audience. As stated above, Ofcom’s research on offensive language indicates that the word “fuck” and other variations of it, are considered by audiences to be among the most offensive language. Therefore, Ofcom considered that the use of “*fuck*ing” broadcast between 16:00 and 17:00 clearly had the potential to cause offence to the audience.

In reaching its decision, Ofcom took into account that it had been alerted to this matter by the Licensee at the earliest possible opportunity, rather than by an audience complaint. Furthermore, AETN UK took immediate steps to mitigate the offence caused by the error, such as broadcasting an apology and removing the episode from the broadcast schedule for the Lifetime +1 service, so that the same programme was not broadcast an hour after the original broadcast. We also noted the steps the Licensee had already put in place when this incident had happened to improve compliance procedures. Taking all of these factors into account, Ofcom’s decision is that the matter was resolved.

## **Resolved**

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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>

## Not in Breach

### Broadcast interviews with Jeremiah Adebolajo and Omar Bakri Muhammed

*Channel 4 News, Channel 4, 19 December 2013, 19:00*

*Sky News, Sky News Channel, 20 December 2013, 10:15 and 11:19*

*Channel 5 News, Channel 5, 20 December 2013, 17:00*

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#### Introduction

On 22 May 2013, Fusilier Lee Rigby was murdered by Michael Adebolajo and Michael Adebowale in Woolwich<sup>1</sup>. On 19 December 2013, Michael Adebolajo and Michael Adebowale were found guilty<sup>2</sup> of Fusilier Rigby's murder.

Ofcom received complaints about three programmes broadcast following the conclusion of the criminal trial of Michael Adebolajo and Michael Adebowale. In summary, these complaints alerted Ofcom to potentially offensive content included within three separate interviews, as described below. The interview in the programme broadcast by *Channel 4 News* involved the controversial Islamic figure, Omar Bakri Muhammed<sup>3</sup>, who had been widely reported as having links with Michael Adebolajo. The interviews in the programmes broadcast by Sky News and Channel 5 involved Jeremiah Adebolajo, the brother of Michael Adebolajo. These two interviews made clear that Jeremiah Adebolajo, like his brother Michael, had converted to Islam and shared the same extreme interpretation of Islamic theology as his brother.

#### *Channel 4 News, 19 December 2013, 19:00 – Interview with Omar Bakri Muhammed*

We received two complaints about this programme. In summary, these objected to the broadcast of Omar Bakri Muhammed "praising" Michael Adebolajo, and mobile telephone footage filmed by an eye witness of the aftermath of the murder of Fusilier Rigby<sup>4</sup>.

We noted that this programme featured an interview with the controversial Islamic figure, Omar Bakri Muhammed, who was being asked about his reported links to Michael Adebolajo, one of the convicted killers of Fusilier Rigby. We noted that the

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<sup>1</sup> On 6 January 2014, following the conclusion of the criminal trial of Michael Adebolajo and Michael Adebowale, Ofcom published its decisions in relation to a number of news broadcasters' news coverage of the aftermath of the killing of Lee Rigby. The large majority of these broadcasters had featured in their news coverage in some way the mobile telephone footage featuring Michael Adebolajo, described in footnote 2. In summary, Ofcom found that none of the broadcasts investigated had breached the Code (See <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/245/obb245.pdf>).

<sup>2</sup> On 26 February 2014, Michael Adebolajo was given a whole-life term and Michael Adebowale was jailed for a minimum of 45 years for murdering Fusilier Lee Rigby.

<sup>3</sup> Omar Bakri Muhammed is reported to have led the proscribed terrorist organisation, Al-Muhajiroun Following the 7/7 London bombings, Omar Bakri Muhammed left the UK to live in Lebanon.

<sup>4</sup> This was mobile telephone footage filmed by an eye witness to the aftermath of the murder of Lee Rigby. The original footage showed Michael Adebolajo holding a machete and knife in his hands, which were covered in blood, and talking to camera seeking to justify the attack on Lee Rigby.

interview was of approximately three minutes' duration and was included in a longer news report of approximately six minutes' duration which focused on the events that had led up to the conviction of Michael Adebolajo and Michael Adebowale.

During the report there were brief clips of: CCTV footage of the car being driven by Michael Adebolajo and Michael Adebowale, up to behind Fusilier Rigby, as he crossed the road in Woolwich where he was killed; a 10-second mobile telephone clip<sup>5</sup> of Michael Adebolajo talking to bystanders in the wake of Fusilier Rigby's murder; two short clips of the two killers rushing towards police cars arriving at the scene of Fusilier Rigby's murder, including the aftermath of the murderers being shot and wounded by police; and a clip of Michael Adebolajo speaking at a demonstration and referring to non-Muslims as "pigs" and "worse than cattle".

We noted that, at the beginning of the programme, the studio presenter, Jon Snow, said the following:

*"Good evening. A poor but leafy area of London, a quiet unassuming street and a moment of indescribable horror. Today a jury convicted Michael Adebolajo and Michael Adebowale of the savage murder of Fusilier Lee Rigby. During the trial we learned that both Muslim men had been radicalised. Indeed, the radical cleric, Omar Bakri Muhammed, tells us tonight 'I'm proud of Michael Adebolajo'. So how were the killers turned and how well is MI5 equipped to track and combat the threat? What turned a South London schoolboy into a ruthless crazed killer and could he have been stopped?...And we learn about the decent unremarkable life of the victim who met so shocking an end".*

Later in the programme, Jon Snow introduced the report as follows:

*"Home Affairs correspondent, Simon Israel traces the events now from their roots to their denouement today at the Old Bailey. And be warned, his report does contain distressing images".*

Approximately three minutes into the report, Cathy Newman, a presenter in the studio gave the following introduction to the interview with Omar Bakri Muhammed:

*"He was born into a Christian family, but converted to Islam at university. Michael Adebolajo's anger at the Iraq war drove him to Africa in an abortive attempt to link up with the Islamists of Al Shabaab. Deported back to Britain he then came to the attention of MI5. So how was he able to plot the daylight murder of a British soldier on the streets of London? Paraic O'Brien has this – and again as you would expect, his report does contain some distressing scenes and content".*

We noted that the interview with Omar Bakri Muhammed ("OBM") included the following exchanges and statements between him and the reporter:

Reporter: *"The picture you are painting of a quiet gentle man jars with the image we see of him with those bloodied hands in Woolwich. What happened?"*

OBM: *"My own personal analysis – that is Michael is one of those Muslims who is really radicalised because of 9/11, because of the foreign policies really of campaign against so-called terrorism against Islam".*

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<sup>5</sup> Ibid.

Reporter: *"And because of you?"*

OBM: *"It's not because of me, because of me I teach him Islam".*

Reporter: *"Well, in fairness though, you have acknowledged that you set him off on that path. Your group was the first group he came in contact with. Your narrative was the one, you could argue, that ultimately brought [Michael Adebolajo] to Woolwich".*

OBM: *"To be honest, if he got motivated by our lectures, I would be proud of him".*

Reporter: *"Was your first reaction, as a religious man, not sympathy for the victim? Would that not be your first reaction?"*

OBM: *"Not at all".*

Reporter: *"I see".*

OBM: *"Not at all".*

Reporter: *"Why not?"*

OBM: *"Because, I don't know, you don't understand the Muslim psyche. The Muslim psyche when we are at war with the people who are killing our brothers and sisters. We are not going to feel sorry for somebody who is a criminal. And we did not see that about soldiers, except somebody criminals".*

Reporter: *"You know what I find interesting about this exchange is that every time I try to personalise it, you just use it as a platform to give a little speech, which suggests to me that you're quite, you don't quite get it".*

OBM: *"I am proud of what Michael did. Get it!"*

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Reporter (in voiceover):

*"At this point in the interview, his little son walked into the room. If you need any more convincing about how extreme and unrepresentative this man's viewpoint is, here you go".*

[The son of OBM comes into shot and climbs onto his father's knee.]

OBM (with his son sitting on his knee):

*"The family of Michael, we say to them: I got son; if he did what Michael did, I would be happy".*

Reporter: *"What?"*

OBM: *"If he did what Michael did, I would be happy".*

Reporter: *"If this little boy did what Michael Adebolajo did?"*

OBM: *“When he be grown up and he really carried the same attack and become a muhajadeen”.*

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

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

Rule 2.3: “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Appropriate information should also be broadcast where it would assist in avoiding or minimising offence”.

We therefore sought Channel 4’s comments as to how this material complied with these rules.

Sky News, 20 December 2013, 10:15 and 11:19 – Interview with Jeremiah Adebolajo

We received two complaints about an interview with Jeremiah Adebolajo. These complainants objected to Jeremiah Adebolajo appearing to endorse his brother’s murder of Fusilier Rigby. We noted that the interview at 10:15 lasted about five minutes and Jeremiah Adebolajo was asked his opinion on a range of matters relating to his brother and the murder of Fusilier Rigby. The interview included various images or clips (in vision only, without the words of Michael Adebolajo being broadcast) relating to Michael Adebolajo including a 13-second mobile telephone clip<sup>6</sup> of Michael Adebolajo talking to bystanders in the wake of his killing of Fusilier Rigby. The images of Michael Adebolajo’s bloodied hands and weapons were blurred as was Fusilier Rigby’s body lying in the background.

We noted that the interview was preceded by the studio presenter saying the following:

*“The brother of the Woolwich killer Michael Adebolajo, has refused to condemn the murder of soldier Lee Rigby. Asked if he has any regrets, Jeremiah Adebolajo told Sky News his only regret was that foreign troops are in the lands of the Muslims...”.*

We noted the following exchanges during the interview between a reporter and Jeremiah Adebolajo (“JA”), broadcast at 10:15:

Reporter: *“You followed [Michael Adebolajo] and made that decision, as well, to convert [to Islam]”.*

JA: *“I did, I did, yeah. The media have taken this line that we have, you know, this disenfranchised, young, Christian boy, who was radicalised by these bogeymen figures: Anjem Choudary<sup>7</sup>, Omar Bakri [Muhammed]. It’s a*

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<sup>6</sup> Ibid.

<sup>7</sup> Anjem Choudary is a controversial Muslim cleric who is known for his extreme and provocative views concerning Islamic doctrine and practice. In the wake of the murder of Fusilier Rigby, it had been widely reported that Anjem Choudary had known Michael Adebolajo. On 20 January 2014, following the conclusion of the criminal trial of Michael Adebolajo and Michael Adebowale, Ofcom published its decisions in relation to various



*simplistic narrative. What the truth is that they had no ideological influence over my brother, none at all”.*

Reporter: *“Even though they were on the same marches, part of the same activism that was going on. You don’t believe that there was any influence at all?”*

JA: *“Many Muslims felt aggrieved about what was going on in Iraq and Afghanistan. You find redress of that grievance in whatever you can. And part of the redress of the grievance my brother sought was going to demonstrations”.*

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Reporter: *“You say that your brother is a very moral person, and that is something that is part of his upbringing, and was reinforced, if anything, by his conversion to Islam. How is there any morality in slaughtering a soldier in the street who he didn’t even know 100% was a soldier, and who had no idea as to what was going to happen. It was cowardly, wasn’t it?”*

JA: *“I think the phrase my brother used was a phrase found in both the Qur’an and the Bible. He used the phrase: ‘An eye for an eye, a tooth for a tooth’. With tanks and with guns, and with the latest in military technology, Britain enter into lands such as Afghanistan and Iraq and the result of that is the slaughter of thousands upon thousands of people. There’s a danger in dehumanising Iraqis and Afghanistans and suggesting that they’re, in some way, less important than British troops”.*

Reporter: *“I don’t think anyone is, but I’ve spoken to an awful lot of British Muslims, who say they completely reject the acts, they understand the context you put forward, the argument about foreign policy. But, they say if you want to go and kill a British soldier, go and do it in the theatre of war. Don’t do it on a street in South East London, using a Vauxhall Tigra as your weapon initially. And trying to hack somebody’s head off. It’s barbaric, and goes against every moral that people here in the United Kingdom value”.*

JA: *“You mention the theatre of battle. Would you say that when the drones strike in a Pakistani village, that that’s part of the theatre of battle? And if we suggest that ‘Well, no, the theatre of battle widens wherever we find combatants’, then one would suggest that if you were to find a combatant on the streets of London, one would naturally fight... The 99% of Muslims you speak about in Britain who condemn the attack also condemn what’s happening in Iraq and Afghanistan. Some of them would choose to lobby politicians. Some of them would choose to get into politics themselves”.*

Reporter: *“But none of them would go out and behead a British soldier?”*

JA: *“Arguably, some of them have. I mean, arguably, some of them blew up a bus. Arguably, some of them blew up a marathon in America”.*

Reporter: *“Do you feel regret for what happened in Woolwich or not?”*

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broadcasters’ interviews featuring Anjem Choudary. Ofcom found that none of the broadcasts investigated had breached the Code (See <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/246/obb246.pdf>).

JA: *“My main regret is that, you know, foreign troops are in the lands of the Muslims”.*

We noted that at 11:19 a shortened 50-second version of the interview with Jeremiah Adebolajo was broadcast.

We considered the material raised issues warranting investigation under Rules 1.3 and 2.3 of the Code. We therefore sought Sky News’ comments as to how this material complied with these rules.

Channel 5 News, 17:00 – Interview with Jeremiah Adebolajo

We received two complaints about an interview with Jeremiah Adebolajo. These complainants objected to Jeremiah Adebolajo appearing to endorse his brother’s murder of Fusilier Rigby. We noted that the interview was of approximately three minutes’ duration, during which Jeremiah Adebolajo was asked his opinion on a range of matters relating to his brother and the killing of Fusilier Rigby. The interview included various images or clips (in vision only, without the words of Michael Adebolajo being broadcast) relating to Michael Adebolajo including a 10-second mobile telephone clip<sup>8</sup> of Michael Adebolajo talking to bystanders in the wake of Fusilier Rigby’s killing. The images of Michael Adebolajo’s bloodied hands and weapons were blurred as was Fusilier Rigby’s body lying in the background.

We noted that the interview was preceded by the studio presenter saying the following:

*“The brother of one of the men convicted of murdering the soldier Lee Rigby has refused to condemn the killing. Yesterday Michael Adebolajo was found guilty, along with Michael Adebowale, of a brutal attack in Woolwich in May. The court was told that Adebolajo had become a radicalised Muslim at university. Now his brother, Jeremiah, who’s also converted to Islam, has spoken to Channel 5 News, and has tried to justify the murder...”.*

We then noted the following exchanges during the interview between a reporter and Jeremiah Adebolajo (“JA”):

Reporter: *“Why did your brother murder Lee Rigby?”*

JA: *“Well, the word, murder, first is I think what was contended in court. Lee Rigby died simply because British troops were sent to Iraq and Afghanistan and other places in the Muslim world. Thousands upon thousands of others in Iraq and Afghanistan are dying. I ask you, do you think their blood’s cheaper?”*

Reporter: *“But how can it be an act of war or an act of a soldier, to knock down a defenceless man as he is walking across the road and attempt to decapitate him?”*

JA: *“The individual you mentioned is a soldier”.*

Reporter: *“But he was off duty. He was defenceless. He had no chance of defending himself”.*

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<sup>8</sup> See footnote 2.

JA: *“But nonetheless a soldier. I think in getting bogged down in speaking about the murder of one individual, we lose sight of the bigger picture”.*

Reporter: *“I’m just going to interrupt you to say ‘getting bogged down about the murder of one individual’, many people watching this at home having seen the trial and having seen footage of your brother with his hands covered in blood, would find it very offensive to talk about being ‘bogged down’. They would be horrified at what he did and horrified at any attempt to justify it”.*

JA: *“I understand. What I’m saying in using the term bogged down is we have a danger here of becoming sidetracked in what this was about. The family of Lee Rigby, and the general British public, I’m sure would want to know why the, why Lee Rigby was killed and I’m sure...”.*

Reporter: *“Can you tell his family? Have you got a message for his family?”*

JA: *“And I’m sure that the general British public would also like to know how we as a society can prevent such attacks from occurring again”.*

Reporter: *“So do you think that there are others planning similar attacks like this in Britain?”*

JA: *“I don’t know. I mean, that’s not for me to answer. I think that’s for the general public to think about”.*

Reporter: *“A little boy has been left without a father. Does your brother feel any remorse for that?”*

JA: *“You know from a utilitarian point of view, my brother feels remorse, first and foremost I think, for the thousands upon thousands of deaths and orphans and suffering we find in Afghanistan, Iraq, Somalia and many of the other Muslim countries that have been interfered with”.*

Ofcom considered this material raised issues warranting investigation under Rules 1.3 and 2.3 of the Code. We therefore sought Channel 5’s comments as to how this material complied with these rules.

## **Response**

### *Channel 4 News, 19 December 2013, 19:00 – Interview with Omar Bakri Muhammed*

Channel 4 said it had interviewed Omar Bakri Muhammed in the context of the conviction of Michael Adebolajo and Michael Adebowale. Given that this individual was alleged to have “indoctrinated Michael Adebolajo and incited him on the path to radicalisation”, the licensee said it was important to inform the public about “the path to extremism and radicalisation in order to counter such views” by means of “robust direct challenge”. Channel 4 added that: “Freedom of expression is founded on the principle that in a democracy there will be differing opinions and that opinions should be subject to open and transparent scrutiny”. The licensee contrasted its “stringent journalistic scrutiny” of Omar Bakri Muhammed with “internet propaganda reports produced by supporters of such views”. In its view, Channel 4 said: “It is the job of a free and fair media to hold such extremists to account”.

In relation to Rule 2.3, Channel 4 said that news reporting can sometimes be distressing and upsetting. However, the licensee outlined the ways in which context

was given in this case a “clear warning” was provided to viewers in advance of the news report in which the interview was included; and Omar Bakri Muhammed was “robustly challenged...[and] held to account for his radical statements”. For example, the reporter put it to Omar Bakri Muhammed that he had “some level of culpability for introducing Michael Adebolajo to the path which he later took”. Further, Channel 4 referred to the point in the interview when Omar Bakri Muhammed presented his son during the interview and declares he would be proud of his son if he had committed such an atrocity. At this point, the reporter said in voiceover to the audience “*If you need any more convincing about how extreme and unrepresentative this man’s viewpoint is, here you go*”.

In relation to Rule 1.3, Channel 4 said that *Channel 4 News* is a “serious long-form news programme that looks into news issues in depth”. However, in this case, a warning was given prior to the segment in which the interview was included alerting viewers to “*distressing scenes and content*”. The licensee said other relevant factors determining the editorial judgements in relation to Rule 1.3 included: the time of broadcast; the “many challenges” being made by the reporter to Omar Bakri Muhammed; and the likely expectations of the audience, including that “although primarily an adult audience, children may be watching”.

In conclusion, Channel 4 said that while the interview may have been “unsettling” for some, “it is important that news broadcasters do not shy away from interviewing individuals with controversial views, particularly when those views relate to a matter of significant public interest”. Therefore, to “exclude potential interviewees or subject areas on the basis that such views or insights could offend some, would directly conflict with the broadcaster’s freedom to impart information and the public’s right to receive information”. Rather, according to Channel 4, it is an editorial judgement for the broadcaster as to who to interview, as long as such interviews comply with the Code “with appropriate challenges to interviewees and contextualisation of the information in the report”.

#### Sky News, 20 December 2013, 10:15 and 11:19 – Interview with Jeremiah Adebolajo

Sky News said that the background to this interview was the murder of Fusilier Rigby, which the licensee described as “an unprecedented act”. It added that in the public interest “there should be some understanding of how such home-grown terror develops in our society”. It was in this context that the licensee considered it appropriate to interview Jeremiah Adebolajo “as someone who could give genuine insight into the reasons behind such barbarity”. Sky News added that “It is sometimes necessary to broadcast challenging or unpopular views in order to increase public awareness and stimulate debate. The aim of our interview was to try to understand the issues surrounding a significant and distressing event in UK life”. Therefore, while the licensee said that it would never condone or encourage any extreme views, it stated its belief that “it is vitally important in a free and democratic society that these challenging issues are brought to light and tested under public scrutiny”.

In relation to Rule 2.3, Sky News recognised the “the sensitivity around the murder of Lee Rigby and the views of some members of the Muslim community”. It therefore outlined the various contextual factors it believed justified any offence caused by the interview with Jeremiah Adebolajo:

- in the 36-hour period following the conviction of Fusilier Rigby’s killers, Sky News said that it broadcast “myriad voices of condemnation and horror from many sections of society – including Muslims – at the actions” of Michael Adebolajo and Michael Adebowale. For example, soon after the 10:15 interview with Jeremiah

Adebolajo, there was an interview with Sughra Ahmed, President of the Islamic Society of Britain who “strongly condemned the Murder [of Fusilier Rigby] and distanced the Muslim community from such actions”. According to Sky News, the fact that the interview with Sughra Ahmed “came 12 minutes after the interview with Jeremiah Adebolajo did nothing to reduce its importance or impact. We believed it was important to fairly reflect the views of the majority of Muslims who strongly condemn such actions within our coverage as a whole”;

- both the studio presenter and the reporter who interviewed Jeremiah Adebolajo challenged the latter’s views and put them in “appropriate context”. For example, in particular the Sky News reporter described the murder of Fusilier Rigby as “cowardly” and invited Jeremiah Adebolajo to respond. In addition, when Jeremiah Adebolajo acknowledged in the interview that “99% of Muslims in Britain [who] condemn the attack also condemn what’s happening in Iraq and Afghanistan”, the licensee said that its reporter “immediately” challenged Jeremiah Adebolajo to state that those moderate Muslims “would not dream of trying to behead a British soldier”; and
- the interview with Jeremiah Adebolajo was edited to ensure that the “most extreme” parts were not broadcast, and so he was not permitted to “unnecessarily repeat his views or to incite any viewer to illegal or anti-social acts”.

In relation to Rule 1.3, Sky News said that it is a channel aimed at an adult audience. In the licensee’s view, the Fusilier Rigby murder trial was “firmly” in the public domain, and therefore “Parents were aware that the trial was still being discussed in detail by the media which would be likely to further reduce our limited number of under 18 viewers”. Sky News said it had taken various steps to protect any children in the audience in relation to this content, such as providing an explicit warning that it included “images of Michael Adebolajo in the aftermath of the murder of Lee Rigby”. The licensee said that, while its reporter had spoken to Jeremiah Adebolajo for 45 minutes, less than five minutes of that content was broadcast so as to avoid causing any undue harm and offence to “viewers of any age”. However, Sky News stated its belief that the interview was warranted in the public interest and “given the likely expectation of a predominantly adult audience on a specialist news channel...firmly in line with audience expectation”.

In conclusion, Sky News stated its belief that the interview with Jeremiah Adebolajo “provided insight into an unprecedented and highly significant incident and that it was entirely justified in the public interest...[and] valuable insight into the nature of home grown terrorism and the mind-set of” Fusilier Rigby’s killers.

#### Channel 5 News, 17:00 – Interview with Jeremiah Adebolajo

Channel 5 said this interview was broadcast one day after the conclusion of the Fusilier Rigby murder trial which was “the first killing of a soldier on mainland Britain by those linked to jihad”. Accordingly, the licensee said: “Viewers were fully aware that this interview formed part of our reporting of the murder of Lee Rigby and the conviction of his killers”.

Channel 5 added that the murder of Fusilier Rigby was a major news story and “Questions were being raised as a matter of public debate about how and why these young Christian men [i.e. Michael Adebolajo and Michael Adebowale], raised and educated in Britain, could have converted to Islam and then adopted such a radical form of Islam that it ultimately led them to commit a horrific murder”. The licensee

therefore argued that there was significant public interest in hearing from “a direct member of Michael Adebolajo’s family...[to give] viewers an insight into the background of, and as it transpired, shared views of” Michael and Jeremiah Adebolajo. By so doing, the interview showed that “the views expressed by Michael Adebolajo, when he gave evidence in his trial, are not isolated views but are shared and understood by others, not least his brother who is also a convert to Islam”.

Channel 5 accepted that Jeremiah Adebolajo’s views would have been unacceptable to some viewers, but “it is important to recognise that controversial views that are within the law should be allowed to be expressed”. The licensee added that: “Freedom of expression is founded on the principle that in a democracy there will be differing opinions and that opinions should be subject to open and transparent scrutiny”.

In relation to Rule 2.3, Channel 5 outlined the contextual factors that it considered justified any potential offence caused by the interview:

- the reporter who conducted the interview “was forceful in her challenges to Jeremiah Adebolajo’s views and she asked the questions which we believe many viewers would have wished to put to him or his brother”;
- the interview was in line with the likely expectations of the audience for *Channel 5 News* at 17.00;
- Jeremiah Adebolajo’s views, while “upsetting”, were not expressed in “violent or extreme language nor did they contain a direct threat to the public”; and
- in a live studio report following the interview “it was made clear that the majority of Muslims whose views are moderate, condemn the murder of Lee Rigby”.

In relation to Rule 1.3, Channel 5 said that *Channel 5 News* is not aimed at children, and in this case the child audience was seven per cent of the total audience. The licensee said that the context of this news report was the murder of Fusilier Rigby, and “The lead in to the report made clear what was about to be heard and thereby allowed parents or other responsible adults to turn off the report if children were in the room”. Channel 5 added that “the material was edited to ensure that there was nothing in the interview itself which was directly threatening or particularly graphic such as would place a child in fear”. Therefore, the licensee considered that the content was suitable for children, because Jeremiah Adebolajo expressed his views “in a calm and measured way” and “did not expressly endorse or condone the killing [and] no graphic details of the death were included”. In addition, the live report that followed the interview “made clear that he was expressing a minority viewpoint”.

The licensee said that it was editorially justified to broadcast a 10-second mobile telephone clip<sup>9</sup> of Michael Adebolajo talking to bystanders in the wake of Fusilier Rigby’s killing which was edited with “the weapons in his hands blurred”. It added that this clip was shown in the context of the reporter asking Jeremiah Adebolajo a question, challenging him with reference<sup>10</sup> to the images of his brother, Michael,

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<sup>9</sup> Ibid.

<sup>10</sup> At this point in the interview, the reporter said: “I’m just going to interrupt you to say ‘getting bogged down about the murder of one individual’, many people watching this at home having seen the trial and having seen footage of your brother with his hands covered in blood, would

appearing in the mobile telephone clip. Channel 5 considered that the clip “was sanitised to take into account that children may be amongst our viewers”.

In conclusion, Channel 5 stated its belief that the interview was editorially justified because it “contributed to the on-going public debate about radicalisation of young British men and about the attitudes and views stirred up by past and present conflicts across the Middle East”. It added that while the interview may have been unsettling for some “it is important that news broadcasters do not shy away from interviewing individuals with controversial views particularly when those views relate to a matter of significant public interest”.

## Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that persons under the age of eighteen are protected and generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material. These duties are reflected in Section One (Protecting the Under-Eighteens) and Section Two (Harm and Offence) 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; the nature of the particular programme; and the likely audience expectations. Rule 2.3 requires broadcasters to ensure that the broadcast of potentially offensive material must be justified by the context. Context is assessed by reference to a range of factors including but not limited to: the editorial content; the degree of offence; the effect of the material on viewers who might come across it unawares; whether the nature of the content has been brought to the attention of the audience by appropriate information; and likely audience expectations.

In reaching its decision in this case, Ofcom has taken account of the audience’s and the broadcaster’s right to freedom of expression. This is set out in Article 10 of the European Convention on Human Rights (“ECHR”) which encompasses the right to hold opinions and to receive and impart information and ideas without interference by public authority. Ofcom must therefore seek an appropriate balance between ensuring members of the public including children are protected from material which may be considered harmful or offensive on the one hand, and the broadcaster’s and audience’s right to freedom of expression on the other.

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

Ofcom recognises that, at times, offence can be caused not just by the actual content of a programme but by the very fact that people with controversial views are given airtime. Any potential offence in these circumstances can be exacerbated if viewers

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*find it very offensive to talk about being ‘bogged down’. They would be horrified at what he did and horrified at any attempt to justify it”.*

or listeners consider that such contributors' views are not properly challenged or contextualised. However, broadcasters are allowed to include any contributor they wish in their programming, as long as they comply with the Code. There are various possible editorial approaches to how a broadcaster might if necessary provide context when featuring an individual with controversial and offensive views (e.g. a presenter asking challenging questions). However, the final decision as to what approach to take is one for the broadcaster.

In the case of these three broadcasts, each programme prominently featured interviews with two individuals known to have links with Michael Adebolajo, one of the convicted killers of Fusilier Rigby. For example, Omar Bakri Muhammed<sup>11</sup> is a controversial Islamic figure, who has been widely reported as having known Michael Adebolajo. Jeremiah Adebolajo was closely related to Michael Adebolajo and, like his brother, had converted to Islam, and appeared to share some of the same radical views. Ofcom took into account the fact that the interviews with Omar Bakri Muhammed and Jeremiah Adebolajo were broadcast against the backdrop of a very important news story, namely the end of the criminal trial and conviction of the two men responsible for the murder in a London street of Fusilier Rigby on 22 May 2013. It is understandable that, with the conclusion of the criminal trial of Michael Adebolajo and Michael Adebowale, broadcasters wished to explore the factors that may have influenced them in committing their crime, in the context that it had been widely reported that the murder had been motivated by an extreme version of Islamic theology. In this context, there was a strong public and news interest for broadcasters to examine: the extent to which Omar Bakri Muhammed may have had a role in 'radicalising' one of Fusilier Rigby's killers; and the views and opinions of Jeremiah Adebolajo (given that he was a close relative of one of Fusilier Rigby's killers, Michael Adebolajo, and like the latter had converted to Islam, and appeared to share some of the same radical views).

Against this background, we considered each programme in turn against Rule 2.3 and then Rule 1.3.

#### Channel 4 News, 19 December 2013, 19:00 – Interview with Omar Bakri Muhammed

##### *Rule 2.3*

Ofcom first considered whether the appearance of Omar Bakri Muhammed had the potential to cause offence. In this case, we noted that Omar Bakri Muhammed was included in an interview lasting three minutes, in which he was able to put forward his views in relation to the murder of Fusilier Rigby and the role of Michael Adebolajo in that killing. The murder of Fusilier Rigby had taken place on a London street during the day, while Fusilier Rigby was unarmed. Ofcom considered that a UK audience would have viewed the attack as very serious. Given the widely-reported brutality of the murder of Fusilier Rigby, we considered Omar Bakri Muhammed's references to Michael Adebolajo's role in killing Fusilier Rigby to be highly offensive. For example, his statement that he would be "*proud*" if Michael Adebolajo had been motivated by him to carry out the murder had the potential to be highly offensive. This level of offence would have been exacerbated by Omar Bakri Muhammed emphasising his pride in what Michael Adebolajo had done, by the strident emphasis he put on the phrase "*Get it!*", when he said the following statement: "*I am proud of what Michael did. Get it!*" In addition, despite being asked by the reporter whether he had any sympathy for Fusilier Rigby, he clearly and repeatedly stated that he did not.

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<sup>11</sup> Omar Bakri Muhammed, like Anjem Choudary (see footnote 5) is reported to have had links to the proscribed extreme Muslim organisation, Al-Muhajiroun.



Furthermore, we considered that there was the potential for serious offence to have been caused by Omar Bakri Muhammed being shown, with his young son sitting on his knee, and saying that he would be “*happy*” if his son committed the same act as murder as Michael Adebolajo.

Ofcom then considered whether the material was justified by the context.

Ofcom noted that this report was included in *Channel 4 News*, a programme that provides coverage and analysis of a range of on-going news stories. It was not surprising, and within audience expectations, that a specialist news programme should want to reflect Omar Bakri Muhammed’s viewpoint to some extent because it had been widely reported that Michael Adebolajo’s crime had been motivated by an extreme and radical interpretation of Islam, and Omar Bakri Muhammed had had a role in ‘radicalising’ Michael Adebolajo. We considered that, although this viewpoint might be objectionable to many, it was a legitimate topic for discussion, given that the interview took place in the immediate aftermath of the conclusion of the trial of Michael Adebolajo and Michael Adebowale.

We considered the various ways in which the licensee provided context for Omar Bakri Muhammed’s views, for example, through: the warnings provided in this case; the extent to which Omar Bakri’s views were directly challenged in the interview; and other viewpoints being reflected to counter any potential offence caused by Omar Bakri Muhammed.

Firstly, we noted that viewers were alerted to the potentially offensive nature of Omar Bakri Muhammed’s views. This first happened at the beginning of the programme when the main presenter, Jon Snow, made the introductory remarks quoted in the “Introduction” section above. Viewers were also alerted to the offensive nature of Omar Bakri Muhammed’s views by another studio presenter, Cathy Newman, saying the following immediately before the report that included the interview with Omar Bakri Muhammed:

*“So how was [Michael Adebolajo] able to plot the daytime murder of a British soldier on the streets of London? Paraic O’Brien has this – and again as you would expect, his report does contain some distressing scenes and content”.*

Second, Paraic O’Brien, the reporter conducting the interview: challenged Omar Bakri Muhammed about the latter’s role in ‘radicalising’ Michael Adebolajo; and asked Omar Bakri Muhammed whether he had any sympathy for Fusilier Rigby. The reporter also made clear how extreme Omar Bakri Muhammed’s views are in the following voiceover:

*“At this point in the interview, his little son walked into the room. If you need any more convincing about how extreme and unrepresentative this man’s viewpoint is, here you go”.*

Third, context was provided by a studio discussion immediately following the interview with Omar Bakri Muhammed. This involved: Mohammed Ansar, described as a “*theologian and social commentator*”; Peter Neumann, Director of the International Centre for the Study of Radicalisation at King’s College, London; and Dame Pauline Neville-Jones, the former Security and Counter-Terrorism Minister. These participants condemned the views and actions of Michael Adebolajo and Michael Adebowale, and also the views of Omar Bakri Muhammed, and stressed that their views were held by only a small unrepresentative minority of people in the UK

Muslim community. For example, we noted the following statements during the studio discussion:

*“I think it’s deeply worrying. I think it reflects a situation we have in society today where young Muslims are following the worst kind of teachings, the most extreme teachings, the most radical teachings and we don’t really have the infrastructure at the minute to be able to tackle this”.*

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*“It seems quite clear these people, these two guys, were part of what we call a counter-culture, and extremist milieu for a number of years. There’s nothing necessarily worrying about being part of an extremist milieu. What was missed was the point at which they graduated from being part of that counter-culture to actually wanting to commit a violent act...”.*

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*“I think we are looking at a couple of hundred people in this country who would be prepared to do something like that [i.e. the killing of Fusilier Rigby]”.*

Finally, the audience were alerted to Omar Bakri Muhammed’s extreme views by the reporter, Paraic O’Brien, saying the following in voiceover immediately prior to the start of his interview with Omar Bakri Muhammed:

*“...Adebolajo...met the radical group, Al-Muhajiroun. He started attending and then speaking at their demos...The group was proscribed in 2004. The leader of that group at the time knew Adebolajo. His name is Omar Bakri Muhammed. He has subsequently fled the UK for fear of arrest. He now lives here in Tripoli, Lebanon. He’s interesting, not because he represents many people, he doesn’t – he’s interesting because when Adebolajo converted he was looking for answers and, at the time, this notorious cleric gave them to him”.*

In our view, this statement helped to alert viewers that Omar Bakri Muhammed was not providing a mainstream Muslim perspective.

We also noted that the news report included brief clips of: CCTV footage of the car being driven by Michael Adebolajo and Michael Adebowale up behind Fusilier Rigby before he was murdered; a mobile telephone clip<sup>12</sup> of Michael Adebolajo talking to bystanders in the wake of Fusilier Rigby’s killing; two clips of the two murderers rushing towards police cars arriving at the scene of Fusilier Rigby’s murder, including the aftermath of the killers being shot and wounded by police; and a clip of Michael Adebolajo speaking at a demonstration and referring to non-Muslims as “pigs” and “worse than cattle”. We considered that these various clips had the potential to cause offence. However, we considered their inclusion in the programme was editorially justified due to various factors such as: the audience expectations for this programme; the brevity of the clips included; and that the clips gave illustrative background to what was being discussed in the report and the interview with Omar Bakri Muhammed, namely the murder of Fusilier Rigby, and Michael Adebolajo’s life up until the murder.

Given all the above, we considered there was sufficient context to justify any potential offence in this case, and Rule 2.3 of the Code was therefore complied with.

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

### *Rule 1.3*

Given the time of broadcast of this programme, we also considered the content in relation to Rule 1.3. As a news programme aimed at an adult audience, we noted that the child audience in this case was low (42,000 children aged 15 and under, or eight per cent of the total audience). However, broadcasters must always ensure, as required by Rule 1.3, that children must be protected by appropriate scheduling from material that is unsuitable for them.

We first considered whether the material in this case was unsuitable for children. Omar Bakri Muhammed did make statements that would have been likely to have been offensive to some, for example by saying that: he was “*proud*” of Michael Adebolajo for what he had done; and he would be “*happy*” if his son committed the same act of murder as Michael Adebolajo. In addition, the various brief clips included in the news report outlined above under Rule 2.3 had the potential to be offensive. Arguably, some of this content had the potential to cause distress to children and was therefore unsuitable for them. For example, Omar Bakri Muhammed expressly endorsed and condoned the killing of Fusilier Rigby. In addition, the clip of Michael Adebolajo talking to bystanders in the wake of Fusilier Rigby’s killing in particular had the potential to be distressing, because of Michael Adebolajo’s appearance (with bloodied hands holding a machete and knife covered in blood) and his statement to camera (“...*you people will never be safe...*”).

However, we considered that this content would have been in line with the likely expectations of the audience for this programme on this channel at this time, and that the warnings, described above, would have given appropriate information to the audience to help protect children. Further, given also the brevity of the clips featured in this report, we considered that the content had been appropriately scheduled. The material was therefore not in breach of Rule 1.3.

*Sky News, 20 December 2013, 10:15 and 11:19 – Interview with Jeremiah Adebolajo*

### *Rule 2.3*

Ofcom first considered whether the appearance of Jeremiah Adebolajo had the potential to cause offence. In this case, we noted that he was included in an interview lasting five minutes, in which he was able to put forward his views in relation to the killing of Fusilier Rigby and the role of Michael Adebolajo in that killing. As above, given the widely-reported brutality of the killing of Fusilier Rigby, we considered that Jeremiah Adebolajo’s references to Michael Adebolajo’s role in killing Fusilier Rigby to be highly offensive. For example, Jeremiah Adebolajo was asked by the reporter conducting the interview whether the attack on Fusilier Rigby was “*cowardly*” or “*barbaric*”, and Jeremiah Adebolajo declined to condemn it in this way. Rather, he appeared to justify the murder of Fusilier Rigby as a form of retribution for the “*slaughter of thousands upon thousands of people*” in “*lands such as Afghanistan and Iraq*”. Given the widely-reported brutality of the killing of Fusilier Rigby, we considered that Jeremiah Adebolajo’s attempts to justify the murder had the potential to be particularly offensive to many in the audience.

Ofcom then considered whether the material was justified by the context.

This interview was included on Sky News, a rolling news channel, that provides coverage and analysis of a range of on-going news stories. For the reasons given above, it was not surprising, and within audience expectations for this programme, that a specialist news service should want to reflect Jeremiah Adebolajo’s viewpoint

to some extent. Although this viewpoint might be objectionable to many, it was a legitimate topic for discussion, given that the interview took place in the immediate aftermath of the conclusion of the trial of Michael Adebolajo and Michael Adebowale. Further, Jeremiah Adebolajo was a close relative of one of Fusilier Rigby's killers, Michael Adebolajo, and like the latter had converted to Islam, and appeared to share some of the same radical views. In these circumstances, it was likely Jeremiah Adebolajo would have been able to give background into Adebolajo's motivations and actions to some extent.

We considered that the licensee provided context for Jeremiah Adebolajo's views, for example, through: the warnings provided in this case; the extent to which Jeremiah Adebolajo's views were directly challenged in the interview; and other viewpoints being reflected to counter any potential offence caused by Jeremiah Adebolajo.

Firstly, viewers were alerted to the potentially offensive nature of Jeremiah Adebolajo's remarks by the following warning by the studio presenter:

*"The brother of the Woolwich killer, Michael Adebolajo, has refused to condemn the murder of soldier Lee Rigby. Asked if he has any regrets, Jeremiah Adebolajo told Sky News his only regret was that foreign troops are in the lands of the Muslims..."*

Second, the reporter conducting the interview challenged Jeremiah Adebolajo about his brother's actions in various ways, for example, by challenging him as follows:

*"How is there any morality in slaughtering a soldier in the street who he didn't even know 100% was a soldier, and who had no idea as to what was going to happen. It was cowardly, wasn't it?"*

Other examples are given in the licensee's response (see above).

Third, the reporter also alerted the audience to the fact that Jeremiah Adebolajo's views were not widely held amongst UK Muslims, for example, by saying:

*"...I've spoken to an awful lot of British Muslims, who say they completely reject the acts [of murdering Fusilier Rigby], they understand the context you put forward, the argument about foreign policy. But, they say if you want to go and kill a British soldier, go and do it in the theatre of war. Don't do it on a street in South East London, using a Vauxhall Tigra as your weapon initially. And trying to hack somebody's head off..."*

Again, other examples are given in the licensee's response (see above).

Finally, context was also provided by an interview with Sughra Ahmed, President of the Islamic Society of Britain, broadcast 12 minutes after the interview with Jeremiah Adebolajo. This interview last approximately seven and a half minutes. We noted that Sughra Ahmed referred to Fusilier Rigby's killing as an "horrific murder" and supported the conviction of Michael Adebolajo and Michael Adebowale by stating: "justice has been done". She also said that only an "absolutely tiny number of people" in the UK Muslim community would share the radical views of Michael Adebolajo and Michael Adebowale. This interviewee also rebutted the attempted justification by Jeremiah Adebolajo of Fusilier Rigby's murder, namely that it was a form of retribution for the UK's foreign policy towards Afghanistan and Iraq, by saying:

*“There is no connection between those of us who dissent and we object to foreign or domestic politics and the way these people [i.e. Michael Adebolajo and Michael Adebowale] have behaved at all”.*

We also noted that during the interview with Jeremiah Adebolajo a brief mobile telephone clip<sup>13</sup> of Michael Adebolajo talking to bystanders in the wake of Fusilier Rigby’s killing was shown, in vision only, without the words of Michael Adebolajo being broadcast. We considered that this clip had the potential to cause offence. However, we considered its inclusion in the programme was editorially justified due to various factors including: audience expectations; the brevity of the clip included; and the fact it was in vision only, without the words of Michael Adebolajo being broadcast.

In addition, we noted that at 11:19, i.e. just under an hour after the original interview with Jeremiah Adebolajo was broadcast, a further shorter version of the same interview was broadcast which lasted 50 seconds. Although potentially offensive, given the brevity of this content we considered it required less in terms of context to justify any potential offence caused. We therefore considered this further interview was contextually justified for several of the reasons outlined above. In particular, Jeremiah Adebolajo explicitly acknowledged that his viewpoint was a minority view amongst UK Muslims, when he referred to: *“The 99% of Muslims you speak about in Britain who condemn the attack”*. In addition, the reporter conducting the interview challenged Jeremiah Adebolajo during this brief exchange, including asking him whether he felt *“regret”* for the murder of Fusilier Rigby.

Given all the above, we considered there was sufficient context to justify any potential offence in this case, and Rule 2.3 of the Code was therefore complied with.

### *Rule 1.3*

In addition, given the time of broadcast of this content, we also considered the content in relation to Rule 1.3 requiring that children must be protected by appropriate scheduling from material that is unsuitable for them.

We therefore first considered whether the material in this case was unsuitable for children. Jeremiah Adebolajo made statements that were likely to have been offensive to some, for example by appearing to justify the killing of Fusilier Rigby by virtue of the UK’s foreign policy in Afghanistan and Iraq. However, he expressed his viewpoint in a measured way, and at no point did he expressly endorse or condone the killing of Fusilier Rigby. Further, the potential distress caused to any children viewing the clip of Michael Adebolajo talking to bystanders in the wake of Fusilier Rigby’s killing would have been lessened by the facts that it was in vision only, without the words of Michael Adebolajo being broadcast, and the images of Michael Adebolajo’s bloodied hands and weapons were blurred as was Fusilier Rigby’s body lying in the background. Also we considered that this content would have been in line with the likely expectations of the audience for this programme on this channel, and the warnings before the broadcast of the interview with Michael Adebolajo at 10:22 (and repeated at 11:19) described above gave appropriate information to the audience to help protect children. As a news programme aimed at an adult audience, we noted that the child audience in this case was zero. We therefore considered that the content had been appropriately scheduled. The material was therefore not in breach of Rule 1.3.

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<sup>13</sup> See footnote 2.

Channel 5 News, 17:00 – Interview with Jeremiah Adebolajo

*Rule 2.3*

Again, Ofcom first considered whether the appearance of Jeremiah Adebolajo had the potential to cause offence. We noted that, as above, Jeremiah Adebolajo was included in an interview lasting three minutes, in which he put forward his views about the role of Michael Adebolajo in the murder of Fusilier Rigby. Given the widely-reported brutality of the murder of Fusilier Rigby, we considered that Jeremiah Adebolajo's references to Michael Adebolajo's role in killing Fusilier Rigby were highly offensive. For example, Jeremiah Adebolajo was asked by the reporter conducting the interview why his brother had murdered Fusilier Rigby, and in reply he appeared to suggest that the killing was not murder but rather retribution for the fact that *"British troops were sent to Iraq and Afghanistan and other places in the Muslim world"*.

Ofcom then considered whether the material was justified by the context.

Ofcom noted that this interview was included in a news bulletin, which provides coverage and analysis of a range of on-going news stories. It was not surprising, and consistent with audience expectations for this programme, that a specialist news service wanted to reflect Jeremiah Adebolajo's viewpoint to some extent. Although this viewpoint was objectionable to many, it was a legitimate topic for discussion. Further, Jeremiah Adebolajo was a close relative of one of Fusilier Rigby's killers, Michael Adebolajo, and like the latter had converted to Islam, and appeared to share some of the same radical views.

We considered the various ways in which the licensee put Jeremiah Adebolajo's views in context, for example, through: the warnings provided in this case; the extent to which Jeremiah Adebolajo's views were directly challenged in the interview; and other viewpoints being reflected to counter any potential offence caused by Jeremiah Adebolajo.

Firstly, we noted that viewers were alerted to the potentially offensive nature of Jeremiah Adebolajo's views by the following warning by the studio presenter:

*"The brother of one of the men convicted of murdering the soldier Lee Rigby has refused to condemn the killing. Yesterday Michael Adebolajo was found guilty, along with Michael Adebowale, of a brutal attack in Woolwich in May. The court was told that Adebolajo had become a radicalised Muslim at university. Now his brother, Jeremiah, who's also converted to Islam, has spoken to Channel 5 News, and has tried to justify the murder..."*

Second, the reporter conducting the interview challenged Jeremiah Adebolajo about his brother's actions, for example, as follows:

*"But how can it be an act of war or an act of a soldier, to knock down a defenceless man as he is walking across the road and attempt to decapitate him?...he was off duty. He was defenceless. He had no chance of defending himself"*.

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*"I'm just going to interrupt you to say 'getting bogged down about the murder of one individual', many people watching this at home having seen the trial and*

*having seen footage of your brother with his hands covered in blood, would find it very offensive to talk about being 'bogged down'. They would be horrified at what he did and horrified at any attempt to justify it".*

Third, in a studio discussion between the studio presenter and the reporter who conducted the interview with Jeremiah Adebolajo, the reporter alerted the audience to the fact that Jeremiah Adebolajo's views are not widely held amongst UK Muslims, as follows:

*"Jeremiah Adebolajo believes his brother's actions were a direct result of Britain's foreign policy and the deaths of many Muslims in countries like Iraq and Afghanistan. But it's important to stress that moderate Muslims would say his beliefs are a betrayal of Islam. The Muslim Council of Britain says: 'No cause justifies cold blooded murder. They've described the killing of Lee Rigby as a truly barbaric and dishonourable act', and they say that 'Muslim communities are united in their condemnation of this crime'."*

We also noted that during the interview with Jeremiah Adebolajo a mobile telephone clip<sup>14</sup> was broadcast in vision only, without the words of Michael Adebolajo being broadcast, of Michael Adebolajo talking to bystanders in the wake of Fusilier Rigby's killing. We assessed this in the same way as analogous material included in the *Channel 4 News* interview above: this clip had the potential to cause offence but we considered its inclusion in the programme was editorially justified due to various factors such as the audience expectations to this programme; the brevity of the clip included; and that the clip gave illustrative background to what was being discussed in the report and interview.

Given all the above, we considered there was sufficient context to justify any potential offence in this case, and Rule 2.3 of the Code was complied with.

### *Rule 1.3*

Given the time of broadcast of this programme, we also considered the content in relation to Rule 1.3. We first considered whether the material in this case was unsuitable for children.

Jeremiah Adebolajo made statements that would have been likely to have been offensive to some, for example by appearing to justify the killing of Fusilier Rigby by virtue of the UK's foreign policy in Afghanistan and Iraq, and the fact that Fusilier Rigby (although off duty in the UK) was a serving soldier. As regards whether it was appropriately scheduled, Jeremiah Adebolajo expressed his viewpoint in a relatively measured way, and at no point did he expressly endorse or condone the murder of Fusilier Rigby. Further, the potential distress caused to any children viewing the clip of Michael Adebolajo talking to bystanders in the wake of Fusilier Rigby's killing would have been lessened by the fact that it was in vision only, without the words of Michael Adebolajo being broadcast, and the images of Michael Adebolajo's bloodied hands and weapons were blurred as was Fusilier Rigby's body lying in the background, behind Michael Adebolajo. We considered that this content would have been in line with the likely expectations of the audience for this programme on this channel and the warning before the broadcast of the interview with Michael Adebolajo, described above, gave appropriate information to the audience to help protect children. As a news programme aimed at an adult audience, we noted that the child audience in this case was low (56,000 children aged 15 and under or seven

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<sup>14</sup> See footnote 2.

per cent of the total audience). We therefore considered that the content had been appropriately scheduled. The material was therefore not in breach of Rule 1.3.

## Guidance

Whilst we consider that all the above programmes complied with the Code, we were concerned about two aspects of the content considered in this decision, and wish to give some general guidance to the two licensees involved. Ofcom recognises that when covering an important news story, especially where the subject matter and associated audio visual material is potentially distressing and offensive, important editorial judgement is required. Therefore, television journalists must balance the need to inform the public fully in a competitive news environment against the requirements of the Code. However, we set out below some guidance to broadcasters when covering similar stories in the future.

### Sky News, 20 December 2013, 10:15 and 11:19 – Interview with Jeremiah Adebolajo

We noted that immediately following the interview with Jeremiah Adebolajo broadcast at 10.15, the studio presenter said the following:

*“More on that story coming up”.*

We also noted that 12 minutes later an interview was broadcast with Sughra Ahmed, President of the Islamic Society of Britain. According to Sky News, the interview with Sughra Ahmed was included to “fairly reflect the views of the majority of Muslims who strongly condemn” the actions of Fusilier Rigby’s killers. The licensee added that the fact that this interview “came 12 minutes after the interview with Jeremiah Adebolajo did nothing to reduce its importance or impact”. Ofcom agreed with Sky News that the seven and a half minute interview with Sughra Ahmed added important context to make clear that the vast majority of UK Muslims condemned the views of Jeremiah Adebolajo. However, given the potential for serious offence caused by the longer interview with Jeremiah Adebolajo broadcast at 10:15, we consider it may have been helpful if the licensee had more clearly alerted viewers to the fact that it would be broadcasting shortly afterwards a viewpoint that was strongly critical of Jeremiah Adebolajo’s views. Ofcom therefore urges news broadcasters always to consider appropriately signalling to their audiences, content which might serve to place in context potentially offensive material, and mitigate that potential offence.

### Channel 5 News, 17:00 – Interview with Jeremiah Adebolajo

We noted that, immediately following the interview with Jeremiah Adebolajo, there was a studio discussion between the studio presenter and the reporter who conducted the interview with Jeremiah Adebolajo. In this discussion, the reporter said the following:

*“Jeremiah Adebolajo believes his brother’s actions were a direct result of Britain’s foreign policy and the deaths of many Muslims in countries like Iraq and Afghanistan. But it’s important to stress that moderate Muslims would say his beliefs are a betrayal of Islam. The Muslim Council of Britain says: ‘No cause justifies cold blooded murder. They’ve described the killing of Lee Rigby as a truly barbaric and dishonourable act’, and they say that ‘Muslim communities are united in their condemnation of this crime’”.*

According to Channel 5, this statement “made clear that the majority of Muslims whose views are moderate, condemn the murder of Lee Rigby”. We agreed with



Channel 5 that the reference to the viewpoint of the Muslim Council of Britain added important context to make clear that the vast majority of UK Muslims condemned the views of Jeremiah Adebolajo. However, given the potential for serious offence caused by the preceding interview with Jeremiah Adebolajo we consider it may have been helpful if the licensee had reflected more substantially the viewpoint of the mainstream UK Muslim community. While it is always an editorial decision how broadcasters provide context, we would urge news broadcasters always to consider adequately reflecting alternative viewpoints where appropriate to counter any potentially offensive views included within programming.

### Conclusion

The Code does not prohibit any particular individual from appearing on UK television and radio just because their views or actions have the potential to cause offence, as long as broadcasters comply with the Code. To do otherwise would, in our view, be a disproportionate restriction of the broadcaster's right to freedom of expression and the audience's right to receive information and ideas. This is especially the case in news and current affairs programming, where the timely and comprehensive coverage of on-going news stories may require individuals or organisations with challenging views to be given airtime. However, where highly controversial individuals are given the chance to articulate their views on television or radio, broadcasters must ensure that their views are challenged and put into context as appropriate.

***Channel 4 News, Channel 4: Not in Breach***  
***Sky News, Sky News Channel: Not in Breach***  
***Channel 5 News, Channel 5: Not in Breach***

## Not in Breach

### Report on Al Shabaab

*Channel 4 News, Channel 4, 16 December 2013, 19:00*

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#### Introduction

Three complainants alerted Ofcom to a report on Al Shabaab included in this edition of *Channel 4 News*. In summary, these complainants considered that the broadcasting of this report was, for example, “irresponsible” and amounted “to a recruiting video” for Al Shabaab. In particular, complainants objected to an interview with an Al Shabaab spokesman, Sheikh Ali Dhere, included in the report, in which complainants alleged he invited UK Muslims to join Al Shabaab.

Al Shabaab is a terrorist organisation proscribed<sup>1</sup> under UK law. The UK Government’s List of Proscribed Terrorist Organisations describes Al Shabaab as:

“...an organisation based in Somalia which has waged a violent campaign against the Somali Transitional Federal Government and African Union peacekeeping forces since 2007, employing a range of terrorist tactics including suicide bombings, indiscriminate attacks and assassinations. Its principal aim is the establishment of a fundamentalist Islamic state in Somalia, but the organisation has publicly pledged its allegiance to Usama Bin Laden and has announced an intention to combine its campaign in the Horn of Africa with Al Qa’ida’s aims of global jihad”.

We noted that at the beginning of this programme, Jon Snow, the main presenter said the following:

*“Inside an Al-Shabaab training camp in Somalia we learn why Britain is a target”.*

A few minutes later, he then said the following, while summarising the main headlines:

*“Good evening. Tonight, on the ground with the Al-Qaeda linked group in Somalia less than three months after they murdered 67 people in the Westgate<sup>2</sup> attack in Nairobi. The head of the United Nations in Somalia argues that Al-Shabaab is being contained and is in retreat. But tonight we learn Britain is amongst their continuing targets”.*

Later in the programme, Jon Snow introduced the report on life in an Al Shabaab training camp as follows:

*“Tonight, as David Cameron declares that Afghanistan is no longer a haven for terror – we report from inside a Jihadist training camp in Somalia, where the*

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<sup>1</sup> Under the Terrorism Act 2000, the Home Secretary may proscribe an organisation if the Home Office believes it is concerned in terrorism. For the current List of Proscribed Organisations, see [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/266038/List\\_of\\_Proscribed\\_organisations.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266038/List_of_Proscribed_organisations.pdf).

<sup>2</sup> On 21 September 2013 gunmen attacked the Westgate Shopping Mall in Nairobi, killing 67 people. Al Shabaab claimed responsibility for the attack.

*much feared Al-Shabaab is training hundreds of fighters from around the world. The group, which was behind the Kenyan shopping mall attack which left 67 people dead, tells us it considers Britain a target. And terrifyingly – one of the most popular units for the new recruits is the Suicide Brigade. Our African reporter, Jamal Osman, has this exclusive report”.*

The report consisted of a 10 and a half minute filmed report by a journalist, Jamal Osman, who had been given access to an Al Shabaab training camp in Somalia. Jamal Osman began his report as follows:

*“In a secret location, deep in the Somali bush, I meet Al Shabaab, one of the most feared Al-Qaeda affiliated organisations. This is the jihadist group behind the attack at the Westgate Shopping Mall in Kenya two months ago, that left 67 people dead. This is the face they want the world to see. This is the Al-Shabaab class of 2013. Around 300 newly trained fighters have completed a six month course – the same military training as the Westgate attackers. Al Shabaab have given me exclusive access to film their graduation ceremony. Today they are rewarded with a visit from Al-Shabaab’s spokesman Sheikh Ali Dhere. He’s the public face of the group and the only one willing to show his face on camera”.*

Soon after, Jamal Osman introduced his interview with an Al Shabaab spokesman, Sheikh Ali Dhere:

*“There are young Muslims from all over the world — Arabs, Kenyans and even I was told, a small number from Britain. I tried but I wasn’t allowed to speak to them. This was one of two fully armed brigades I saw during my stay. These men are determined to crush the western-backed Somali government in Mogadishu. The weak Government is propped up by African Union troops, including Kenyan forces who invaded Southern Somalia two years ago. Some western analysts believe Al Shabaab is in decline, but the group say the Westgate attack proves how strong they remain. That’s why Al-Shabaab viewed the Westgate Shopping Mall in Nairobi, Kenya, as a PR victory. These terrifying images from that attack show Al Shabaab fighters casually walking through the mall, as they shoot civilians. I challenged Sheikh Ali Dhere how he could justify killing innocent shoppers”.*

The interview was then broadcast in three segments included in the report as follows, with both Jamal Osman (“JO”) and Sheikh Ali Dhere (“SAD”) speaking in Somali. English subtitles were shown on-screen, and these sub-titles are set out below:

#### Segment 1:

JO: *“They were innocent shoppers going about their daily life. Why target civilians rather than the military?”*

SAD: *“Kenya attacked us. We have said many times – stay away from us, leave our land, our people, stop fighting us. We warned them again and again. But they ignored us. So we had to spill blood to send a message. Their women aren’t better than ours. Their sons aren’t better than ours. Their children aren’t better than ours. When they kill our people, we kill theirs”.*

#### Segment 2:

JO: *“What problem do you have with the British?”*

SAD: *"They are colonising us and are running our country. In Mogadishu, the top man is British. They're supporting the mercenaries, the Kenyans. In our country, after America the British are the biggest problem".*

JO: *"So if they are supporting the African forces they are a legitimate target?"*

SAD: *"Yes they're part of the war".*

### Segment 3:

JO: *"Are you going to release the identities of the attackers?"*

SAD: *"We will do that when we choose to. It happened at the heart of their country and the attack lasted days and they still don't know if our men have escaped or not, how many there were. That shows how weak they are".*

JO: *"So you are enjoying that?"*

SAD: *"We are very happy to see their weakness".*

Elsewhere in the report, including between the above interview segments, the report included the following:

- statements by Sheikh Ali Dhere (speaking in Somali with English subtitles being shown on-screen) to the Al Shabaab recruits and also separately to Somali civilians, such as:

*"To free ourselves we have to follow our religion. And that means preparing for Jihad".*

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*"Look at what the Kenyans are facing today. Boys who were like you, had the same training as you. They sacrificed their lives for God. And brought huge victory for Muslims".*

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*"When we fight and are martyred, we hope to be with God in Paradise. We are hoping for beautiful women. What are the infidels hoping for? Nothing".*

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*"It's your duty to deal with the infidels. It's you who should defend Islam. Victory is close. God willing. The infidels have little time left. They are in their 11th hour".*

- footage of members of Al Shabaab training and parading in front of Sheikh Ali Dhere, and shouting slogans in Somali with English subtitles being shown on-screen (for example: *"We are Al Shabaab! We are terrorists! We are Al Qaeda!"*), or making statements to camera in Somali with English subtitles being shown on-screen (for example: *"For the sake of our religion, dying does not frighten us"*).

- commentary by Jamal Osman describing the motivations and aspirations of the Al Shabaab fighters in the training camp, as follows:

*“For Al Shabaab, the [Westgate] attack has been used to inspire new soldiers”.*

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*“The recruits might remain regular fighters, become bomb makers or work for Amniyat, Al-Shabaab’s elite intelligence network. But the most popular unit is the Suicide Brigade. And believe it or not there is a long waiting list – only the best recruits will be accepted”.*

- a sequence showing life in a Somali town, Buloburt, controlled by Al Shabaab. The reporter, Jamal Osman introduced this sequence as follows:

*“Al-Shabaab have been designated as a terrorist organisation by several Western nations. After losing control of four major cities the Islamists were thought to have been defeated, but they still control large parts of the country and see themselves as an alternative government...The locals might not agree with Al Shabaab’s military campaign but they told me they appreciate them for bringing law and order”.*

At the end of the report, there was the following content:

JO (speaking in voiceover):

*“And to achieve victory, Sheikh Ali Dhere’s appeal goes beyond Somalia. He makes a chilling call to British Muslims”.*

SAD (speaking in Somali with English subtitles):

*“We say to young Muslims in Britain: All Muslims should support each other and we welcome any of them who accepts our invitation. Anyone who wants to join our fight against the enemies of Muslims will be welcomed with open arms”.*

Footage of Al Shabaab soldiers shouting in Somali with English subtitles:

*“Power! Glory!”*

JO (speaking in voiceover):

*“It’s an ominous message from a group that says it’s been revived and is strengthened by the Kenya attack. They say they will strike again. The question is, where and when?”*

In addition to Jamal Osman’s report, the programme included interviews conducted by the main presenter, Jon Snow (by video link from Somalia) with Nicholas Kay, the UN Special representative in Somalia, and (in the studio) with Sir Richard Ottaway MP, Chair of the House of Commons Foreign Affairs Select Committee. During the interview with Nicholas Kay, the latter said:

*“It’s absolutely no secret that Al Shabaab have targeted the UN before and are indeed targeting internationals without any real mercy. However, it’s also very true that Al Shabaab kill far more Somalis than they kill internationals, and this is*

*a small group that is here bringing a great deal of misery to a great deal of people”...[Al Shabaab is] certainly being contained and they’re actually being pushed back. The principal towns and cities in Somalia, the capital, Mogadishu, where I am talking to you from, is certainly not under Al Shabaab control. It’s under the local Government of Somalia’s control – the first legitimate internationally recognised Government this country has had now for 22 years. So Al-Shabaab are certainly very much on the back foot, and I think, you know, this is reflected in their increasingly desperate terrorist attacks which they are carrying out. “You saw the horrific and cruel attack that they did in Kenya at Westgate shopping centre in September. These, I think are signs of an organisation that is very much under pressure...Certainly there are parts of the country, the countryside and some parts of towns which are definitely under the control of Al Shabaab. The United Nations Security Council has just authorised the [inaudible] forces...and I think there will be increasingly military pressure against Al Shabaab in the coming months”.*

In addition, in the interview with Sir Richard Ottaway MP, the latter said:

*“Yes, we take Al Shabaab very seriously indeed and there are a number of similar Al Qaeda style groups promoting terrorism in the region and indeed right across North and West Africa and it would be a very foolish country that didn’t take them seriously indeed...we have seen [attacks] in Nairobi, we’ve seen radicalisation by these groups of people, who then come back to this country and cause problems. That is what happened in the 7/7 bombings in 2005, where these people went to Pakistan and got radicalised. And it comes as no surprise to see that they’re doing it in Somalia at the moment. And, clearly they have funding from somewhere and they’re at it, but we are not complacent. Here they are on television and we can see them coming and there our security forces are actually addressing the situation as we sit here...[Jamal Osman’s report is] quite a chilling report this...And that’s an important lesson for us. And we see that wherever Brits go abroad, whether it’s Syria, Pakistan, Somaliland – they pose a threat to the security of this country. They will return and it’s incumbent upon our security services now to monitor the situation and try and protect British citizens in this country...Now with Al-Shabaab there, these people represent a threat and it is because they are relatively intelligent, they are motivated and they are getting radical training and that is something for us to be concerned about”.*

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

- Rule 1.3: “Children must...be protected by appropriate scheduling from material that is unsuitable for them”.
- Rule 2.3: “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Appropriate information should also be broadcast where it would assist in avoiding or minimising offence”.
- Rule 3.1: “Material likely to encourage or incite the commission of crime or to lead to disorder must not be included in television or radio services”.

We therefore sought Channel 4’s comments as to how this material complied with these rules.

## Response

By way of background, Channel 4 said that this report was a unique and rare opportunity to gain “access to Al Shabaab and to put questions to them directly” and subject the group to “direct journalistic scrutiny”. This was in the context that “Most insight into Al Shabaab is provided through the release of propaganda videos by such groups onto YouTube and internet sites which prevent such information being subject to any direct journalistic scrutiny or questioning”. The licensee added that the report “came just months after the Westgate Mall terror attack in Nairobi last year and followed claims by the group that further attacks would take place, including the fact, as was reported, that the United Kingdom may be a possible target”. In Channel 4’s view, therefore, the report “provided new information and informed the public of a matter of real public importance”.

The licensee said that in preparing the report for broadcast, it was recognised that the report must not allow Al Shabaab “to espouse their extreme views”. Therefore, the report was subject to detailed and careful editorial decision-making at a senior editorial level and legal advice was obtained from a QC.

In relation to Rule 3.1, Channel 4 expressed the view that the report was not likely to encourage or incite crime. It added that “to provide an insight into Al Shabaab or any terror organisation, there is a need to provide some reference to what they believe” so that these views can be examined. Channel 4 said that the report did not provide a platform for extreme views, as the views of Al Shabaab were subject to “journalistic questioning”. It added that this approach was “very different to the propaganda footage seen on YouTube and other material put out by Al Shabaab (which was not included in the report)”. The licensee added that “Interviews were also broadcast in the programme with appropriate experts that place the report in context and gave perspective to the report”.

In relation to Rule 2.3, Channel 4 conceded that “Reporting inside a terror camp may offend some and it is recognised that some people will argue such reports provide the ‘oxygen of publicity’ to a terror group”. However, the licensee said that “it is important to provide information on matters of public importance and bring the facts and information to the public’s attention – so that they can make better informed choices in a democratic society” and that extreme views can be challenged. Channel 4 said that since the Westgate attack, Al Shabaab had been the focus of considerable media attention which have looked at whether or why the group had carried out such attacks and “How many foreign recruits do they have and are any British?” The licensee said that it had chosen not to broadcast Al Shabaab’s own internet “propaganda videos” because “they included no independent or objective questioning of the aims, modus operandi or the consequences of [Al Shabaab]’s operation”. The report in this case however “was able to show first-hand the truth about Al-Shabaab”.

Channel 4 outlined various factors and measures that it took which it believed justified the context of any offence that may have been caused by the broadcast of the report. These included:

- explicitly stating in the programme several times that Al-Shabaab was responsible for the attack on the Westgate Shopping Mall;
- showing in the report the “negative impact and control imposed by Al-Shabaab on local Somali people”;

- directly challenging Al Shabaab spokesman, Sheikh All Dhere, in the report as to “why Al Shabaab had killed innocent men, women and children who were shopping in Nairobi and asking what motivated the organisation and why they were fighting”; and
- including in the programme interviews that accompanied the report “with appropriate persons that put the main report in context and gave perspective to what had been revealed in the report”.

In relation to Rule 1.3, Channel 4 said that *Channel 4 News* is a “serious” news programme that is primarily aimed at an adult audience. However, it said that, in recognition that this programme was broadcast pre-watershed, the programme presenter, Jon Snow made clear] what the subject of the report was, in his introduction to the report. The licensee said that the report gave “a unique insight into subject matter that is rarely subject to direct journalistic scrutiny and appropriate checks and editing was carried out so that the report was suitable for broadcast in the programme at 7pm”. Channel 4 therefore considered that although the subject of this report was “challenging”, nothing was broadcast that was “of a disturbing or distressing nature”. Rather, the report: “taken as a whole made clear the terrorist objectives of the group and their targeting of innocent civilians”.

In conclusion, Channel 4 stated that “as a news broadcaster operating in a democracy, of which freedom of speech is a cornerstone, it is important that we can ask questions of organisations such as Al Shabaab directly, rather than relying on material provided by their propaganda units”.

## Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that: persons under the age of eighteen are protected; generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material; and, material likely to encourage or incite the commission of crime or lead to disorder is not included in television or radio services. These duties are reflected in: Section One (Protecting the Under-Eighteens); Section Two (Harm and Offence); and Section Three (Crime) of the Code.

In reaching its decision in this case, Ofcom has taken careful account of the audience’s and the broadcaster’s right to freedom of expression. This is set out in Article 10 of the European Convention on Human Rights (“ECHR”) which encompasses the right to hold opinions and to receive and impart information and ideas without interference by public authority. Ofcom must therefore seek an appropriate balance between ensuring members of the public are protected from material which may be considered harmful or offensive on the one hand, and the broadcaster’s and audience’s right to freedom of expression on the other.

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



Ofcom recognises that, at times, offence can be caused not just by the actual content of a programme but by the very fact that people with extreme and very controversial views are given airtime. Any potential offence in these circumstances can be exacerbated if viewers or listeners consider that such contributors' views are not properly challenged or contextualised. However, broadcasters are allowed to include any contributor they wish in their programming, as long as they comply with the Code. There are various possible editorial approaches to how a broadcaster might provide context when featuring an individual with extreme and offensive views (e.g. a presenter asking challenging questions). However, the final decision as to what approach to take is one for the broadcaster.

In this case a report was broadcast from within an Al Shabaab training camp in Somalia. Al Shabaab is a terrorist organisation that is proscribed within the UK and has claimed responsibility for the Westgate Shopping Mall attack in Kenya. In addition, it has been widely reported that a number of UK citizens<sup>3</sup> have gone to Somalia to join Al Shabaab, and that the UK might be a target for the group<sup>4</sup>. To date few broadcast journalists have been able to gain access to Al Shabaab. In this context, Ofcom considered it understandable that Channel 4 would wish to broadcast a report highlighting and analysing the beliefs and activities of this group. In particular, we considered there was a strong public and news interest for broadcasters to examine: the role of Al Shabaab in the Westgate Shopping Mall; the extent to which UK nationals had joined this group; and whether the UK might be a future target for Al Shabaab.

Against the above background, we considered the programme under Rules 3.1, 2.3 and 1.3 of the Code.

#### *Rule 3.1*

Rule 3.1 requires that material likely to encourage or incite the commission of crime or to lead to disorder must not be included in television or radio services.

In considering broadcast material under Rule 3.1 we are required to assess the *likelihood* of it encouraging or inciting the commission of crime or of leading to some form of disorder. This is fundamentally different from the test that would apply for bringing a criminal prosecution. We therefore considered whether there were any statements in the programme that were likely to encourage or incite criminal action or lead to disorder, for example, by calling on UK Muslims to join Al Shabaab and undertake acts of extreme violence. As part of this assessment, we considered whether there were any statements in the programme that amounted to a direct or indirect call to action.

We noted that at the end of the report focusing on an Al Shabaab training camp, Sheikh Ali Dhere said the following statement:

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<sup>3</sup> For example, the Royal United Services Institute's *UK Terrorism Analysis* in February 2012 stated that: "Britons are thought to make up about 25 per cent of the 200 or so foreign fighters that the Al-Shabaab group in Somalia currently fields, and who are engaging in a deepening war on neighbouring Kenya and its tourist trade" (see <http://www.rusi.org/downloads/assets/UKTA1.pdf>, p.2).

<sup>4</sup> Ibid., p.4.

*“We say to young Muslims in Britain: All Muslims should support each other and we welcome any of them who accepts our invitation. Anyone who wants to join our fight against the enemies of Muslims will be welcomed with open arms”.*

We assessed the context in which this statement appeared. It was part of a report analysing and highlighting the activities of a Somali-based terrorist group, Al Shabaab. During the report, various steps were taken to question the legitimacy of Al Shabaab’s tactics. For example, we noted that Jamal Osman introduced his interview with Sheikh Ali Dhere by stating: *“I challenged Sheikh Ali Dhere how he could justify killing innocent shoppers [in the Westgate Shopping Mall attack]”*. Jamal Osman then asked the following question to Sheikh Ali Dhere about why Al Shabaab killed innocent civilians in the Westgate Shopping Mall:

*“They were innocent shoppers going about their daily life. Why target civilians rather than the military?”*

In particular, we noted that Jamal Osman introduced Sheikh Ali Dhere’s statement in relation to *“young Muslims in Britain”* by labelling it as a *“chilling call to British Muslims”*, and called it an *“ominous message”* after Sheikh Ali Dhere made his statement.

We considered that these factors acted to blunt and diminish the possibility that Sheikh Ali Dhere’s words amounted to a direct or indirect call to action to UK Muslims to join Al Shabaab. The report clearly pointed to the extremely negative results of Al Shabaab’s philosophy and actions, in particular the indiscriminate killing of innocent people. In addition, we considered that other content] included in the programme provided context for or challenged the views of Al Shabaab, including Sheikh Ali Dhere, as presented in the report itself. For example, we noted that Jon Snow, the main presenter said (with Ofcom emphasis added):

*“The group [Al Shabaab], which was behind the Kenyan shopping mall attack which left 67 people dead, tells us it considers Britain a target. And terrifyingly – one of the most popular units for the new recruits is the Suicide Brigade. Our African reporter, Jamal Osman, has this exclusive report”.*

We considered that Jon Snow’s introduction to Jamal Osman’s report clearly pointed to the negative manifestation of Al Shabaab’s tactics, through its use of a *“Suicide Brigade”*, which the presenter labelled as ‘terrifying’. In addition, the programme included interviews conducted by the main presenter, Jon Snow (by video link from Somalia) with Nicholas Kay, the UN Special representative in Somalia, and (in the studio) with Sir Richard Ottaway MP, Chair of the House of Commons Foreign Affairs Select Committee. Both interviewees, in our view, added further context to Jamal Osman’s report by pointing to other very negative aspects of Al Shabaab’s activities]. For example, Sir Richard Ottaway described Jamal Osman’s report as *“chilling”*, and made clear the negative implications of potential Al Shabaab activity against the UK, by saying:

*“...it’s incumbent upon our security services now to monitor the situation and try and protect British citizens in this country...[Al Shabaab] represent a threat and it is because they are relatively intelligent, they are motivated and they are getting radical training and that is something for us to be concerned about”.*

In addition, Nicholas Kay made the following statements that identified the negative outcomes of Al Shabaab’s activities, including the killing of members of the Somali

population and the carrying out of a renowned terrorist attack that killed a number of innocent people in Nairobi:

*“It’s also very true that Al Shabaab kill far more Somalis than they kill internationals, and this is a small group that is here bringing a great deal of misery to a great deal of people”.*

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*“You saw the horrific and cruel attack that they did in Kenya at Westgate shopping centre in September. These, I think are signs of an organisation that is very much under pressure”.*

We considered that Sheikh Ali Dhere’s reference to “*young Muslims in Britain*” to have been placed clearly in context by the balancing content outlined above, which, in our view would have served to emphasise the negative ramifications of Al Shabaab’s philosophy and actions.. Therefore, Ofcom did not consider that neither the report by Jamal Osman overall, nor in particular the remarks of Sheikh Ali Dhere, were likely to encourage or incite the commission of crime or lead to disorder. Therefore Ofcom did not consider the programme to be in breach of Rule 3.1.

### *Rule 2.3*

Rule 2.3 requires broadcasters to ensure that the broadcast of potentially offensive material must be justified by the context. Context is assessed by reference to a range of factors including but not limited to: the editorial content; the degree of offence; the effect of the material on viewers who might come across it unawares; whether the nature of the content has been brought to the attention of the audience by appropriate information; and, likely audience expectations.

Ofcom first considered whether this report on Al Shabaab had the potential to cause offence. In this case, Channel 4 broadcast a 10 and a half minute report on a proscribed terrorist organisation, which depicted Al Shabaab recruits in an Al Shabaab training camp and also a Somali town under Al Shabaab control. We considered that there were a number of statements which would have been potentially offensive because they appeared to endorse the extreme violent activities of Islamic terrorists in general, and Al Shabaab in particular. For example, we noted the report featured Al Shabaab recruits shouting: “*We are Al Shabaab! We are terrorists! We are Al Qaeda!*” and “*For the sake of our religion, dying does not frighten us*”. In addition, we noted Sheikh Ali Dhere sought to justify the killing of innocent civilians in the Westgate Shopping Mall attack (for example he said: “*We warned them again and again. But they ignored us. So we had to spill blood to send a message*”). In addition, he said the following:

*“To free ourselves we have to follow our religion. And that means preparing for Jihad”.*

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*“Look at what the Kenyans are facing today. Boys who were like you, had the same training as you. They sacrificed their lives for God. And brought huge victory for Muslims”.*

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*“When we fight and are martyred, we hope to be with God in Paradise. We are hoping for beautiful women. What are the infidels hoping for? Nothing”.*

Ofcom considered that a UK audience would, in particular, have viewed Sheikh Ali Dhere’s references to the UK particularly offensive: firstly, the statement discussed in relation to Rule 3.1 above, where he appeared to invite “*young Muslims in Britain*” to join Al Shabaab; and second, the following statement where he was answering Jamal Osman’s question as to what “*problem*” Sheikh Ali Dhere had with the British:

*“They [i.e. the British] are colonising us and are running our country. In Mogadishu, the top man is British. They’re supporting the mercenaries, the Kenyans. In our country, after America the British are the biggest problem”.*

Ofcom then considered whether the material was justified by the context.

This report was included in *Channel 4 News*, a programme that provides coverage and analysis of a range of on-going news stories. For the reasons given above (see Rule 3.1), it was not surprising, and within audience expectations for this programme, that a specialist news programme should want to analyse and report on the views and activities of Al Shabaab to some extent. We considered that although the viewpoint of Al Shabaab, and especially as articulated by Sheikh Ali Dhere would be objectionable to many, this was a legitimate topic for discussion.

We considered the various ways in which the licensee provided context for the views and actions of Al Shabaab, for example, through: the warnings provided in this case; the extent to which Sheikh Ali Dhere’s views were directly challenged in Jamal Osman’s interview with him; and other viewpoints being reflected to counter any potential offence caused in Jamal Osman’s report.

Firstly, we noted that viewers were alerted to the potentially offensive nature of the report. For example, the main presenter, Jon Snow referred at various times (as described in the Introduction) at the beginning of the programme to the content of Jamal Osman’s report, stressing in particular that the audience would “*learn why Britain is a target*”.

Second, Jamal Osman, through his questions to Sheikh Ali Dhere, and his statements in the voiceover to the report made clear the very extreme and violent nature of Al Shabaab’s activities and their very negative consequences, and he challenged Sheikh Ali Dhere directly. For example, Jamal Osman made clear that Al Shabaab has “*been designated as a terrorist organisation by several Western nations*”. In addition, Jamal Osman challenged Sheikh Ali Dhere over killing 67 individuals in the Westgate Shopping Mall attack. For example:

Jamal Osman (in voiceover):

*“These terrifying images from that attack show Al Shabaab fighters casually walking through the mall, as they shoot civilians. I challenged Sheikh Ali Dhere how he could justify killing innocent shoppers”.*

Jamal Osman (questioning Sheikh Ali Dhere):

*“They were innocent shoppers going about their daily life. Why target civilians rather than the military?”*

Jamal Osman was also shown visiting a Somalian town, Buloburt, controlled by Al Shabaab.

Although, in this part of the report, there were some positive references to Al Shabaab's 'rule' of Buloburt, we noted that Jamal Osman also made clear the negative aspects of Al Shabaab's control, as follows (Ofcom emphasis added):

*"Unlike other parts of southern and central Somalia, there is peace here – but it's under Al-Shabaab's strict Shari Law".*

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*"The locals might not agree with Al Shabaab's military campaign but they told me they appreciate them for bringing law and order".*

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During one sequence, the Al Shabaab police were shown ordering Buloburt's residents to attend the local Mosque to pray. The report showed them commanding a butcher to leave his stall, as follows:

*"The Al Shabaab police make sure everyone goes to the mosque... This butcher is reluctant, but no is not an option".*

Third, as mentioned above, further context was also provided by the interviews conducted by the programme's main presenter, Jon Snow with Nicholas Kay and Sir Richard Ottaway MP. We considered in particular that the interview with Nicholas Kay gave important information to viewers as to the extent of Al Shabaab's diminished presence in Somalia and the international community's moves to counter the group, as follows:

*"[Al Shabaab is] certainly being contained and they're actually being pushed back. The principal towns and cities in Somalia, the capital, Mogadishu, where I am talking to you from, is certainly not under Al Shabaab control. It's under the local Government of Somalia's control – the first legitimate internationally recognised Government this country has had now for 22 years. So Al-Shabaab are certainly very much on the back foot, and I think, you know, this is reflected in their increasingly desperate terrorist attacks which they are carrying out...The United Nations Security Council has just authorised the [inaudible] forces...and I think there will be increasingly military pressure against Al Shabaab in the coming months".*

Similarly, we considered that the interview with Sir Richard Ottaway MP provided important context. This was by providing details of the seriousness of the potential threat that Al Shabaab might pose to the UK, and the seriousness with which the UK security forces are taking that threat:

*"Yes, we take Al Shabaab very seriously indeed and there are a number of similar Al Qaeda style groups promoting terrorism in the region and indeed right across North and West Africa and it would be a very foolish country that didn't take them seriously indeed...but we are not complacent. Here they are on television and we can see them coming and there are security forces actually addressing the situation as we sit here...And that's an important lesson for us. And we see that wherever Brits go abroad, whether it's Syria, Pakistan, Somaliland – they pose a threat to the security of this country. They will return*

*and it's incumbent upon our security services now to monitor the situation and try and protect British citizens in this country...Now with Al-Shabaab there, these people represent a threat and it is because they are relatively intelligent, they are motivated and they are getting radical training and that is something for us to be concerned about".*

Given all the above, we considered there was sufficient context to justify any potential offence in this case, and Rule 2.3 of the Code was therefore complied with.

### *Rule 1.3*

Given the time of broadcast of this programme, we also considered the content in relation to Rule 1.3. 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; the nature of the particular programme; and, the likely audience expectations.

We first considered whether the material in this case was unsuitable for children. There were statements in this report, for example by Sheikh Ali Dhere, that would have been likely to have been offensive to some, for example, Sheikh Ali Dhere appearing to seek to justify the killing of innocent civilians in the Westgate Shopping Mall attack, and welcoming: *"Anyone who wants to join our fight against the enemies of Muslims"*. However, the report did not include any graphic detail or depictions of violence. We therefore considered that the material was not unsuitable for children. In addition, we considered that this content would have been in line with the likely expectations of the audience for this programme on this channel, and that the warnings, described above, would have given appropriate information to the audience to help protect children. Also as a news programme aimed at an adult audience, we noted that the child audience in this case was low (28,000 children aged 15 and under, or five percent of the total audience).

We therefore considered that the content had been appropriately scheduled. The material was therefore not in breach of Rule 1.3.

### Conclusion

The Code does not prohibit particular individuals or organisations from appearing on UK television and radio just because their views or actions have the potential to cause offence, as long as broadcasters comply with the Code. To do otherwise would, in our view, be a disproportionate restriction of the broadcaster's right to freedom of expression and the audience's right to receive information and ideas. This is especially the case in news and current affairs programming, where broadcasters may wish to give coverage to or interview individuals or organisations with extreme and very challenging views as part of their legitimate and comprehensive coverage of on-going news stories. Broadcasters should be and are able to report on terrorist groups that pose potential terror threats internationally and domestically. This is clearly in the public interest. However, where highly controversial individuals or organisations are given the chance to articulate their views on television or radio, broadcasters (as Channel 4 did here) must always ensure that they comply with the Code by challenging and placing in context those views as appropriate.

### **Not in Breach**

## Advertising Scheduling cases

### In Breach

#### Advertising minutage

*Channel 4, 2 February 2014, 22:00*

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#### Introduction

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

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

Channel 4 (or “the Licensee”) notified Ofcom that on 2 February 2014, 13 minutes of advertising was transmitted in the 22:00 clock hour, therefore exceeding the amount permitted under Rule 4 of COSTA.

Ofcom considered the case raised issues warranting investigation in respect of Rule 4 of COSTA and therefore asked the Licensee for its comments with regard to this rule.

#### Response

Channel 4 explained the incident on 2 February 2014 occurred during *The Jump*, a live celebrity winter sports contest, which was scheduled from 21:00 to 22:30.

The Licensee said a break had been scheduled for broadcast at 21:55. However, because the early segments of the programme ran significantly longer than planned, the production team had decided to allow this break to be pushed into the next clock hour as a break at the planned point “would [have] damaged the editorial context and viewers’ experience of the show”. The Licensee noted that the overall advertising minutage shown between 21:00 and 23:00 had not increased as a result.

Channel 4 considered that it had been the correct decision to take the breaks at the pre-agreed segments of the programme. The Licensee assured Ofcom that it took its responsibility to adhere to advertising regulations seriously, but considered that this incident had been the result of a difficult live transmission that fed into another live broadcast. As a result, it did not consider there was a “need to place in further steps going forward.”

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

In this case, we noted that the 22:00 clock hour exceeded the permitted allowance by one minute and therefore breached Rule 4 of COSTA.

Ofcom recognises that live programming increases the risk of unexpected problems requiring last minute decisions about possible schedule alterations. However, it is the responsibility of all licensees to ensure that the procedures they have in place are sufficient to ensure compliance with COSTA, including around live programming.

In this case, Ofcom noted the Licensee's concern that the insertion of a break at the scheduled time may have had a negative effect on the viewing experience. However, we also noted that Channel 4 made no attempt to compensate for the unplanned broadcast of the break at 22:07, either by broadcasting self-promotional material in lieu of advertising or by dropping advertising scheduled in the remainder of this hour. We were concerned that, having identified a problem that would result in its service exceeding its permitted advertising allowance, Channel 4 considered that the most appropriate course of action was to allow this to happen, rather than taking the mitigating steps open to it to ensure compliance with COSTA.

Ofcom reminds Channel 4 that it is required under the terms of its licence to take appropriate measures to ensure that the amount of advertising in each individual clock hour does not exceed the limit stipulated in COSTA.

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



## In Breach

### Breach 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.”

<b>Channel</b>	<b>Transmission date and time</b>	<b>Code and rule / licence condition</b>	<b>Summary finding</b>
BT Sport 2	9 March 2014, 16:00	COSTA Rule 4	British Telecommunications plc notified Ofcom that its service BT Sport 2 exceeded the permitted advertising allowance on this date by 117 seconds.  <b>Finding: Breach</b>

## Broadcast Licence Condition cases

### Broadcasting licensees' late and non-payment of licence fees

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Ofcom is partly funded by the licence fees it charges television and radio licensees. Ofcom is under a statutory obligation to ensure that the aggregate amount of fees that are required to be paid by licensees is sufficient to meet the cost of Ofcom's functions relating to the regulation of broadcasting. The principles which Ofcom applies when determining what fees should be paid by licensees are set out in the Statement of Charging Principles<sup>1</sup>. The detailed fees and charges which are payable by broadcasting licenses are set out in Ofcom's Tariff Tables<sup>2</sup>.

The payment of a fee is a licence requirement<sup>3</sup>. Failure by a licensee to pay its licence fee when required represents a serious and fundamental breach of a broadcast licence, as it means that Ofcom is unable properly to carry out its regulatory duties.

#### In Breach

The following licensees have failed to pay their annual licence fee in accordance with the original deadline, despite repeated requests to do so. These licensees have therefore been found **in breach** of their licences. As a consequence of this serious and continuing licence breach, Ofcom is putting these licensees on notice that their present contravention of their licences is being considered for the imposition of a statutory sanction, including licence revocation.

Television Licensees		
Licensee	Licence Number	Service Name
DM Digital Television Limited	TLCS 873	DM Digital TV

#### Resolved

The following licensees failed to pay their annual licence fee in accordance with the original deadline, but have subsequently submitted a late payment. For these licensees, we therefore consider the matter **resolved**.

Television Licensees		
Licensee	Licence Number	Service Name
A&A Inform Limited	TLCS 680	Russian Hour

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[http://stakeholders.ofcom.org.uk/binaries/consultations/socp/statement/charging\\_principles.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/socp/statement/charging_principles.pdf)

2 [http://stakeholders.ofcom.org.uk/binaries/research/Tariff\\_Tables\\_2001112.pdf](http://stakeholders.ofcom.org.uk/binaries/research/Tariff_Tables_2001112.pdf)

3 Contained in Licence Condition 3 for radio licensees and Licence Condition 4 for television licensees

## Fairness and Privacy cases

### Upheld

#### Complaint by Mr Terry Chaplin and Mr Michael Chaplin

*The Dealership: Tough Customers, Channel 4, 15 August 2013*

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#### Summary

Ofcom has upheld this complaint of unwarranted infringement of privacy in the programme as broadcast made by Mr Terry Chaplin and Mr Michael Chaplin.

The programme, part of a reality documentary series examining the operation of a used car dealership in Essex, focused on difficult negotiations between customers and members of the dealership's sales team. It included footage of Mr Terry Chaplin, his son, Mr Michael Chaplin, and one of the dealership's employees, "James", as they negotiated over the potential sale of a Ford Fiesta car.

Ofcom found that, on the basis of all the evidence (and, in particular, that Mr Terry Chaplin was asked to sign a release form immediately after the relevant footage was filmed but refused to do so) it was not reasonable on balance for the programme makers to have considered that they had secured informed consent from the complainants for the inclusion of the footage of and information about them in the programme as broadcast. Given this, Ofcom concluded that the complainants' privacy was unwarrantably infringed in the programme as broadcast.

#### Introduction and programme summary

On 15 August 2013, Channel 4 broadcast an edition of *The Dealership*, part of a reality documentary series of programmes examining, from the perspective of its employees and its potential customers, the operation of a used car dealership in Essex. This edition, entitled "*Tough Customers*", focused throughout on difficult negotiations between customers and members of the dealership's sales team. It also featured discussions between dealership staff and managers about particular negotiation techniques used on customers to sell cars and meet the dealership's sales targets.

During the first part of the programme, Mr Terry Chaplin, his son, Mr Michael Chaplin, and one of the dealership's employees, "James", were shown negotiating over the potential sale of a used Ford Fiesta car. The programme included a discussion between James and his manager about the potential transaction. Introducing this footage, the narrator said: "*James is trying to work a father and son up to the price of £6,600 for a Ford Fiesta*". James was then shown attempting to persuade Mr Terry Chaplin to raise his offer to which he said: "*I don't really want to go past six grand, really. That's all I've got. We're struggling then. I've got other bills to pay. That's enough. That's all we really wanted to spend on a car*".

Later in the programme, as an agreement between Mr Terry Chaplin, his son, and "James" neared a conclusion, James offered the car for "£6,550?". As Mr Michael Chaplin accepted the offer, James was heard to say, while shaking Mr Terry Chaplin's hand, "*Tel – happy days. Jesus Christ. I've never grafted so hard on a deal in my bleeding life*". The programme's commentary then said: "*James may feel that this is a victory for him...but really it's a victory for Greg [his manager], who – by holding out – has got the customer to spend an extra £550*".

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

Mr Terry Chaplin complained on his own behalf and on behalf of his son, Mr Michael Chaplin, that their privacy was unwarrantably infringed in the programme as broadcast because, having refused permission for the programme makers to use the recorded footage of them, the full details of a private transaction between them and the dealership were disclosed through showing footage of this transaction in the programme as broadcast.

In particular, Mr Terry Chaplin said that, immediately after the filming, he and his son had refused permission for the programme makers to use the footage of them on three occasions<sup>1</sup>. Despite their refusal, Mr Terry Chaplin claimed that the programme makers then offered to “pay the car tax” in return for their consent. This offer was refused. Mr Terry Chaplin added that he understood that programme makers were required to obtain release forms from every person included in a broadcast programme, but neither he nor his son signed such a form. He also said that at no point did either he or his son agree to be part of a programme to be broadcast on television and that he recalled saying that he did not want to be on television.

In response, Channel 4 said that it accepted that, given that they were filmed negotiating a deal concerning the purchase of a car, Mr Terry Chaplin and his son had a legitimate expectation of privacy in relation to the events which were filmed and broadcast. However, it said that the complainants did consent both to the filming of the relevant footage and to its subsequent broadcast.

The broadcaster said that the programme makers did not ask the complainants to sign release forms, but instead sought and obtained verbal consent for their inclusion in the programme. It added that there is no requirement in the Code, or elsewhere, that written releases be obtained, merely that informed consent be obtained in some way. Channel 4 also said that verbal consent was relied upon routinely by programme makers and that, in this case, a filming notice was placed around the car dealership. The notice (a full copy of which was provided to Ofcom) included the following words:

“...in continuing into this area you consent to being filmed and consent to such recording being included in the series”.

Channel 4 said that this clearly suggested that written releases would not be sought.

The broadcaster added that the programme makers spoke to the complainants on three occasions about the filming, although none of these conversations were recorded. However, it said that the executive producer of the programme recalled that he had approached the complainants shortly after they arrived at the dealership and that he briefly explained the subject and purpose of the filming to Mr Terry Chaplin, and asked him if he and his son would be happy to participate. Channel 4 said that the executive producer explained that the camera crew were primarily filming the sales team going about their jobs and that the focus would be on them, although clearly interaction with customers would also be filmed. Channel 4 said that, initially, Mr Terry Chaplin had said that he did not know whether he wanted to be filmed but, after a few seconds, he said that they were “okay” with being filmed, but would prefer to be “in the background”. The executive producer understood this to mean that the complainants were happy to be filmed along with any member of the

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<sup>1</sup> Ofcom understands that these were the three occasions when the programme makers spoke to the complainants, as set out in Channel 4's response.

sales team they were dealing with, but did not wish to be interviewed on camera, or to feature prominently.

Channel 4 said that, after the negotiation between James and the complainants had been going on for some time, one of the cameramen started filming them. When the executive producer realised that the complainants were being filmed, he approached them again. During a break in the negotiations, the executive producer asked the complainants whether they were happy with the filming which was taking place, reiterating that the focus was on James and the way James carried out his job, but that this potential sale/negotiation would be very interesting for the programme. Channel 4 said that the complainants confirmed that they were happy.

The broadcaster stated that the executive producer said that the filming of James and the complainants continued for some time and that clearly all three knew that they were being filmed and their words recorded as the camera was pointing directly at them from just a few feet away. At no point did the complainants revoke their consent, ask for filming to stop, express reservations about being filmed, or appear uneasy with filming.

Channel 4 said that after the sale was concluded (and while the complainants were waiting to complete the necessary paperwork) the executive producer asked Mr Terry Chaplin if he would be prepared to do follow-up filming, for example an 'on-camera' interview about their experience. Mr Terry Chaplin said that he did not wish to do any follow-up filming. However, he expressed no reservations about the filming that had taken place up until that point, and he did not at any time revoke his earlier consent.

Channel 4 said that the executive producer also spoke separately to Mr Michael Chaplin, who confirmed that he was happy with the filming that had taken place. The executive producer did not ask Mr Michael Chaplin whether he was prepared to do a follow-up interview because his father had already refused to do so. It said that the programme makers had no further contact with the complainants before the broadcast of the programme.

The broadcaster refuted the complainants' claim that they explicitly revoked their consent or stated that they did not wish to appear in the programme. It said that the programme makers were justified in believing that the complainants had given their informed consent to the inclusion of the relevant footage of them in the programme as broadcast because:

- filming notices were clearly visible on site;
- the complainants allowed themselves to be filmed for an extended period without expressing any reservations;
- the complainants verbally consented to being filmed; and
- although the complainants refused to take part in follow-up filming they did not revoke their earlier consent to the use of the footage of them which had already been recorded.

With regard to the offer to "pay the car tax", Channel 4 said that the executive producer said that, before filming of the complainants' negotiation with James began, the producer had told James that the complainants had expressed reservations about the filming and had asked to be in the background. James responded "why don't you offer to pay their car tax?" to which the executive producer said "yes". The executive producer said that he did not think that James was being serious and considered that the comment was part of the salesman's playful banter.

Subsequently, James suggested to the complainants that the programme makers might pay for their car tax. Channel 4 said that no programme makers were present when this suggestion was made and neither the executive producer nor any of the camera crew personally offered to pay the complainants' car tax. Channel 4 added that James had confirmed the executive producer's recollection of these events.

### **Ofcom's initial Preliminary View**

Ofcom prepared an initial Preliminary View that Mr Terry Chaplin and Mr Michael Chaplin's complaint should not be upheld. The initial Preliminary View acknowledged the conflicting position of the parties about whether the complainants had repeatedly told the programme makers that they did not want to appear in the programme. However, it was reasonable, in Ofcom's view, for the programme makers to have concluded that they had secured the complainants' informed consent because: filming notices were placed around the dealership; the filming took place openly and the complainants were aware that they were being filmed (and understood the purpose of that filming); and the footage in the programme indicated that neither complainant had asked that the filming be stopped nor left to avoid being filmed.

Both Mr Terry Chaplin and Channel 4 commented on the initial Preliminary View. The main points made by Mr Terry Chaplin that are directly relevant to the complaint as entertained and Channel 4's responses to those points were, in summary, as follows.

#### *Mr Terry Chaplin's representations*

Mr Terry Chaplin said that the filming notices on display in the dealership "were not visible" and that he and his son "did not see them". He also said that Channel 4 was wrong to say that he and his son had not been asked to sign a release form and added that, given that he was asked to sign a release form and neither he nor his son signed it, it was clear that they had not given their consent.

Mr Terry Chaplin said that "at no time did I say I was OK to be in the programme" and disputed Channel 4's position that during a break in the negotiations he and his son had "confirmed that they were happy" with the filming which was taking place. He also said that his son "has no recollection" of telling the executive producer that he was happy with the filming that had taken place. However, Mr Terry Chaplin acknowledged that he was aware that the cameras were filming.

Mr Chaplin reiterated his position that on more than one occasion he and his son had said that they did not want to be in the programme and argued that it was not relevant that they had not "ask[ed] for filming to stop" or "revoke[d] their consent" because they had not consented to any footage being used in the first place.

#### *Channel 4's representations*

Channel 4 said that upon further enquiry in preparation of its representations to Ofcom (notably communication with an assistant producer ("AP") who left the production company soon after working on this programme<sup>2</sup>), it had found that after the filming Mr Terry Chaplin was in fact asked to sign a release form by the AP and he refused to do so. The AP said that she had spoken to Mr Terry Chaplin on two occasions. The first time, which was soon after he and his son arrived at the dealership, she asked him if they would be happy to be filmed for the programme and

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<sup>2</sup> Channel 4 explained that prior to submitting its initial response to this complaint it had previously tried to contact the AP but she had not received its message.

he replied that they would be, but preferred to be “in the background”. The second time was as he walked past her after the filming and she asked him if he would sign a release form, to which he said “no”. Channel 4 said that the AP added that “the impression she got was that, while Mr Chaplin said “no” to signing the release form, he was not revoking his consent to the earlier filming. He just didn’t want to sign a release form, which sometimes contributors don’t”.

Notwithstanding this acknowledgement, Channel 4 argued that it was reasonable for the programme makers to have concluded that they had secured informed consent from Mr Chaplin for his and his son’s inclusion in the programme. In particular, it said there were three occasions when Mr Terry Chaplin confirmed he and his son were either “OK with” or “happy” to be filmed – the initial approach from the AP; the executive producer’s initial approach soon afterwards; and the executive producer’s second conversation with Mr Terry Chaplin during a break in the negotiations.

In addition, although it acknowledged that after the filming Mr Chaplin had refused the AP’s request to sign a release form and then told the executive producer that he did not wish to take part in any follow-up filming, Channel 4 said that when the executive producer subsequently checked whether Mr Michael Chaplin was happy with the filming which had just taken place he confirmed that he was.

Channel 4 again pointed to the presence of the filming notices at the dealership before saying that the programme makers were “adamant” that neither Mr Terry Chaplin nor his son said that they did not wish to be filmed or to appear in the programme. It also repeated its argument that the complainants did not ask the camera crew to stop filming.

#### *Additional issue*

The complainants also claimed that the programme makers offered to pay the tax on their new car in exchange for consent. They said that they refused this offer. In its response Channel 4 said that James suggested making such an offer to Mr Terry Chaplin and Mr Michael Chaplin during a conversation he had with the executive producer, who said “yes” in response. However, the broadcaster also explained that the executive producer considered that this exchange was not meant to be taken seriously, and denied that any of the programme makers either made or sanctioned the making of an offer on these terms. Given that this alleged offer was not accepted or acted upon at the time of filming and that the complainants did not subsequently contact Channel 4 in relation to this issue, Ofcom considers that it did not form the basis of Channel 4’s understanding that the complainants had given informed consent for their participation in the programme. Therefore, this matter was not relevant to Ofcom’s consideration of this complaint.

#### **Ofcom’s revised Preliminary View**

Having carefully considered both parties’ representations (and, in particular, Channel 4’s acknowledgement that Mr Terry Chaplin was specifically asked to sign a release form but had refused to do so), Ofcom considered, in light of the further points raised, that we should reconsider our initial Preliminary View not to uphold the complaint.

Ofcom came to the revised Preliminary View that on balance the complaint should be upheld. We provided both parties with a copy of the revised Preliminary View and an opportunity to make representations on it.

## **Representations on the revised Preliminary View**

Channel 4 made representations on the revised Preliminary View and Mr Terry Chaplin submitted a response to two of the points raised by Channel 4 in its representations.

Channel 4 said that the “simple refusal [by Mr Terry Chaplin] to sign a release form is, in itself incapable of overriding all the other evidence which suggests that the complainants did consent to appear” and argued that Ofcom had “placed undue reliance” on Mr Terry Chaplin saying “no” to signing a release form. It added that Ofcom had failed to give sufficient consideration and weight to the conversation between Mr Michael Chaplin and the executive producer after the filming in which he [Mr Chaplin] said he was happy with the filming. Channel 4 also said that, although Mr Terry Chaplin had said that his son had “no recollection” of this discussion, he did not deny that it had taken place.

In response to these points Mr Terry Chaplin said when he and his son arrived at the dealers he had made it clear that neither of them wanted to feature in a programme but, having been told that the filming would mainly focus on the salesman, they did not protest about the filming going on around them. He also said that, as Channel 4 acknowledged, when asked to sign a release form “we refused”. He added “no-one explained that we did not have to sign a release form for the footage including us to be shown. We thought our refusal was sufficient”. He also said that Channel 4 was incorrect to assume that he and his son were happy to be included in the programme.

Mr Terry Chaplin also said that he had spoken to his son again and that he had reiterated that he had no recollection of the conversation which Channel 4 claims he had with the executive producer and said that “he certainly would not have stated that he was “happy” with the filming”.

Having taken account of all the representations by the parties (including those on the revised Preliminary View) Ofcom concluded that on balance its final decision should remain the same as the revised Preliminary View – that is, to uphold the complaint. The reasons for our decision to uphold this complaint are set out below.

## **Decision**

In reaching its Decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast and both parties’ written submissions.

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 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.

Ofcom considered the complaint that the complainants' privacy was unwarrantably infringed in the programme as broadcast because footage of them was included without their consent. In doing so, Ofcom had particular 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 first assessed the extent to which the complainants had a legitimate expectation of privacy in respect of the material which was broadcast.

As set out in detail in the "Introduction and programme summary" section above, the programme included footage of the complainants negotiating to buy a used car with James, a member of the dealership's sales team. The programme included approximately 90 seconds of footage of the complainants in which their faces were clearly visible and, although their full names were not included, they were described as a father and son and the salesman referred to them as "Tel" and "Mike". Therefore, Ofcom considered that the complainants were identifiable from the inclusion of the footage of and information about them in the broadcast. Ofcom took the view that, ordinarily, business negotiations and conversations involving an individual's personal financial situation could reasonably be regarded as being private and therefore attract an expectation of privacy.

Ofcom noted from Channel 4's statement that filming notices had been placed around the dealership when the filming took place and that the filming had been conducted openly. In addition, from their complaint it appeared to Ofcom that the complainants had been aware that they were being filmed and that the filming was for a programme about the dealership which would be broadcast on Channel 4. In these circumstances, Ofcom considered that, although the complainants had a legitimate expectation of privacy in relation to the material broadcast, their expectation was limited for these reasons.

Having taken the view that the complainants had a legitimate expectation of privacy, albeit limited, in respect of the material broadcast in the programme, Ofcom assessed whether their consent had been secured before this material was broadcast in accordance with Practice 8.6 of the Code.

Ofcom noted that there was a significant disparity between the recollections of the complainants and the programme makers about whether the programme makers secured the complainants' informed consent to broadcasting the material. In these circumstances Ofcom attempts, based on the evidence available, to determine which of the parties is correct on the point. If it is unable to do so, Ofcom decides whether it was reasonable for the programme makers to consider that they had obtained a complainant's informed consent for the broadcast of the relevant material in the specific circumstances.

In this case, Ofcom noted Mr Terry Chaplin's understanding that programme makers are required to obtain written release forms from every person included in a broadcast programme. However, this is not necessary. The Code requires broadcasters to ensure that 'informed consent' has been obtained from people who have been invited to make a contribution to a programme (except where that contribution is trivial). It is for the programme makers to determine how best to obtain such consent and they are permitted to rely on either written or oral confirmations of consent.

In its initial Preliminary View, Ofcom took into account Mr Terry Chaplin's claim that he and his son refused the programme makers' permission for the use of the footage of them on three occasions, and the testimony of the executive producer which is summarised above. In addition, Ofcom noted the following:

- filming notices were placed around the dealership which: set out the purpose and focus of the filming that was taking place; asked anyone who did not wish to be filmed to notify the production team (and confirmed that if they did this they would not be featured); and explicitly stated that any individual who went into the area where filming was taking place was consenting to being filmed and to the inclusion of any such recording in the series. (Ofcom noted Mr Terry Chaplin's assertion that neither he nor his son saw these notices. However, we are content that they were present and that it was reasonable for the programme makers to have taken this into account when deciding whether or not they had secured informed consent from the complainants);
- filming took place openly and the complainants were aware that their negotiations with James were being filmed for a programme about the car dealership to be broadcast on Channel 4; and
- from the footage included in the programme, it appeared that the complainants continued to negotiate with James while the filming took place and neither asked that the filming be stopped nor left the sales office to avoid being filmed.

All of these factors were relevant to Ofcom's considerations in the revised Preliminary View and this Decision. However, we also noted that, after receiving our initial Preliminary View (and Mr Terry Chaplin's response to it), Channel 4 provided a candid correction to its original submission in response to this complaint. In particular, we took account of the broadcaster's acknowledgement that immediately following the filming of the complainants the AP had in fact specifically asked Mr Terry Chaplin to sign a release form and he refused to do so. This was just before he refused to take part in any follow-up filming.

Ofcom noted Channel 4's argument that, despite the exchange regarding the release form, it was still reasonable for the programme makers to have concluded that they had secured informed consent from the complainants for the inclusion of footage of and information about them in the programme. Channel 4 argued this was because there were three occasions when Mr Terry Chaplin confirmed he and his son were either "OK with" or "happy" to be filmed, but also because Mr Michael Chaplin subsequently told the executive producer that he was happy with the filming which had just taken place. However, we also noted that in his representations after both the initial and the revised Preliminary Views Mr Terry Chaplin disputed the broadcaster's claim that both he and his son had indicated that they were "happy" with the filming either while it was taking place or, in Mr Michael Chaplin's case, soon afterwards.

We noted that the undisputed facts in this case are that:

- filming notices were displayed around the dealership (as noted above, we recognised that Mr Terry Chaplin said that neither he nor his son saw these notices. However, he did not dispute that there were displayed);
- the complainants knew that they were being filmed and allowed this to happen on the understanding that the salesman would be the focus of the footage in question (we recognised that Mr Terry Chaplin has said that prior to the filming he told the programme makers that neither he nor his son wanted to be featured in a programme. However, he has also repeatedly indicated that he spoke to the programme makers about the extent to which they would be featured); and,
- immediately after the filming took place Mr Terry Chaplin was asked to sign a release form consenting to the inclusion of footage of information about him and his son in the programme and he refused to do so.

Having carefully assessed these conflicting accounts, Ofcom took the view that it was reasonable for the programme makers to have understood that the complainants knew the purpose of the filming and did not raise any objections while they were being filmed.

However, notwithstanding the misunderstandings which appear to have occurred between the complainants and the programme makers during their conversations about the filming and use of the relevant footage, we consider that Mr Terry Chaplin's clear refusal to sign a release form was significant. We placed appropriate weight on this factor in this Decision.

As mentioned above, the executive producer understood the complainants to have indicated that they were happy to be filmed along with any member of the sales team they were dealing with, but did not wish to be interviewed on camera, or to feature prominently in the programme. We considered that, while the complainants were identifiable in the programme and details of their negotiation to buy a car were included, the main focus of the section of the programme in which they featured was on James and the efforts he made to complete both this sale and another one he was conducting at the same time, as well as his working relationship with his manager. The programme included no further footage of or reference to the complainants.

Whether someone has given their informed consent to being included in a broadcast depends on all the relevant circumstances, and, in particular, in this case those relating to the filming of the footage. Whether it was reasonable for the broadcaster to have concluded in this case that Mr Terry Chaplin and his son gave informed consent involved assessing all the evidence from the time Mr Chaplin and his son arrived at the car showroom to when they left. Ofcom noted that there were certain factors which suggested that Mr Terry Chaplin and his son may have given informed consent e.g. the warning notices that were displayed. Ofcom carefully balanced these factors, however, against the significant fact that Mr Terry Chaplin was asked to sign a release form after the relevant footage was filmed and before he left the premises, but he refused to do so. This was significant in Ofcom's opinion because, as is accepted by both parties, it occurred immediately after the filming and therefore, in our view, raised serious doubt as to whether the complainants had given their consent for the broadcast of the relevant material.

As a result Ofcom considered that, on balance, it was not reasonable, in the circumstances of this case, for the programme makers to have concluded that they

had secured informed consent from the complainants for the inclusion of footage of and information about them (from which they were identifiable) in the programme as broadcast. Therefore, Ofcom concluded that the complainants' privacy was infringed in this respect.

Ofcom next considered whether this infringement of privacy was warranted. Ofcom weighed the broadcaster's right to freedom of expression and to impart information and ideas without unnecessary interference against the complainants' right to privacy. We noted that Channel 4 made no argument that there were any factors which would justify such an infringement of the complainants' privacy. Rather, in both sets of submissions in response to this complaint, Channel 4 indicated that if the programme makers had understood that the complainants did not wish to appear in the programme, the footage would either not have been filmed at all or, if filming had already taken place, no filmed footage would have been included in the programme.

In these circumstances, our view is that the broadcaster's right to freedom of expression and its right to receive and impart information without interference did not outweigh the complainants' expectation of privacy in relation to the inclusion of the footage of and information about them in the programme. We therefore concluded that the inclusion of this material in the programme as broadcast was not warranted.

For all these reasons Ofcom's Decision is that, on balance, the complainants' privacy was unwarrantably infringed in the programme as broadcast.

**Therefore, Ofcom found that the complaint made by Mr Terry Chaplin and Mr Michael Chaplin of unwarranted infringement of privacy in the programme as broadcast should be upheld.**

## Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed between 1 and 21 April 2014 and decided that the broadcaster did not breach Ofcom's codes, licence conditions or other regulatory requirements.

### Investigations conducted under the Procedures for investigating breaches of content standards for television and radio<sup>1</sup>

Programme	Broadcaster	Transmission date	Categories
Do You Know Me	Channel 5	10/02/2014	Scheduling

For more information about how Ofcom conducts investigations about content standards, go to: <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/>.

### Investigations conducted under the General Procedures for investigating breaches of broadcast licences

Licensee	Categories
ATN Bangla UK Limited	Provision of information

For more information about how Ofcom conducts investigations about broadcast licences, go to: <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/general-procedures/>.

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<sup>1</sup> This table was amended after publication to correct a factual inaccuracy.

## Complaints Assessed, not Investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 1 and 21 April 2014 because they did not raise issues warranting investigation.

### Complaints assessed under the Procedures for investigating breaches of content standards for television and radio

For more information about how Ofcom assesses conducts investigations about content standards, go to:

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Millionaire Matchmaker	4Music	23/03/2014	Offensive language	1
Police Interceptors	5*	06/04/2014	Outside of remit / other	2
The Hotel Inspector	5*	21/03/2014	Offensive language	1
Khara Sach	ARY News	Various	Due impartiality/bias	1
Special Alapcharita	ATN Bangla UK	16/03/2014	Due impartiality/bias	5
Special Alapcharita	ATN Bangla UK	16/03/2014	Product placement	1
Morning Breakfast Show	Awaaz FM	26/03/2014	Materially misleading	1
Bangla TV News	Bangla TV	16/03/2014	Advertising scheduling	1
Programming	Bay FM	24/03/2014	Generally accepted standards	1
Programming	Bay FM	26/03/2014	Fairness	1
Programming	Bay FM	Various	Competitions	1
Athletics	BBC 1	13/04/2014	Outside of remit / other	2
BBC News	BBC 1	11/04/2014	Outside of remit / other	1
BBC News at Six	BBC 1	01/04/2014	Outside of remit / other	1
BBC News at Ten	BBC 1	02/04/2014	Outside of remit / other	1
Breakfast	BBC 1	14/03/2014	Flashing images/risk to viewers who have PSE	1
Breakfast	BBC 1	04/04/2014	Outside of remit / other	1
Countryfile	BBC 1	06/04/2014	Outside of remit / other	8
Don't Cap My Benefits	BBC 1	10/04/2014	Materially misleading	1
EastEnders	BBC 1	25/03/2014	Generally accepted standards	1
EastEnders	BBC 1	10/04/2014	Outside of remit / other	1
EastEnders	BBC 1	10/04/2014	Product placement	1
EastEnders	BBC 1	11/04/2014	Violence and	1

			dangerous behaviour	
Gay, Married and Legal	BBC 1	04/04/2014	Generally accepted standards	1
Gay, Married and Legal	BBC 1	04/04/2014	Generally accepted standards	1
Have I Got News for You	BBC 1	11/04/2014	Offensive language	6
Have I Got News for You	BBC 1	11/04/2014	Outside of remit / other	10
Holby City	BBC 1	01/04/2014	Generally accepted standards	2
Holby City	BBC 1	15/04/2014	Outside of remit / other	1
Inside Out West Midlands	BBC 1	17/02/2014	Scheduling	1
Live at the Apollo	BBC 1	31/03/2014	Disability discrimination/offence	1
MasterChef	BBC 1	10/04/2014	Generally accepted standards	1
Match of the Day	BBC 1	15/03/2014	Generally accepted standards	1
Outnumbered	BBC 1	05/03/2014	Disability discrimination/offence	1
Panorama	BBC 1	31/03/2014	Race discrimination/offence	4
Panorama	BBC 1	14/04/2014	Outside of remit / other	1
Question Time	BBC 1	06/03/2014	Generally accepted standards	1
Question Time	BBC 1	27/03/2014	Outside of remit / other	1
The Michael McIntyre Chat Show	BBC 1	14/04/2014	Generally accepted standards	1
The National Lottery Live	BBC 1	05/04/2014	Generally accepted standards	1
The One Show	BBC 1	31/03/2014	Scheduling	1
The One Show	BBC 1	09/04/2014	Nudity	1
The One Show	BBC 1	14/04/2014	Suicide and self harm	1
The One Show	BBC 1	16/04/2014	Disability discrimination/offence	1
The One Show	BBC 1	16/04/2014	Outside of remit / other	1
The Voice UK	BBC 1	29/03/2014	Offensive language	4
The Voice UK	BBC 1	05/04/2014	Outside of remit / other	1
The Voice UK	BBC 1	05/04/2014	Product placement	1
The Voice UK	BBC 1	05/04/2014	Voting	1
This Week	BBC 1	28/03/2014	Outside of remit / other	1
River City	BBC 1 Scotland	18/03/2014	Violence and dangerous behaviour	1
Border Country: The Story of Britain's Lost Middleland	BBC 2	06/04/2014	Violence and dangerous behaviour	1
Louis Theroux's LA Stories	BBC 2	30/03/2014	Generally accepted standards	1

Newsnight	BBC 2	11/04/2014	Outside of remit / other	1
Stewart Lee's Comedy Vehicle	BBC 2	22/03/2014	Race discrimination/offence	1
The European Union: In or Out?	BBC 2	02/04/2014	Outside of remit / other	1
Great TV Mistakes	BBC 3	05/04/2014	Offensive language	1
Invasion of the Job Snatchers	BBC 3	07/04/2014	Generally accepted standards	1
The Call Centre	BBC 3	09/04/2014	Outside of remit / other	1
The Call Centre	BBC 3	15/04/2014	Generally accepted standards	1
Top Gear	BBC 3	12/04/2014	Offensive language	2
News	BBC 6 Music	08/04/2014	Scheduling	1
Coverage of Oscar Pistorius trial	BBC and Sky News	08/04/2014	Generally accepted standards	1
Elliott Webb	BBC Hereford & Worcester	28/03/2014	Sexual orientation discrimination/offence	1
Bigfoot	BBC iPlayer	Various	Outside of remit / other	1
The Papers	BBC News Channel	03/04/2014	Materially misleading	1
Nick Grimshaw	BBC Radio 1	02/04/2014	Scheduling	1
The Matt Edmondson Show	BBC Radio 1	28/03/2014	Violence and dangerous behaviour	1
The Matt Edmondson Show	BBC Radio 1	06/04/2014	Scheduling	1
Charlie Sloth	BBC Radio 1Xtra	14/04/2014	Offensive language	1
Woman's Hour	BBC Radio 4	03/04/2014	Gender discrimination/offence	1
Shelagh Fogarty	BBC Radio 5 Live	14/04/2014	Crime	1
Vanessa Feltz Show	BBC Radio London	28/03/2014	Sexual orientation discrimination/offence	1
Morning Call with Oliver Hides	BBC Radio Wales	24/03/2014	Generally accepted standards	31
BBC Scotland News	BBC Scotland	09/04/2014	Outside of remit / other	1
FA Cup Football	BT Sport 1	13/04/2014	Outside of remit / other	1
Premier League Football: Chelsea v Arsenal	BT Sport 1	22/03/2014	Offensive language	2
Adventure Time	Cartoon Network	Various	Scheduling	1
The Slammer	CBBC	28/10/2011	Race discrimination/offence	1
Tweenies	CBeebies	19/03/2014	Scheduling	1
Jail (trailer)	CBS Drama	13/04/2014	Generally accepted standards	1
Dog and Beth: On the Hunt	CBS Reality	12/04/2014	Offensive language	1
8 Out of 10 Cats	Channel 4	14/04/2014	Generally accepted standards	2
Alan Carr: Chatty Man	Channel 4	11/04/2014	Generally accepted standards	2



Channel 4 News	Channel 4	04/04/2014	Gender discrimination/offence	1
Channel 4 News	Channel 4	09/04/2014	Due impartiality/bias	27
Channel 4 Racing	Channel 4	12/03/2014	Race discrimination/offence	1
Dogging Tales	Channel 4	15/04/2014	Generally accepted standards	2
Fifteen to One (trailer)	Channel 4	28/03/2014	Flashing images/risk to viewers who have PSE	1
Gogglebox	Channel 4	04/04/2014	Generally accepted standards	2
Gogglebox	Channel 4	04/04/2014	Sexual orientation discrimination/offence	2
Grand National (trailer)	Channel 4	31/03/2014	Animal welfare	1
Nigel Farage: Who are You?	Channel 4	31/03/2014	Due impartiality/bias	8
Our Gay Wedding: The Musical	Channel 4	31/03/2014	Sexual orientation discrimination/offence	1
Our Gay Wedding: The Musical (trailer)	Channel 4	31/03/2014	Due impartiality/bias	1
Posh Pawn (trailer)	Channel 4	16/04/2014	Scheduling	1
The £60,000 Puppy: Cloning Man's Best Friend	Channel 4	09/04/2014	Generally accepted standards	1
The Celeb Hunter	Channel 4	10/04/2014	Materially misleading	1
The Cowboys	Channel 4	01/04/2014	Race discrimination/offence	1
The Mechanic	Channel 4	29/03/2014	Scheduling	1
Undercover Doctor: Cure Me, I'm Gay	Channel 4	18/03/2014	Materially misleading	3
Britain's Best Loved Double Acts	Channel 5	12/04/2014	Offensive language	1
Can't Pay? We'll Take it Away!	Channel 5	09/04/2014	Generally accepted standards	1
Can't Pay? We'll Take it Away: Final Demand	Channel 5	08/04/2014	Violence and dangerous behaviour	1
Dreams' sponsorship of "Easter"	Channel 5	Various	Religious/Beliefs discrimination/offence	7
Gypsies on Benefits and Proud (trailer)	Channel 5	08/04/2014	Race discrimination/offence	1
Hercules the Human Bear	Channel 5	03/04/2014	Outside of remit / other	1
It Takes a Thief to Catch a Thief	Channel 5	27/03/2014	Offensive language	11
It Takes a Thief to Catch a Thief	Channel 5	10/04/2014	Race discrimination/offence	1
Most Shocking Moments in Pop	Channel 5	05/04/2014	Suicide and self harm	1
Most Shocking Talent Show Moments	Channel 5	12/04/2014	Offensive language	1
NCIS	Channel 5	07/04/2014	Scheduling	1
Pickpockets and	Channel 5	14/04/2014	Crime	8

Proud				
The Nightmare Neighbour Next Door	Channel 5	08/04/2014	Violence and dangerous behaviour	1
The Unseen Fred West Confessions	Channel 5	10/04/2014	Generally accepted standards	1
The Wright Stuff	Channel 5	01/04/2014	Fairness & Privacy	1
UFC Fight Night London: Live	Channel 5	08/03/2014	Generally accepted standards	3
Promo 21 greetings/community announcement	Channel i	19/02/2014	Political advertising	1
VIP Lounge with Zakir Khan	Channel Nine UK	07/11/2013	Due impartiality/bias	1
CHSTV News	CHSTV	23/11/2013	Due impartiality/bias	1
Live at the Apollo	Comedy Central	07/03/2014	Disability discrimination/offence	1
The US Office (trailer)	Comedy Central	07/03/2014	Scheduling	1
Vaisakhi and Community broadcast	Community Radio Huddersfield	01/04/2014	Religious/Beliefs discrimination/offence	1
QI	Dave	06/04/2014	Scheduling	1
Top Gear	Dave	02/04/2014	Offensive language	1
The Big Bang Theory	E4	Various	Outside of remit / other	1
Get Connected	East Coast FM 107.6	24/03/2014	Offensive language	1
Starred Up: Interview Special	Film4	29/03/2014	Scheduling	1
Kato Kaelin Live	FilmOn.tv	23/03/2014	Generally accepted standards	1
The JD Show	Free Radio	27/02/2014	Sexual orientation discrimination/offence	1
Sam and Amy	Gem 106	17/03/2014	Competitions	1
Geo News	Geo News	03/03/2014	Generally accepted standards	1
Adventure Time	ITV	12/04/2014	Scheduling	1
Amazing Greys	ITV	12/04/2014	Age discrimination/offence	1
Amazing Greys	ITV	12/04/2014	Generally accepted standards	1
Aunt Bessie's sponsorship of The Chase	ITV	04/04/2014	Sponsorship credits	1
Britain's Got Talent	ITV	12/04/2014	Animal welfare	11
Britain's Got Talent	ITV	12/04/2014	Generally accepted standards	3
Britain's Got Talent	ITV	12/04/2014	Offensive language	3
Britain's Got Talent	ITV	12/04/2014	Outside of remit / other	2
Celebrity Juice (trailer)	ITV	05/04/2014	Generally accepted standards	1
Champions League Live	ITV	08/04/2014	Drugs, smoking, solvents or alcohol	1
Coronation Street	ITV	17/03/2014	Scheduling	2

Coronation Street	ITV	21/03/2014	Scheduling	2
Coronation Street	ITV	31/03/2014	Generally accepted standards	1
Coronation Street	ITV	04/04/2014	Generally accepted standards	1
Coronation Street	ITV	07/04/2014	Materially misleading	1
Coronation Street	ITV	Various	Generally accepted standards	1
Dangerous Dogs	ITV	20/03/2014	Animal welfare	1
Dangerous Dogs	ITV	27/03/2014	Animal welfare	52
Daybreak	ITV	03/04/2014	Due impartiality/bias	7
Emmerdale	ITV	24/03/2014	Materially misleading	1
Emmerdale	ITV	26/03/2014	Scheduling	1
Emmerdale	ITV	31/03/2014	Materially misleading	1
Emmerdale	ITV	31/03/2014	Outside of remit / other	1
Emmerdale	ITV	04/04/2014	Animal welfare	1
Emmerdale	ITV	04/04/2014	Generally accepted standards	1
Emmerdale	ITV	07/04/2014	Materially misleading	1
Emmerdale	ITV	09/04/2014	Product placement	1
Emmerdale	ITV	15/04/2014	Generally accepted standards	1
Emmerdale	ITV	Various	Generally accepted standards	1
Endeavour	ITV	30/03/2014	Materially misleading	1
Endeavour	ITV	06/04/2014	Drugs, smoking, solvents or alcohol	1
FA Cup Highlights	ITV	12/04/2014	Generally accepted standards	1
FA Cup Live	ITV	12/04/2014	Generally accepted standards	1
FA Cup Semi-Final	ITV	12/04/2014	Outside of remit / other	1
Inside the National Trust	ITV	06/04/2014	Animal welfare	1
ITV News	ITV	15/01/2014	Due impartiality/bias	1
ITV News at Ten and Weather	ITV	31/03/2014	Due accuracy	1
ITV News at Ten and Weather	ITV	02/04/2014	Due impartiality/bias	1
ITV News at Ten and Weather	ITV	07/04/2014	Generally accepted standards	1
Jackpot247	ITV	08/04/2014	Gambling	1
Lorraine	ITV	14/04/2014	Generally accepted standards	1
Martin Clunes and a Lion Called Mugie	ITV	04/04/2014	Generally accepted standards	1
Off Their Rockers	ITV	06/04/2014	Age discrimination/offence	1
Off Their Rockers	ITV	06/04/2014	Generally accepted standards	1
Off Their Rockers	ITV	13/04/2014	Scheduling	1
The Chase	ITV	14/04/2014	Outside of remit /	1

			other	
The Cube	ITV	05/04/2014	Generally accepted standards	1
The Jeremy Kyle Show	ITV	26/03/2014	Generally accepted standards	2
The Jeremy Kyle Show	ITV	07/04/2014	Generally accepted standards	1
The Jeremy Kyle Show	ITV	16/04/2014	Generally accepted standards	1
The Jeremy Kyle Show	ITV	17/04/2014	Generally accepted standards	1
The Widower	ITV	31/03/2014	Offensive language	1
The Widower	ITV	31/03/2014	Race discrimination/offence	1
This Morning	ITV	09/04/2014	Generally accepted standards	1
This Morning	ITV	15/04/2014	Exorcism, the occult and the paranormal	1
Visit Scotland advertisement	ITV	12/04/2014	Political advertising	1
ITV News Central	ITV Central	09/04/2014	Due accuracy	1
118 118 sponsorship credits	ITV channels	Various	Outside of remit / other	1
ITV News London	ITV London	26/03/2014	Due accuracy	2
Access services	ITV Player	Various	Television Access Services	1
Celebrity Juice	ITV2	01/04/2014	Generally accepted standards	1
Celebrity Juice	ITV2	03/04/2014	Fairness	1
Celebrity Juice	ITV2	10/04/2014	Outside of remit / other	1
Channel ident	ITV2	01/04/2014	Violence and dangerous behaviour	1
The Jeremy Kyle Show	ITV2	28/03/2014	Gender discrimination/offence	1
Year One	ITV2	06/04/2014	Scheduling	1
You've Been Framed!	ITV2	07/04/2014	Animal welfare	1
Visit Scotland advertisement	ITV3	30/03/2014	Political advertising	1
Advertisements	ITV4	06/04/2014	Advertising minutage	1
Grants Whiskey sponsors Kojak	ITV4	14/04/2014	Sponsorship	1
IPL Cricket (trailer)	ITV4	30/03/2014	Materially misleading	1
Morning Glory with Robin Banks	Jack FM (Berkshire)	24/03/2014	Scheduling	1
Cristo	LBC 97.3FM	13/04/2014	Generally accepted standards	1
James O'Brien	LBC 97.3FM	31/01/2014	Generally accepted standards	1
Nick Ferrari	LBC 97.3FM	24/03/2014	Commercial communications on radio	1
Steve Allen	LBC 97.3FM	14/04/2014	Generally accepted standards	1
Go!Go!Go!	Nick Jr	05/04/2014	Scheduling	1

Programming	Panjab Radio	29/03/2014	Commercial communications on radio	1
"Register to vote" advertisement	Pick TV	11/04/2014	Political advertising	1
Futurama	Pick TV	23/03/2014	Scheduling	2
Futurama	Pick TV	31/03/2014	Scheduling	1
Aintree Racecourse Live	Radio City 96.7 FM	05/04/2014	Offensive language	1
Game of Thrones	Sky Atlantic	14/04/2014	Advertising scheduling	2
Repeat programming	Sky channels	Various	Outside of remit / other	1
Sky+ Series link function	Sky channels	07/04/2014	Outside of remit / other	1
Sky News	Sky News	27/03/2014	Due impartiality/bias	1
Sky News	Sky News	03/04/2014	Gender discrimination/offence	1
Sky News	Sky News	08/04/2014	Generally accepted standards	1
Sky News	Sky News	09/04/2014	Scheduling	5
Sky News at Ten	Sky News	06/04/2014	Cross/self promotions	1
Sunrise	Sky News	15/04/2014	Due impartiality/bias	1
Champions League Football	Sky Sports 1	02/04/2014	Race discrimination/offence	2
Football	Sky Sports 1	29/03/2014	Generally accepted standards	1
Live Football	Sky Sports 1	15/04/2014	Offensive language	1
Premier League Football	Sky Sports 1	06/04/2014	Offensive language	1
About a Boy (trailer)	Sky Sports 2	30/03/2014	Scheduling	1
Metlife's sponsorship of All England Badminton Tournament	Sky Sports 3	08/03/2014	Surreptitious advertising	1
WWE Raw	Sky Sports 3	18/03/2014	Violence and dangerous behaviour	1
The Simpsons	Sky1	31/03/2014	Offensive language	1
The Smoke	Sky1	18/03/2014	Generally accepted standards	1
Ashes to Ashes (trailer)	Sony TV	29/03/2014	Scheduling	1
Iss Pyaar Ko Kya Naam Doon	Star Plus	21/03/2014	Suicide and self harm	1
Mahabharat	Star Plus	20/03/2014	Violence and dangerous behaviour	1
Mahabharat	Star Plus	Various	Violence and dangerous behaviour	1
Studio 66 Nights	Studio 66 TV1	21/02/2014	Sexual material	1
You've Been Framed!	STV	12/04/2014	Generally accepted standards	1
Advertisements	Talksport	10/04/2014	Outside of remit / other	1
Gun Smokes	TCM	27/03/2014	Advertising scheduling	1

Lily Allen: Our Time (music video)	Various	07/04/2014	Violence and dangerous behaviour	1
Programme trailers	Various	Various	Flashing images/risk to viewers who have PSE	1
References to Facebook and Twitter	Various	Various	Promotion of products/services	1
Various news and sport channels	Various	Various	Outside of remit / other	1
Deep Freeze Cold Spray's sponsorship	XFM	Various	Violence and dangerous behaviour	1
Zee Holi Mahotsav	Zee TV	16/03/2014	Advertising/editorial distinction	1

### Complaints assessed under the General Procedures for investigating breaches of broadcast licences

For more information about how Ofcom conducts investigations about broadcast licences, go to: <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/general-procedures/>.

Licensee	Categories
Corby FM Limited	Key commitments
Demon FM Ltd	Provision of licensed service
Ipswich Community Radio	Key commitments
Radio City (Sound of Merseyside) Ltd	Key commitments
Tamworth Radio Broadcasting C.I.C.	Other

## Investigations List

If Ofcom considers that a broadcaster may have breached its codes, a condition of its licence or other regulatory requirements, it will start an investigation.

**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 licence or other regulatory requirements being recorded.**

Here are alphabetical lists of new investigations launched between 3 and 23 April 2014.

### Investigations launched under the Procedures for investigating breaches of content standards for television and radio

Programme	Broadcaster	Transmission date
Advertising minutage	SAB	27 July 2013
BBC Radio Scotland Football	BBC Radio Scotland	16 March 2014
Guido (trailer)	FilmOn.tv	24 March 2014
Janice Dickinson	FilmOn.tv	23 March 2014
Law with N Rahman	CHSTV	25 January 2014
Top Gear	BBC 2	16 March 2014

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

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

### Investigations launched under the Procedures for the consideration and adjudication of Fairness and Privacy complaints

Programme	Broadcaster	Transmission date
Life and Death on the A9	BBC1 Scotland	6 March 2013
Khara Sach	ARY News	4 and 13 November, and 21 December 2013
Khara Sach	ARY News	13 November 2013
Police Interceptors	Channel 5	10 March 2014

For more information about how Ofcom considers and adjudicates upon Fairness and Privacy complaints, go to:

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

### **Investigations launched under the General Procedures for investigating breaches of broadcast licences**

<b>Licensee</b>	<b>Licensed Service</b>
Middlesex Broadcasting Corporation Limited	MATV (Punjabi)
Voice of Africa Radio	Voice of Africa Radio
Yol Media Limited	Yol TV

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

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